



GOVERNMENT OF ORISSA

REPORT

OF

THE COMMISSION OF INQUIRY

Appointed as per Notification No. 813-EC, dated the 26th
October, 1967 issued by the Home Department of the
Government of Orissa

HOME DEPARTMENT

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PART I

BACKGROUND, PRELIMINARIES AND GUIDING PRINCIPLES

CHAPTER 1

THE BACKGROUND OF THE INQUIRY

A Congress Ministry headed by Dr. Harekrushna Mahatab was in power in Orissa when the country became free on August 15, 1947. The Ministry lasted till May 11, 1950. On May 12, 1950 a Congress Ministry headed by Shri Naba-krushna Choudhury was formed and remained in office till October 18, 1956. On October 19, 1956 a Congress Ministry headed by Dr. Harekrushna Mahatab was formed in Orissa. This Ministry continued to function till May 22, 1959. On the last mentioned date Gana Tantra Parishad also joined the Government and a coalition Ministry was formed. Dr. Mahatab continued to be the Chief Minister and Shri R. N. Singh Deo, leader of the Gana Tantra Parishad Party, became the Deputy Chief Minister. This Ministry lasted till February 24, 1961. There was President's rule in Orissa from February 25, 1961 up to June 22, 1961. Mid-term elections took place in Orissa in June, 1961. The Congress secured an absolute majority and on June 23, 1961 Shri Biju Patnaik, leader of the Congress Party, was sworn in as Chief Minister. He formed a ministry with Shri Biren Mitra as Deputy Chief Minister. Shri R. N. Singh Deo became the leader of the Opposition. The ministry of Shri Patnaik remained in office till October 1, 1963.

There was, it appears, criticism in Orissa State Assembly regarding the business done by the Government with Orissa Agents, which was stated to be the proprietary concern of the wife of Shri Biren Mitra, Deputy Chief Minister. On July 3, 1963 Shri Patnaik addressed a letter to Shri R. N. Singh Deo, Leader of the Opposition and Chairman of Public Accounts Committee, to examine the allegations in respect of the Orissa Agents and find out whether any patronage had been shown to that concern. Shri R. N. Singh Deo at first agreed to undertake the task. On July 15, 1963 Shri R. N. Singh Deo referred to some further developments and stated that no public purpose would be served by his investigating the affairs of Orissa Agents. In a further letter dated August 16, 1963 Shri Singh Deo wrote to Shri Patnaik that nothing short of a Commission of Inquiry under the Commissions of Inquiry Act would be satisfactory in the circumstances.

On September 7, 1963 Shri Patnaik addressed a letter to Shri Arun K. Ray, Comptroller and Auditor-General of India, wherein he referred to the allegations made in the Orissa Legislative Assembly by members of the Opposition regarding supplies to various Government Departments and Government Corporations by Orissa Agents, Kalinga Tubes and Kalinga Industries. Shri Patnaik requested the Comptroller and Auditor-General of India to have those transactions examined and audited by the Accountant-General, Orissa, with a view to establish whether or not the Government had shown any special favour to those concerns. After some further correspondence between the Chief Secretary, Orissa Government and the Comptroller and Auditor-General, Shri S. K. Bhatnagar, Director of Inspection of the office of Comptroller and Auditor-General, conducted a special audit in respect of the dealings of Orissa Agents, Kalinga Industries and Kalinga Tubes with the State Government. The audit report was sent to the Chief Secretary, Government of Orissa in July 1964.

Shri Patnaik resigned on October 1, 1963 under the Kamaraj Plan. Shri Mitra headed the Congress Ministry from October 2, 1963 up to February 20, 1965. After Shri Mitra became Chief Minister, Shri Patnaik was appointed Chairman, State Planning Board and he continued to hold that office till January 29, 1965.

During the time Shri Mitra was Chief Minister a memorial dated July 28, 1964 was submitted to the President of India by Shri R. N. Singh Deo, leader of the Opposition in Orissa Legislative Assembly and 62 others making allegations of impropriety and abuse of office against Shri Patnaik, Shri Mitra and other Ministers of Orissa. The memorial was followed by two supplementary memoranda dated September 21, 1964 and October 12, 1964 by Shri R. N. Singh Deo and others. The matter was then referred by the Home Ministry to the Central Bureau of Investigation for a preliminary enquiry. Complaints and petitions against Orissa Ministers by some others also were sent to the Central Bureau of Investigation. After the enquiry, the Director of Central Bureau of Investigation submitted a report dated November 15, 1964 the concluding paragraphs of which read as under:—

“On the basis of the scrutiny of records it is not possible to say that all the allegations are unfounded, unsubstantiated or untrue. There are quite a few, and some of them are serious, which require further enquiries to come to definite and clear conclusions. On a number of points doubts remain.

Statements have been prepared containing points for clarification from the five Ministers or ex-Ministers concerned in this enquiry. These and replies and comments on them could also be taken into consideration when deciding the further line of action. ”

The main report was accompanied by separate reports in respect of various allegations. After the receipt of the report of the Director of Central Bureau of Investigation the matter was examined by a sub-committee of the Union Cabinet consisting of Shri Gulzari Lal Nanda, Home Minister, Shri Y. B. Chavan, Defence Minister, Shri T. T. Krishnamachari, Finance Minister, Shri Swaran Singh, Foreign Minister Shri A. K. Sen, Law Minister and Shri M. C. Chagla, Education Minister. A number of written questions were sent by the sub-committee to Shri Patnaik and Shri Mitra and their replies obtained to the same. The sub-committee then gave a report which was incorporated in annexure to Minutes of the meeting of the sub-committee held on January 2, 1965 and reads as under:—

“ The sub-committee has held several meetings to consider in detail such of the allegations against the former and present Chief Ministers of Orissa in regard to which the Central Bureau of Investigation have submitted their report on the basis of records obtained by them from the State Government and without taking recourse to open oral inquiry. On the basis of the material made available to the Bureau, questionnaires were drawn up and sent to Sarvashri B. Patnaik and B. Mitra; the sub-committee have taken into consideration the replies furnished to them. The sub-committee have also discussed the matter personally with Shri Patnaik.

2. The sub-committee have studied the various allegations relating to the conduct of Shri Patnaik and Shri Biren Mitra relating to the period during which they were the Chief Minister and Deputy Chief Minister respectively of the State of Orissa (from 23rd June 1961 to 2nd October 1963) and all the evidence and materials connected with them. The allegations are briefly summarised below and the conclusions of the sub-committee are also given in respect of each allegation.

“(1) The allegation is that, shortly after they assumed office, they had a circular issued by the Finance Department of the State Government on 17th November 1961 directing the Departments of the State Government to purchase vehicles, stores and other materials only through local dealers within the State and that this was done in order to benefit concerns in which they and their relations had personal interest.

Having regard to the explanations given by Shri Patnaik and the representatives of the Orissa Government and the fact that orders were also in fact placed on dealers other than Orissa Agents of which Shri Mitra's wife was the sole proprietor, the sub-committee find it difficult to conclude that this circular was issued only for the purpose of benefitting concerns in which they or their relations had personal interest. It is a fact that at the relevant time sales tax payable by Orissa dealers in Orissa was much higher than the sales tax paid by inter-State trade and by outside dealers and a properly worded circular designed to equate the position of Orissa dealers with dealers from outside would not have been improper. But the sub-committee feel that the circular was not properly worded and as was pointed out by responsible officers of the Government at that time it was liable to be misunderstood that unlimited price preference could be given to local dealers. The sub-committee however find that in the actual working of the circular outside dealers were precluded from securing orders which might have given the State better prices. The sub-committee also find that it resulted in preference being shown to Orissa Agents, a firm owned by the wife of the then Deputy Chief Minister, in a number of cases. The circular may therefore be described as improper, unwise and indiscreet.

- (2) The allegation is that, during the period in question, Orissa Agents made large supplies of various items to the State Government, most of which purchases having been made by the State Government through irregular procedures and at unduly high rates, and this was done notwithstanding the fact that this concern belonged to the wife of Shri Mitra.

It is admitted that various orders for G. I. Pipes were placed with Orissa Agents by different departments of the Government during the period when Shri Patnaik was the Chief Minister. Some of these orders were placed on inquiry tenders and some without tenders. Others were placed after calling for tenders. But irrespective of whether these goods could have been purchased at lower rates than those charged by Orissa Agents, having regard to the fact that the recipient of the orders in each case was a firm of the wife of the Deputy Chief Minister, the sub-committee find that the placing of orders without tenders or even on inquiry tenders was irregular and improper and should not have been done. The sub-committee feel that as the Orissa Government was dealing with a firm owned by the Deputy Chief Minister's wife a higher standard of scrutiny and examination was called for. It has, however, not been proved that Mr. Patnaik has received any personal benefit by these orders.

- (3) The allegation is that Shri Patnaik was responsible for the appointment of one Shri Srinivasan as Chief Engineer-cum-Administrator of the Paradeep Port Project through irregular procedures and on unjustifiably favourable terms and, further,

that this was relatable to the fact that immediately on such appointment Shri Srinivasan made certain unnecessary purchases on excessive price and other terms only to benefit concerns in which Shri Patnaik was interested.

It is a fact that Shri Srinivasan was appointed on terms which appear to the Committee rather favourable. Within a few days of his appointment, he recommended the placing of a large order on Kalinga Industries for tubular trusses and these orders were in fact later placed under the direct approval of Shri Patnaik. The sub-committee are not satisfied that those orders were dictated by urgency as claimed. The sub-committee are also satisfied, that necessary precautions were not taken and proper scrutiny not made, as were required when dealing with a concern with which the Chief Minister was so closely associated, whether or not the prices given to Kalinga Industries were higher or not than could have been obtained by proper tenders.

- (4) The allegation relates to similar purchases of the material (Tubular Trusses), from the same concern by various Departments of the State Government during the period under question.

The only factor distinguishing these purchases from the particular purchase mentioned under item (3) was that in these cases the purchase orders were not passed by Shri Patnaik himself. The sub-committee, however, consider that this fact does not make an essential difference as the purchases were broadly of the same pattern. The sub-committee hold Shri Patnaik no less responsible for the impropriety involved in these purchases.

- “(5) The allegation is in regard to 90.63 acres of land belonging to the State Government which had been continuing in illegal possession, since 1946-47 of concerns in which Shri Patnaik and his family were interested.

On the 18th August, 1960, the State Government had sanctioned the lease of this land to that concern at the rate of Rs. 400 per acre. That concern took no further action by way of an appeal or representation till 20th August, 1961, i.e., for a period of over one whole year, but made such a representation within two months of Shri Patnaik's assuming office. Thereupon, the rate fixed earlier was reduced from Rs. 400 to Rs. 100. This downward revision of the rate after the orders had been passed is in the opinion of the sub-committee open to question. As the beneficiary was a concern in which Shri Patnaik's family was interested, it was also altogether improper. The actual orders of revision were passed by the Revenue Department of the State Government with the approval of Shri Patnaik himself as Finance Minister and he must therefore bear responsibility for this impropriety.

3. The sub-committee has also looked into the circumstances concerning the following three allegations and on the materials available find as follows :—

- (a) The allegation is that in regard to a notification issued by the State Government on the 31st August 1963, exempting payment of stamp duty amounting to Rs. 97,000 in connection with a loan of Rs. 97 lakhs taken from the Industrial Finance Corporation of India by a concern in which Shri Patnaik and his family were interested.

Further investigation has revealed that there was an existing agreement which was arrived at prior to Shri Patnaik becoming the Chief Minister that the stamp duty in this case should be borne by the State. The charge therefore fails.

- (b) The allegation relates to the transfer of the Low Shaft Furnace at Barbil to the Industrial Development Corporation of the State Government with effect from the 1st April 1963.

It is admitted that this plant belonged to a concern in which Shri Patnaik and his family were interested, and that the initiative for the transfer was taken by Shri Patnaik after he assumed office and that the transfer was completed while he was in office. It is also admitted that Shri Patnaik took personal interest in having the arrangements completed and the terms of transfer settled. On the material available, however, while different views can be expressed as to the manner in which the valuation was done or the terms settled as compared to other ways in which all this could have been done, in view of the particular terms of the transaction and the profits the projects appear to have made so far since the transfer, the sub-committee do not find any reason to hold that undue loss to public funds was caused or any undue gain to Shri Patnaik or to the concerns in which Shri Patnaik is interested.

- (c) A number of allegations relate to certain mines that had been worked since 1952 by concerns in which Shri Patnaik and his family have been interested, non-payment of royalty by those

concerns, and a compromise in court on the 28th November, 1961 between those concerns and the State Government in litigation relating to those royalty payments.

The sub-committee find that the mines in question were being worked by those concerns for about nine years before Shri Patnaik assumed office and that, long before he assumed office, the alleged arrears of royalty had started accumulating. It is also found that such alleged arrears of royalty had accumulated against various other mine owners also in the State of Orissa due to a prolonged dispute between the mining interests and the State Government in regard to the mode of calculation of royalty. In other words, the acquisition of mining interests by these concerns and the dispute between them and the State Government in regard to royalty related to a period well before Shri Patnaik had assumed office. As regards the compromise in court after Shri Patnaik had assumed office, the sub-committee notice that the terms of the compromise were in effect provisional and evidently without prejudice to either party. In the total circumstances, therefore, the sub-committee do not find any impropriety involved in the matters relating to these mining interests of Shri Patnaik's family which could be traced to exercise of Government authority after he had assumed office.

4. There were some other allegations in the memorandum but in view of the findings on the above charges which are comparatively more serious and also in view of the fact that not enough materials were available to deal with them, the sub-committee have not dealt with these charges.

5. The sub-committee feel that it is necessary to record, in all fairness, that their examination of the materials available did not reveal that, in various transactions in which Shri Patnaik was concerned, he had personally derived any pecuniary benefits.

6. However, the sub-committee felt, in the course of its examination of the material, that the manner in which Shri Patnaik and Shri Mitra, directly or otherwise, conducted Government transactions in which were involved the interests

of private concerns owned or controlled by them or by their relations, was definitely not in keeping with the normal standards of public conduct. The sub-committee desire to record their profound concern at the picture, emerging as a whole from the series of such individual transactions in many fields of activity of the State Government of improper use of authority by leaders of the Government.

7. On the specific point whether a Commission of inquiry needs to be set up to inquire into the facts of transactions referred to in the allegations against Shri Patnaik and Shri Mitra, the sub-committee consider that such a step is not necessary, in view of the scope of the examination it has been able to make and the findings based thereon (recorded above)."

On January 15, 1965 Shri Lal Bahadur Shastri, Prime Minister of India, addressed the following letter to Shri Patnaik—

Secret

Prime Minister's House
New-Delhi

January 15, 1965

My dear Patnaikji,

As you are aware, a sub-committee of the Union Cabinet has examined the various allegations which have been made in connection with certain transactions of the Orissa Government. This sub-committee has since given its report of which a copy is attached. The sub-committee has given the finding that an examination of the available material did not reveal that in the various transactions in which you were concerned, you had personally derived any pecuniary benefits. This finding has been given by the committee after a detailed examination.

The sub-committee has, however, felt that the manner in which certain Government transactions were conducted by Shri Biren Mitra and yourself did involve improprieties. The sub-committee has recorded its profound concern on this.

Thus while the examination of the available material by the sub-committee did not reveal that in the transactions in question any personal pecuniary benefits had been derived, there still remains the question of improprieties to which the sub-committee has drawn attention. I would, therefore, request you kindly consider the resulting situation. I hope you would write to me soon.

Yours sincerely
Sd. Lal Bahadur.

Shri Biju Patnaik,
New Delhi.

A similar letter was addressed by Shri Shastri to Shri Mitra, and the same is reproduced as under —

Secret

Prime Minister's House
New Delhi
January 15, 1965

My dear Biren Mitraji,

As you are aware, a sub-committee of the Union Cabinet has examined the various allegations which have been made in connection with certain transactions of the Orissa Government. This sub-committee has since given its report of which a copy is attached. The sub-committee had given the finding that an examination of the available material did not reveal that in the various transactions in which Shri Patnaik was concerned, he has personally derived any pecuniary benefits. This finding has been given by the committee after a detailed examination.

The sub-committee, has, however, felt that the manner in which certain Government transactions were conducted by Shri Patnaik and yourself did involve improprieties. The sub-committee has recorded its profound concern on this.

Thus while the examination of the available material by the sub-committee did not reveal that in the transactions in question any personal pecuniary benefits had been derived, there still remains the question of improprieties to which the sub-committee had drawn attention. I would, therefore, request you to consider the resulting situation. I hope you would write to me soon.

Yours sincerely
Sd. Lal Bahadur.

Shri Biren Mitra,
Chief Minister of Orissa
Bhubaneswar.

Shri Patnaik, it would appear, was shown the report of the Cabinet sub-committee by the Prime Minister. On January 15, 1965 Shri Patnaik addressed a letter to the Prime Minister in which he referred to three matters :

- (1) The policy of the State Government of Orissa to give maximum fillip to small-scale industries as well as to trade and commerce by the people of Orissa. As regards the large-scale industrial complex started by him, Shri Patnaik mentioned that the total purchase by Orissa Government over the year represented hardly 1 per cent of the entire scales of those factories. The collective fortune of those factories, according to Shri Patnaik, was independent of any Orissa Government purchases. The Orissa Government, Shri Patnaik stated, under his stewardship has formed a comprehensive policy to further the programme of development of agro-industries and small-scale industries. Shri Patnaik added that "all sections of Orissa Legislature strongly felt that the people of Orissa should cease to be the hewers of wood and drawers of water and look for jobs as coolies in Calcutta and Assam tea gardens, and they had fully endorsed this policy".
- (2) The decision of the State Government to purchase structurals from Kalinga Industries Limited at 1959 rates.
- (3) The reduction of the price of 90 acres of land transferred by the State Government to Orissa Textile Mills from Rs. 400 to Rs. 100, Shri Patnaik pointed out that the possession of that land had been taken by Orissa Textile Mills in 1948.

After referring to the above three matters, Shri Patnaik stated—

"While I admit that in public conduct one walks on the razor's edge, I do hold that absence of *mala fide* motive or intent should not also be lost sight of in judging one's actions. It is, of course, reprehensible if one uses his public office for personal gains or for gains to his relatives. Since the Cabinet sub-committee has stated that such is not the case, I would request that the sub-committee reviews these three points, particularly as I strongly feel that my Government was guided in their decisions only in the best interest of the State."

In the concluding paragraphs of the letter Shri Patnaik wrote to the Prime Minister as under—

“I have sought a review, because if the sub-committee's report is to be taken as the final decision of the Central Government, the following consequential steps would be logical :—

(a) that the Central Government will have to advise the State Government, that the policy which must be presumed to be hostile to the interests of the people of Orissa, should be forthwith scrapped and replaced by a ‘proper’ policy as determined by the Central Government.

(b) that on the other two counts, recommendations and decisions at all levels being *mala fide* and against the interest of the State, all persons connected will have to be proceeded against. In such an event the motive, intention, actions and results will have to be clearly defined.

I have to submit, that the sub-committee have arrived at their conclusions based on scrappy and disconnected informations furnished to them. Facts being otherwise, a review would easily establish that there is no cause for administrative ‘concern’ on all these three counts and consideration of any action would, therefore, be redundant.

In conclusion, I would say that, in the interest of the Party, let not new and dangerous pastures of vague ‘administrative impropriety’ be opened up, which in the future may have the tendency to run wild, thus providing the opposition with wide and unpredictable range of ammunitions to demolish the Congress Party's image. Loose and baseless propaganda of corruption at high political levels have already caused sufficient damage to the Party. Where corruption charges are not established, the next handle would be administrative impropriety, irregularity or indiscretion, and would be even stretched to lack of judgement, wisdom or prudence, each succeeding one made to appear more heinous than the previous one. Where does one end ? I request you to give your serious consideration to the entire problem.

As one who has the pride to serve the party and the people with some dedication, I can assure the P. M. that I do not seek any special consideration except common justice to uphold individual dignity and honour. If a combination of events and circumstances deliberately created by a determined few, can cloud the decisions of the highest in the land, then the prospects of a fearless, free and democratic India are bleak indeed.”

On receipt of the letter, dated January 15, 1965 from the Prime Minister, Shri Patnaik addressed the following letter to him:—

“

Secret
Calcutta

16th January 1965

My dear Shastriji,

I thank you for your letter, dated 15th, enclosing a copy of the Cabinet Sub-Committee's report to you. I had also sent you a letter yesterday morning at Delhi detailing my objections to the Cabinet Sub-Committee's observations of impropriety on three counts.

(2) I was, however, shocked to read the 'Indian Express' during this morning flight from Delhi to Calcutta, where a virtual verbatim report of the Cabinet Sub-Committee's findings was published with slanderous headlines in the front page. It was as if confirming my forecast in my letter to you of yesterday where I had stated in the last-but-one-paragraph, 'where corruption charges are not established, the next handle would be administrative impropriety, irregularity or indiscretion, and would be even stretched to lack of judgment, wisdom or prudence, each succeeding one made to appear more heinous than the previous one. Where does one end ?'

What really shocked me was not what appeared in a hostile Paper against whom my case for defamation is pending in the Calcutta High Court, but the fact that while I received your letter by special messenger about 7 P. M. yesterday, this top secret Report of the Cabinet had found its way to the Press. This is not the first instance when dealing with Orissa, secret reports of Government of India have systematically reached the Press resulting in attempts at character assassination on an unprecedented scale. It is hard to believe that all these are not motivated.

(3) You have often told me that Government investigations must be carried out in utmost secrecy and that you feel solely distressed at the publicity-mania of some. Yet it is indeed sad to note that there is wide difference in what is believed to be proper and what is actually practised in the administration. Apart from this gross attempt at slander, is it not a matter of deep and profound concern that top secret matters of Government of India find free and unimpeded circulation ?

Does it not fall under the category of gross administrative impropriety and, further, does it not constitute a crime under the Official Secrets Act ? Yet, the Government of India have taken no steps to rectify this.

(4) I am grateful to you for repeatedly conveying to me in your letter of the 15th that it has been clearly established that I have not used my office for personal gains. Although I have sent you my reactions on the 15th instant on the three counts of 'impropriety' on a casual look at the Report which was shown to me at Durgapur, I would however like to place below briefly my general comments on these points arising out of the study of the Report enclosed with your letter of the 15th.

(a) In the matter of the policy under question, there appears to be a mix-up. As I have explained in my earlier letter, the policy is still operative and is rendering yeoman service to the development of Orissa's industry and commerce under direct State guidance and control in supersession of great private monopolies who had, for all these years, exploited Orissa without any proportionate benefit to the people of the State.

When the question of this little Agency Firm receiving favours from Government was raised in the Orissa Assembly early in 1963, I, as Chief Minister, immediately ordered a special audit of every contract that Government had with this firm and other firms, so that the Public Accounts Committee headed by the Leader of the Opposition and the State Legislature, could examine and come to an authorised finding. As Chief Minister of the State, I did what was constitutionally proper and correct and this action of mine was upheld by the late Prime Minister, Pandit Nehru, in the Lok Sabha on 22nd August 1963. While the benefits of the policy to the people of Orissa is appreciated by all in Orissa and while I took the only appropriate and proper constitutional action as soon as some doubts were raised by Opposition Members on the Floor of the Assembly, I really cannot understand how this policy has been adversely commented upon. As regards Orissa Agents' sales to Government, the correctness or otherwise can only be properly and adequately ascertained by the Public Accounts Committee and the Orissa Legislature. As a Legislature, I am not likely to be led away by police story till the Public Accounts Committee has declared that Government have lost some money on these purchases. In this event Government would, in constitutional propriety

automatically take the normal and necessary steps to take penal action both against the firm or firms as well as the delinquent indenting officers. Any other consideration by an outside party would be constitutionally improper and incomplete disregard to the privilege and decorum of Parliamentary practice in a Federal structure like ours.

The observation that I have not used this policy for personal gains, though kind, is really besides the point where constitutional authority of an autonomous State Legislature over the State funds is sought to be subverted. That is, why the late Prime Minister, Pandit Nehru, said clearly in the Lok Sabha on the 22nd August 1963 'that the Public Accounts Committee is a very suitable body. It contains members of several Parties, and the Accountant-General is there to help them, and it is right that they should go into this matter as these concerned Orissa Government funds'.

It is for the P. M. to kindly consider whether the late Prime Minister's observations, upholding the correctness and propriety of my action in this regard, were proper or not.

On the other two counts, I, as Chief Minister, had merely affirmed the recommendation and actions taken by the seniormost Committee of Secretaries based on their best of judgement and which I also considered proper in the best interests of the State.

(5) On the other counts where the Cabinet Sub-Committee has not imputed any impropriety, I must say that in the case where Government acquired an asset of Rs. 1 crore with an income of over Rs. 20 lakh a year without any investment whatsoever, the sub-committee's observations that Government have not made any 'undue losses', can have no parallel in any language for an understatement.

In many other cases which the sub-committee considered, direct benefits accruing to the State by generous and dedicated actions were left out. It is for the P. M. to consider whether such commissions which would naturally fail to give a proper impression of a man and his work, is to be considered fair and proper.

(6) The P. M. has mentioned in his letter about 'transactions in which I was concerned'. The conclusions arrived at by the sub-committee in para. 6 of their Report is neither correct nor fair nor do they follow from the previous paragraphs or the findings recorded therein. Para. 6 proceeds on premises which are not correct. The Statement that

I conducted Government transactions in which were involved interests of Private concerns owned or controlled by me or my relatives is not correct. I was not connected with any private concerns but with three large public companies doing considerable business. In those companies I and my family at all material times held only minority shares and neither I nor any of my relatives did own or control any of these Companies. These facts would be evident from the documents already furnished by me to the Cabinet sub-committee which appear to have been overlooked. I may also point out that I left these lucrative industrial and commercial enterprises at considerable personal sacrifice and when I assume office I was no longer connected or concerned with the affairs of these enterprises. I have also placed records before the sub-committee to show that the volume of Government work done by these enterprises was negligible and also I have produced impressive records showing the benefit derived by the State itself through the activities and good-will of these enterprises.

Consequently the expression of 'profound concern' is unwarranted.

(7) How I wish I could had one or two more discussions with the sub-committee. In one short meeting, with an unprepared Chief Secretary summoned in from his meeting in the Planning Commission. I could hardly assist the deliberations of the sub-committee.

The P. M. has asked me to consider the resulting situation arising out of the sub-committee's report. I can only say that the suggestions of some 'impropriety' contained in the Report is not borne out by actual facts. Besides, the sub-committee has not suggested what actions should I have taken on these three counts which would be considered as 'proper'. Only when these points are clarified would I be able to offer any effective consideration to the resulting situation as desired by the P. M. I am sure the P. M. will appreciate my difficulty.

With kind regards

Yours sincerely,

Sd. Biju Patnaik

Shri Lal Bahadur Shastri
Prime Minister of India
New-Delhi

Following letter was sent by Shri Mitra to the Prime Minister on January 25, 1965.

"Biren Mitra
Chief Minister

Secret
Orissa State
Bhubaneswar
The 25th January, 1965

Respected Shastriji,

I thank you for your letter of the 15th instant received by me on the 18th. I regret the delay in replying as I wanted to make a detailed study of the issues raised in your letter and the annexure.

2. I place below my reactions to some of the points in the Cabinet Sub-Committee's report.

- (a) I am unable to understand the observation that the circular of the Finance Department 'may be described as improper, unwise and indiscreet'. May I point out that this circular was designed specifically to give fillip to Orissa Producers and Dealers, as well as to earn sales tax which was being lost to the State to the tune of millions of rupees annually. At that time, the inter-State sales tax was 1 per cent as against Orissa sales tax of 7 per cent. The State Government invariably purchased goods from Calcutta producers, merchants or dealers, at higher prices than offered by the Orissa producers and dealers, due to the differential of 6 per cent available to Calcutta merchants. Besides this, the Orissa Government earned no sales tax on these very large purchases from Calcutta, amounting to crores of rupees annually. Shri Patnaik sought to reverse this situation, firstly by ordering that all State Government purchases should be made from the Orissa producers and dealers, except that in such cases where the goods were not available in Orissa, to buy them from outside the State with the permission of the Finance Department. This had to be done to bring home to every one concerned that Orissa Government has established a policy to sponsor local industries and local trade which had suffered

immeasurably in the past at the hands of the Calcutta business monopolists. Shri Patnaik also received the blessings and support of the West Bengal Chief Minister for this policy. This was necessary, as the affected parties being located in Calcutta would have moved the West Bengal Government to assist them for the reversal of this policy, which in turn would have resulted in the continuance of exploitation of Orissa by Calcutta merchants. In fact, failing in their attempt to secure the support of the West Bengal Government, the Calcutta Merchant's Association moved the Orissa Government to reverse this policy. This was naturally rejected.

Subsequently, when the point had gone home, Shri Patnaik accepted an earlier advice given by the Chief Secretary and the circular of the Finance Department was modified to equate the commodity prices between the suppliers at Calcutta and those in Orissa to the exclusion of sales tax differential, so that the producers and dealers at Calcutta as well as in the State of Orissa, were placed on equal terms. I wish the record that this policy has resulted in earnings of very large sums in sales tax by the State, apart from giving fair and competitive market for Orissa small-scale producers and dealers.

It is mischievous that the allegations attempted to tarnish a policy, which apart from augmenting State resources, was designed for and gave clear opportunity and incentive to a large number of small entrepreneurs of the State, by merely inducting the Orissa Agents into it. This is not only farfetched, but is also unfair, because Orissa Agents being dealers of products of major industries, did not come under the scope of this circular at all. The inspection report of the Auditor-General has also supported this view. The sub-committee has also felt that this allegation is not justified. I would request that the observations of the sub-committee in this regard may kindly be revised, as this policy has brought great benefits to the State and should, therefore, be termed as 'wise and beneficial to the State'.

(b) I would be failing in my duty if I do not state that Shri Shrinivasan's terms of appointment as Chief Engineer-cum-Administrator of Paradeep Port Project were not particularly favourable to him, compared to his past record of performance as a Project Engineer. After retirement he could have easily got much more, in any big Private construction company. His present record of work in the execution of Paradeep Port Project justifies even higher emoluments.

I express my inability to agree with the sub-committee's observation that the orders for structurals, 'were not dictated by urgency'. In view of the fact that the State Government had fixed a time limit of 3 years for the completion of the Paradeep Port Project, when the Port equipped with an automatic loading machine of 2,500 tonnes per hour, will be able to handle 60,000 tonners, housing facilities for thousands of workers and staff, in the swamps of Paradeep assumed the highest priority. It may be noted that there was no communication to the proposed Paradeep Port area at that time and no normal housing construction was possible. At the relevant time, the delivery time of the fabricated steel materials from recognised factories was very long. In this case the Chief Engineer was able to obtain the materials within six months of placing the order. The fact that critical materials were frozen by the Government of India in the wake of the Chinese invasion was responsible for the delay in construction, which was unfortunate. The Prime Minister has urged on many occasions that speed and performance are vital to all planning. This harbour, as the Prime Minister may be aware, would be ready to handle the first 60,000 Tonner that ever berthed in India, according to schedule by the end of this year.

It is regretable that the sub-committee has chosen to observe that 'necessary precautions were not taken and proper scrutiny was not made, on purchases of tubular structurals by the Government in its various Departments. I wish to draw attention to the fact that at the relevant time these structurals were purchased by Government Departments based

only on 1959 prices, as approved by the then State Government. It surely stands to reason that if the prices and advances paid for purchases of these materials held good in 1959, 1960 and 1961, it must be held to be of far greater advantage to the State in 1962 and 1963, when the prices of raw material for these structurals had risen steeply due to Government of India's levy of taxes and duties, as well as rise in wages.

In spite of this special advantage, the State Government was cautious enough to obtain quotations from time to time from recognized producers to ensure the suitability of prices. With such adequate safeguards having been taken, it must be said that financial propriety was always maintained by the purchasing departments. In fact, a public tender for tubular structurals was issued by Government subsequently and very large orders were placed on the Firm as being the lowest tenderer even with a term of 90 per cent advance, and the rates were about 15 per cent higher than the rates paid earlier purchases based on the 1959 prices. Since a public tender was called and this firm had become the lowest tenderer, Government had no scope to revert to the earlier cheaper rates based on 1959 prices. This merely goes to prove that the State Government's earlier judgment was correct and in the best interest of the State. That the State Government in spite of rising prices, could continue to obtain its requirements in 1962-63, at rates based on the agreed 1959 prices, was sufficient guarantee that the Government were purchasing these goods on 'most favoured terms'. In the instance when the Government deviated from this purchase policy and called for open tenders, they had to pay, as explained above, much higher prices. Logically, this purchase policy can only be considered as sound and to the best advantage of the State.

The fact that Shri Patnaik as Chief Minister signed one order on purchase of structurals for the Port Department, although this was duly processed and

recommended by all the relevant departments, has been held to question by the sub-committee. Although, on the merits of the case, no Minister could have turned down this Secretarial recommendation, the sub-committee perhaps felt that a Minister should not sign any order if it relates to any concern 'with which he or members of his family may be interested'. Although Shri Patnaik's approval to the proposal was a mere formality, my only comment in this regard is that at this time there was no code of conduct for the Ministers to guide them on such matters. Even the present code of conduct does not cover this aspect. It may be noted, however, that Shri Patnaik's family held about 5 per cent of the paid-up capital of this Company, while the State Government holds 7 per cent. Further, this Company gave away to the State Industrial assets—the Kalinga Iron Works—over Rs. 1 crore with an annual net income of Rs. 20 lakhs, without any cost to the exchequer.

I am sure the Prime Minister will reconsider the sub-committee's finding in this case.

- (c) As regards the lease of about 90 acres of land to the Orissa Textile Mills Limited by the State Government, I would state that the order of the earlier Government to raise the value of the land the average of Rs. 100 per acre to an average of Rs. 400 per acre was arbitrary and was repugnant to the Land Acquisition Act. It is common knowledge that the price of similar land covered by a notification for acquisition for a public purpose must be at the rate ruling at the time of the acquisition, whether the land is privately owned or Government owned. The State Government merely reinstated the law on an appeal made by the Orissa Textile Mills Limited. Therefore, the downward revision was only an outcome of proper interpretation of law and can hardly be open to question. The respective Departments and the Revenue Minister had passed the order. The Chief Minister put his seal to it, merely as a routine. Yet, if it is held that because his family had some

interest in this Company, he should not have passed order on the file. I have nothing to say. Shri Patnaik and his family held only 3-1/2 per cent of the paid-up capital of this Company, while the State Government hold nearly 17 per cent. I would, however, like to add that, since on examination of the District office records, which was not available with the Government at the relevant time when the order was passed, an undervaluation of about Rs. 8,000 has now been brought to the notice of the Government, the State Government is taking necessary steps to recover this amount from the Company.

- (d) Opinion expressed in paragraph 6 of the sub-committee's findings is sweeping and of general nature and appears to condemn the entire administration. As the sub-committee has held in paragraph 5 that in respect of Shri Patnaik there is no case where authority was used for personal gains, the observation of 'improper use of authority' by him appears to be contradictory.

Similarly, in the entire report of the Cabinet Sub-committee, no case has been received where I had directly or indirectly done anything as a Minister to attract any adverse remark. I, therefore, fail to understand how my name has also appeared in this paragraph, in the context of 'improper use of authority'. It may be noted that the firm 'Orissa Agents' was started by Mrs. Mitra two years before I assumed office as a Minister and was wound up two months before I assumed office as the Chief Minister. Further, at the relevant time, there was no code of conduct with regard to the business of Ministers and their relatives, etc., which would have assisted me and my family to fall in line.

In view of the above, I would earnestly request that the Prime Minister may kindly consider deletion of this paragraph and replace it with an observation that at that time there was no code of conduct to guide the personal business of Ministers and members of their families.

3. I would like to remind the Prime Minister that the State Government took the extreme constitutional step in early 1963 to institute a special audit of all the transactions which had been questioned by the opposition. The final report with regard to these transactions would be scrutinized by the Public Accounts Committee of the State Legislature headed by the Leader of the Opposition, who is not likely to show any favour to Government. If the Public Accounts Committee holds that in some transactions the Government could have legitimately saved some funds, the State Government, according to its earlier assurances, would be duty-bound to enforce recovery of such amount from the parties concerned. This course of action was approved by the Late Prime Minister Pandit Nehru in his statement in the Lok Sabha on 22nd August, 1963.

I submit to the Prime Minister that the actual state of affairs in this regard can be only established with the assistance of the elaborate machinery of the Accountant-General, State Department and the Public Accounts Committee. It is hardly possible to reach correct conclusions by a casual examination of the C. B. I. officials even with the assistance of a preliminary inspection report. It is, therefore, fit and proper that the final detection of overspending by the State Government and remedies, be left with the State Government and the State Legislature.

4. The Prime Minister has asked me to consider the resulting situation arising out of the Cabinet Sub-committee's observations on 'improprieties'. I have given above my clear understanding of the points involved. As we see it, a case for impropriety can only be made if a Minister had committed a breach of a Code of Conduct already in existence at the relevant time. Even so, while the sub-committee has clearly held that at no point of time authority has been used for personal gains, it is obvious that the improprieties mentioned in paragraph 2 of the sub-committee report can only be of a technical nature, and can hardly justify their adverse remarks in paragraph 16 of the sub-committee's report, which is the unkindest cut of all. As for the question whether Government have actually lost money in certain transactions with firms in which the Ministers or their relations had financial interests, the State Government as

early as in early 1963 had *suo motu* taken the drastic step of having these cases verified by appropriate authorities as provided by the Constitutional Parliamentary practice. Therefore, it cannot be said that the State Government or its leaders have not taken adequate and proper precautions in this regard.

"This indeed would be my appreciation of the resulting situation and I hope that the Prime Minister would give his full consideration to my views expressed in this letter before he comes to a final conclusion.

5. The Prime Minister may kindly recollect that as far back as 24th July 1964, I had written him a letter expressing my desire to be relieved from office. On the 12th of this month I had made the same request to him at Calcutta. In between also, on another issue, I had resigned but had to continue under pressure from the party. I am now determined not to continue as Chief Minister any longer. It is my humble request that the Prime Minister may take the necessary steps with the Central Parliamentary Board to ensure election of a new Leader to the Orissa Assembly Congress Party well before the 22nd February, when our Budget Session begins. I now await your instructions.

With deep personal regards,

Yours sincerely,

Sd. Biren Mitra

Shri Lal Bahadur Shastri,

Prime Minister, India,

New Delhi.

Shri Patnaik resigned from the office of the Chairman of State Planning Board on January 29, 1963, while the Ministry headed by Shri Mitra tendered resignation on February 20, 1965. Shri Sadasiba Tripathy, the new leader of the Congress Party, was sworn in as Chief Minister on February 21, 1965. His Ministry continued in office till March 8, 1967.

The Swatantra Party headed by Shri R. N. Singh Deo and Jana Congress Party headed by Dr. H. K. Mahatab, who had before that severed his connections with the Congress Party, constituted the majority of members in the Orissa Legislature as a result of the general elections held in February 1967. A coalition Ministry, consisting of Swatantra and Jana Congress Party, came into power in Orissa in March 1967. Shri R. N. Singh Deo became the Chief Minister while Shri P. M. Pradhan of the Jana Congress Party, was the Deputy Chief Minister in the new Ministry.

CHAPTER 2

NOTIFICATION

On October 26, 1967, the following notification was issued by the Home Department of the Orissa Government in a Gazette Extraordinary:—

"HOME DEPARTMENT NOTIFICATION

The 26th October 1967

No. 813-EC.—WHEREAS pursuant to the mid-term general election of the State Legislative Assembly in 1961, Councils of Ministers headed by Shri Biju Patnaik, Shri Biren Mitra and Shri Sadasiva Tripathy were formed in the State during different times during the period from the 23rd June 1961 till the 8th March 1967 and Shri Biju Patnaik, after laying down his office as Chief Minister, declared himself to be the Chairman, Planning Board and continued to function as Chairman, Planning Board during the period from the 4th October 1963 to the 29th January 1965, during the Chief Ministership of Shri Biren Mitra;

AND WHEREAS during the tenure of office of the aforesaid persons as Chief Ministers there were various allegations against the conduct of the aforesaid persons and some of the Ministers and Deputy Ministers of the State of Orissa, as specified in the Schedule hereto, by politicians the general public and others, and the allegations apart from being put forward from public platforms by private persons and otherwise, have been the subject-matter of active agitation all through in the State Legislature and in the Parliament and some of such allegations were of such a nature that an enquiry was conducted thereon by the Central Bureau of Investigation and the Central Cabinet also held deliberations over the same;

AND WHEREAS on an active and careful consideration of all such allegations by the Government of Orissa, it appears to them—

That during the aforesaid period, i.e., from the 23rd June 1961 to the 8th March 1967, the said persons as named in the Schedule:

- (1) committed various acts of misconduct, misappropriation, fraud, negligence, favouritism, nepotism, illegalities, irregularities, improprieties and abuse of their power in the matters of administration of the State;

- (2) abused their official positions for securing pecuniary and other benefits for themselves, members of their families, their relations, their friends, their partymen (Congressmen) and others in whom they were interested, from out of the funds of the State exchequer and otherwise to the detriment of the interests of the State;
- (3) committed breach of trust and acts of impropriety with respect to the properties and assets of the State with a view to further the interests of their party organisation, i.e., the Congress;
- (4) entered into contracts and other monetary transactions for the supply of machinery, tools, equipments and execution of works, themselves or permitted their family members, relations, friends, partymen and others to enter into such contracts and transactions with the Government of Orissa, with different Departments of the Government of Orissa, with Corporations, Local Bodies, Statutory Bodies and with other Bodies with which Government of Orissa have or had interest, control or concern in utter disregard of the interests of the State and in breach of the trust imposed on them by virtue of their Constitutional positions;
- (5) resorted to misuse of power, interfered in the processes of elections and administration of Local Bodies not only to help their friends, favourites and partymen but also at times for their own personal benefits;
- (6) acquired directly properties of the State either for themselves or for the benefit of the members of their families or relations or others in whom they were interested;
- (7) advanced money and loans by way of favouritism out of the State exchequer in favour of themselves, members of their families, their relations and other persons in whom they were interested;
- (8) permitted wastage, misuse, misutilisation and misappropriation of the funds of the State in several ways to the detriment of the interests of the State in utter disregard of the canons of

financial propriety and established rules and procedure from which a presumption of personal gains for themselves or for persons as aforesaid directly or indirectly arises;

- (9) caused wastage, misuse, misutilisation, misappropriation, illegal or irregular use of the funds of the State through contracts or other monetary transactions entered into by the Government without following the rules of law or the established procedure;
- (10) by way of favouritism and nepotism caused maladministration in matters of public services, namely, in the matter of appointments, transfers, promotions and dealing with corrupt officers;
- (11) interfered with the administration of law and tried to pervert the course of justice by helping offenders to escape law;
- (12) caused to the State Government huge financial loss which has given rise to a great economic crisis, serious retardation in the progress of trade, industry and commerce, agricultural output, serious problems of unemployment and has also vitiated the moral and general character of the people;
- (13) acted in several cases against constitutional proprieties, public policies and proper social and political conduct;
- (14) amassed wealth themselves, through members of their family, relations and other persons or permitted the members of their family, relations and other persons to amass wealth and their assets during the aforesaid period have increased disproportionate to the known sources of their income; by abuse of their constitutional positions.

Under such circumstances the people in general and the Government have expressed a desire that the matters aforesaid regarding the aforesaid persons should be enquired into through a Commission of Inquiry so that facts may be found which, alone will facilitate rectification and prevention of recurrence of such lapses and securing the ends of justice and establishing a moral public order in future.

Under such circumstances, the Government of the State of Orissa are of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making a full inquiry into the aforesaid matters which are of definite public importance.

NOW, THEREFORE, the State Government, in exercise of the powers conferred by section 3 of the Commission of Inquiries Act, 1952 (Act 60 of 1952), hereby appoint a Commission of Inquiry consisting of Shri Justice H. R. Khanna of the Delhi High Court to inquire into and report on and in respect of :

Whether the persons mentioned in the Schedule, during the aforesaid period : -

- (1) committed various acts of malfeasance, misfeasance, misappropriation, fraud, negligence, favouritism, nepotism, illegalities, irregularities, improprieties and abuse of their power in matters of administration of the State in different cases ?
- (2) abused their official positions for securing pecuniary and other benefits for themselves, the members of their families, their relations, their friends and their partymen (Congressmen) and others in whom they were interested, from out of the funds of the State exchequer and otherwise to the detriment of the interests of the State ?
- (3) committed breach of trust and acts of impropriety with respect to the properties and assets of the State with a view to further the interests of their party organisation, i.e., the Congress ?
- (4) entered into contracts and other monetary transactions for the supply of machinery, stores, equipment and execution of works or permitted their family members, relations, friends and others in whom they were interested, with the Government of Orissa in utter disregard of the law, rules and administrative procedure relating thereto and in breach of the confidence reposed on them, by virtue of their constitutional position ?
- (5) resorted to misuse of power, interfered in the process of election and administration of local bodies not only to help their friends, favourites and partymen, but also at times for their own personal benefit ?

- (6) acquired directly properties of the State either for themselves or for the benefit of members of their families, relations or other persons in whom and organisations in which they were interested ?
- (7) advanced money and loans in favour of themselves, members of their families, their relations and other persons in whom they were interested, out of the State exchequer ?
- (8) permitted wastage, misuse and expenditure in various ways to the detriment of the interests of the State without following the established rules of procedure from which the presumption of personal gains for themselves directly or indirectly would arise ?
- (9) by way of favouritism and nepotism have caused maladministration in matters of public services, namely, appointments, transfers, promotions and dealing with corrupt Officers ?
- (10) interfered in the administration of law and tried to pervert the course of justice by helping offenders to escape law ?
- (11) by their aforesaid conduct have put the State Government to huge financial loss which has resulted in a financial crisis for the State ?
- (12) by their aforesaid conduct have hampered the entire industrial development in the State ?
- (13) by their aforesaid conduct have given rise to serious problems of unemployment ?
- (14) by their aforesaid conduct have spread corruption in the Government machinery and have polluted the general public morale in the State and have also brought about a general demoralisation of the political, social, economic and moral aspects of the Society ?
- (15) by their aforesaid conduct have put the State to financial loss which has developed into a great economic crisis and has resulted in rapid retardation of the progress of trade, industry and

commerce, a deplorable fall in the agricultural output, spread of corruption in all wings of administration and a general breakdown in the morale and character of the people of the State ?

The Commission of Inquiry may also perform such other functions as are necessary or incidental to the inquiry.

The Commission shall inquire into the detailed particulars pertaining to the aforesaid matters along with such other incidental and ancillary matters thereto that shall be placed before them by the State Government.

The Commission shall inquire into the financial implications of the aforesaid matters.

The Commission shall make its report to the State Government on or before the 30th April 1968.

And whereas the State Government are of the opinion that having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4), sub-section (5) and sub-section (6) of section 5 of the Commission of Inquiry Act, 1952 shall be made applicable to the said Commission, the State Government hereby directs that all the said provisions shall apply to the said Commission.

The Commission shall have its headquarters at Bhubaneswar and may also visit such places as may be necessary in furtherance of the enquiry.

By order of the Governor

B. B. RATH

Additional Secretary to Government

SCHEDULE

		From	To
1. Shri Biju Patnaik	.. Chief Minister	23-6-1961	1-10-1963
	Chairman, State Planning Board.	4-10-1963	29-1-1965
2. Shri Biren Mitra	.. Minister	23-6-1961	1-10-1963
	Chief Minister	2-10-1963	20-2-1965

			From	To
3. Shri S. Tripathy	..	Minister	23-6-1961	20-2-1965
		Chief Minister	21-2-1965	8-3-1967
4. Shri Nilamani Routray	..	Minister	23-6-1961	25-2-1967
5. Shri Satyapriaya Mohanty		Minister	2-10-1963	24-2-1967
6. Shri P. V. Jagannath Rao		Minister	23-6-1961	8-3-1967
7. Shri H. H. Singh Mardaraj		Minister	23-6-1961	20-2-1965
8. Shri R. P. Misra	..	Minister	21-2-1965	25-2-1967
9. Shri Brundaban Nayak	..	Deputy Minister	29-7-1962	1-10-1963
		Minister	2-10-1963	28-6-1965
10. Shri T. Sanganna	..	Deputy Minister	29-7-1962	1-10-1963
		Minister	2-10-1963	27-2-1963
11. Shri Prahallad Mallik	..	Deputy Minister	29-7-1962	28-2-1967
12. Shri S. K. Sahu	..	Deputy Minister	29-7-1962	28-2-1967
13. Shri Anup Sing Deo	..	Deputy Minister	21-2-1963	8-3-1967
14. Shri Chittaranjan Naik	..	Deputy Minister	21-2-1965	26-2-1967
15. Shri Chandramohan Singh		Deputy Minister	29-7-1962	24-2-1967

B. B. RATH

Additional Secretary to Government

On December 14, 1967, another notification for making amendment in the earlier notification was issued. The notification reads as under—

“HOME (SPECIAL CELL) DEPARTMENT

NOTIFICATION

The 14th December 1967

No. 1102-EC.—The State Government in exercise of the powers conferred by section 3 of the Commission of Inquiry Act, 1952 (Act 60 of 1952) hereby make the following amendment to Home Department notification No. 813-EC., dated the 26th October 1967:—

1. In the paragraph beginning with the words “under such circumstances” and ending with the words “public importance” of the aforesaid notification, the word “definite” shall be inserted before the word “matters” and the word “definite” after the words “matters which are of” shall be deleted.

2. In the paragraph beginning with the words "Now therefore" of the aforesaid notification, after item No. 10, the following item shall be inserted:—

"11. Amassed wealth themselves, through members of their family, relations and other persons in whom they were interested as a result of which their assets have increased disproportionate to their known sources of income or permitted the members of their family, relations, and other persons to amass wealth by abuse of the constitutional position of the persons named in the Schedule."

3. The items Nos. 11 to 15 in aforesaid paragraph of the aforesaid notification shall be renumbered as 12 to 16.

By order of the Governor

B. B. RATH

Secretary to Government

Shri Biju Patnaik, respondent No. 1, has also been described on the record as Shri Bijoy Nanda Patnaik. The full names of respondents Nos. 3, 8, 10 and 12 are Sarvashri Sadasiba Tripathy, Ram Prasad Misra, Toyaka Sanganna and Santosh Kumar Sahu. In the absence of any indication to the contrary respondents Nos. 1 to 15 shall hereinafter be described as Shri Patnaik, Shri Mitra, Shri Tripathy, Shri Routray, Shri Mohanty, Shri Jagannath Rao, Shri Mardaraj, Shri Misra, Shri B. Naik (or Shri Naik simpliciter), Shri Sanganna, Shri Mallik, Shri Sahu, Shri Deo, Shri C. Naik (or Shri Naik simpliciter) and Shri Singh respectively.

CHAPTER 3

PRELIMINARY DIRECTIONS ABOUT PROCEDURE

In pursuance of the notification referred to in the last chapter, I took over as Commission of Inquiry on October 30, 1967. After service had been completed on November 20, 1967 on the 15 persons mentioned in the Schedule of the notification, who shall for facility of reference be hereafter referred to as the respondents, I passed an order directing that arguments be addressed to me on the following preliminary matters:—

- (1) Procedure to be adopted in this inquiry including the question as to whether the evidence should be taken on affidavits or not, as also the question of issue of notification contemplated by rule 7 of the Orissa Commissions of Inquiry Rules, 1963.
- (2) Whether it would or would not be necessary to enable the respondents to effectively defend themselves, that they should know at the outset the precise case they have to meet and the factual allegations they have to rebut ? Would it or not, in the circumstances, be essential that the State Government should, before the matter is proceeded with further, file the detailed particulars to which there is a reference in the notification ?
- (3) In case detailed particulars are filed, in view of the fact that there are as many as fifteen respondents, would it not be necessary that the allegations against each of the respondents should be separately particularised ?

Arguments thereafter were addressed by the learned Advocate-General on behalf of the Government of Orissa and the learned counsel for the respondents. I then passed a detailed order on November 22, 1967, in the course of which I observed:—

fraud, negligence, favouritism, nepotism, illegalities, irregularities, improprieties and abuse of their power in the matters of administration of the State.' It is, however, nowhere indicated in this allegation as to what precise acts of the respondents constituted misconduct and in what way they indulged in misappropriation, fraud, negligence, favouritism, nepotism, illegalities, irregularities, improprieties and abuse of their power in the matters of administration of the State. As the precise particulars are missing, the respondents cannot be said to have notice of the factual allegations they have to meet and rebut. In my opinion, it is essential that the respondents should be apprised at the commencement of the inquiry of the factual allegations which are levelled against them so as to enable them to effectively defend themselves. I may in this context state that Order 6, rule 4 of the Code of Civil Procedure prescribes, *inter alia*, that in all cases in which the party pleading relies on fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary, particulars shall be stated in the pleading. The principle underlying this provision is that general allegations of fraud or other misconduct, however, strong the words in which they are stated may be, if unaccompanied by particulars, are insufficient to amount to an averment of fraud or other misconduct of which the Court may take notice. Order 6, rule 5 accordingly provides that further and better particulars of any matter stated in the pleading may be ordered as may be just. Likewise, section 223 of the Code of Criminal Procedure enjoins that the charge shall contain such particulars of the manner in which the alleged offence was committed as will be sufficient" for that purpose. The object of this section is to ensure that the accused has sufficient notice of the matter with which he is charged, as otherwise he would be seriously prejudiced in his defence. It may be that the above provisions of the two Codes are not strictly applicable to this inquiry, the fact remains that these provisions highlight the importance which our system of administration of justice, both civil and criminal, attaches to the necessity of giving ample notice to a party of the factual allegations which are directed against that party in order to enable it to defend itself. I, therefore, am of the view that before the inquiry is proceeded with further, the State Government should file the detailed particulars pertaining to the matters specified in the notification.

There are as many as fifteen respondents in these proceedings. The factual allegations against any of the respondents in the very nature of things are likely to be different from

those against the others, and though it may be that some of the allegations are common to more than one respondent it would also be that some of the respondents have nothing to do with the allegations against the others. In the circumstances, it would be necessary in the interest of justice that factual allegations against each of the respondents should be separately particularised. If, however, the same factual allegation involves two or more of the respondents, in such a case the question of splitting the allegation *qua* each of the respondents would not be necessary.

An argument has been advanced by the learned counsel for the first respondent that as the factual allegations against the respondents are not given in the notification, the State Government should not be permitted to file the detailed particulars. In this respect I find that the notification appointing this Commission itself contemplates that detailed particulars pertaining to the matters specified in the notification would have to be placed before the Commission by the State Government and the Commission would inquire into them. In view of this direction in the notification, the State Government cannot be debarred from placing before the Commission the detailed particulars. Apart from that, I am of the opinion that the direction, which is being issued by the Commission calling upon the State Government to file detailed particulars at the commencement of the proceedings, is essentially to safeguard the legitimate interests of the respondents so that they may not be left guessing but should know at the outset the precise case they have to meet and the factual allegations they have to rebut in order to effectively defend themselves. The provisions of the Commissions of the Inquiry Act, 1952 and the Orissa Commissions of Inquiry Rules were thereafter discussed in the above order and it was observed—

“Perusal of the above provisions goes to show that subject to the rules framed by the State Government plenary powers have been given to the Commission to regulate its own procedure. After hearing the learned counsel for the parties I direct that till further orders the sittings of the Commission shall take place in the State Library Hall, Sachivalaya Marg, Bhubaneswar. The timings for the sittings of the Commission shall be from 10 A.M. to 1 P.M. and 2 P.M. to 4 P.M. The Commission will function on all days other than holidays. At the request of the learned counsel for the parties it is directed that there would not be any sitting of the Commission on Saturdays though the office of the Commission would be open on Saturdays other than holidays. Another question which

arises for determination is whether the hearing of the Commission should be open to the general public. In this respect I am of the view that as the matters involved in these proceedings relate to the alleged conduct of persons who have hold the highest office in the State, it is but meet that both the State Government as well as those persons should represent their cause in public gaze.

The members of the general public or those of them who are interested are entitled to know as to what are the allegations levelled against the respondents and what is the justification given by them for their acts and omissions. It may be mentioned that the proceedings of the Commission do not necessarily result in character assassination, they can equally lead to the rehabilitation of reputation and are, to use the words of Lord Chancellor Viscount Kilmuir in his defence of Tribunal of Inquiry Act, 1921, 'necessary to kill harmful rumours which are found to be unjustified.' The hearings of the Commission would, therefore, be open to the general public. This would, however, be subject to one proviso. If at any stage the Commission finds that the matter involved is of a scandalous nature or affects the security of the State or is such as raises public feeling and there is an apprehension of tumult or breach of peace or there exists some other substantial reason, it would be open to the Commission to direct that the proceedings be held in camera. Except in such a contingency the sittings of the Commission would be in public. In this connection, I may refer to the words of Lord Shaw that 'publicity in the administration of justice is one of the surest guarantees of our liberties where there is no publicity there is no justice. It is the keenest spur to exertions and the surest of all safeguards against improbity. It keeps the Judge himself while trying under trial'. These observations were quoted with approval by Ayangar Commission in the inquiry against Bakhshi Ghulam Mohammad while directing that the sittings of the Commission should be in public.

As regards the evidence I am of the view that the same shall be taken in the form of affidavits. In case the affidavit is in a language other than the English the same shall be accompanied by an English translation of the same. The correctness of that translation shall be authenticated by the counsel. An affidavit shall towards its close contain the verification of the person filing the affidavit. The verification should not be in an omnibus form but should specify which paragraphs of the affidavit are true to the knowledge of the deponent and which paragraphs are true to the information derived by the deponent. In the latter case the source of information should also be specified.

In case the deponent relies on any document the original document or copy thereof duly certified to be correct should be filed along with the affidavit. In case of non-production of the original document the affidavit shall also contain the reasons as to why the original has not been produced.

Normally there shall be a separate affidavit in respect of each respondent for each allegation. This fact would sometimes necessitate the filing of more than one affidavit by the same person but it cannot be helped. Such a course is necessary for the sake of convenience and to avoid confusion. It would also be helpful at the time of arguments. An affidavit should indicate at the beginning to which particular respondent it relates and in respect of which allegation.

Fifteen copies of each affidavit on behalf of the Government shall also be filed along with that affidavit for being supplied to the respondents. Each affidavit filed on behalf of the respondent shall be accompanied by a copy of the affidavit to be supplied to the Government. In case an affidavit filed on behalf of the respondent contains statements in respect of another respondent or respondents, copies of the affidavit for supply to those respondents shall also be filed.

In case the Commission considers it necessary in the interest of justice after hearing the parties that a person filing an affidavit should give oral testimony and submit to cross-examination, the commission will pass the necessary orders for the purpose. Apart from that, there would be no general right of cross-examination of a person filing an affidavit.

If the Commission considers it necessary for the ends of justice, after hearing the parties, to record the statement of any person who has not filed affidavit, the Commission will pass the necessary order to that effect.

I may state that evidence in the form of affidavits is not as satisfactory as oral evidence in Court where the witness is subjected to cross-examination. At the same time it has to be borne in mind that the proceedings of the Commission are for the purpose of fact finding and the report of the Commission has no force *proprio vigore*. The number of witnesses swearing affidavits may be very large and if each of them is examined in the witness-box and subjected to cross examination, the proceedings of the Commission are apt to get unduly prolonged and protracted. This would be hardly desirable and might defeat the object of appointing the Commission. The Commissions of Inquiry Act contemplates quick disposal of the business before the Commission. The Act and the Rules no doubt give a right of cross-examination but that is only in respect of witnesses who give oral testimony. What value, if any, is to be attached to a statement in an affidavit if it is not supported by documentary evidence or other probabilities of the case, would be gone into at the final hearing. If for the ends of justice, the Commission feels that any of the deponents, who have filed affidavits, may be called upon to give oral testimony and face cross-examination the Commission, as observed earlier, would pass the necessary orders. It may be mentioned that both in the inquiry against Sardar Pratap Singh Kairon conducted by Das Commission, which was presided over by the retired Chief Justice of India, as well as against Bakhshi Ghulam Mohammad conducted by

Ayangan Commission, which was presided over by a retired Judge of the Supreme Court, the evidence was taken by affidavits and there was no general right of cross-examination."

One copy of the order passed by the Commission on each date was given to the Advocate-General representing the State Government and another to the counsel for the respondents free of charge.

CHAPTER 4

THE PARTICULARS OF ALLEGATIONS AND SUBSEQUENT PROCEEDINGS

Seventy particulars of allegations against the respondents were filed by the State Government on December 8, 1967. After I had perused the particulars of allegations, the learned Advocate-General stated that simultaneously with the issue of notification under rule 7 (1) (b) of the Orissa Commissions of Inquiry Rules both the State Governments as well as the respondents should be directed to file statements accompanied by affidavits in respect of the subject-matter of the enquiry. As against that, it was represented on behalf of the respondents that the State Government should file the statement and affidavits first and it should thereafter be that the respondents should file statements and affidavits. It may be mentioned that according to rule 7 (1) (b) the Commission shall as soon as may be after its appointment issue a notification to be published in such manner as it may deem fit, inviting all persons acquainted with the subject-matter of the inquiry to furnish to the Commission a statement accompanied by affidavit relating to such matters as may be specified in the notice. After hearing the arguments I passed an order on December 12, 1967, the material part of which read as under—

“I have given the matter my earnest consideration and am of the view that the submission made on behalf of the respondents is more in consonance with the requirements of justice. Serious allegations have been made and grave charges have been levelled against the respondents of impropriety in the discharge of the functions as Chief Minister, Ministers and Deputy Ministers of the State of Orissa. The State Government seeks to show that those allegations and charge are well-founded. As against that, the stand of the respondents obviously is that those allegations and charges are without basis. Keeping in view the subject-matter of the enquiry and the nature of allegations, I am of the opinion that it is both fair and proper that the State Government as well as the persons who choose to file statements and affidavits in response to the notification under rule 7 (1) (b) of the Orissa Commissions of Inquiry Rules should file statements and affidavits on an earlier date and the respondents should do so on a subsequent date. I may state that the observations on pages 5 and 8 of the Report of Das Commission which went into the charges against Sardar Partap Singh Kairon, Chief Minister of the Punjab, show that affidavits on behalf of the memorialists, who had levelled charges against Sardar Partap Singh Kairon, as well as by members of the public

were in pursuance of the order of the Commission filed earlier and the affidavits on behalf of Sardar Partap Singh Kairon were filed later. I, accordingly, order that the requisite statements and affidavits on behalf of the State Government as well as the persons who choose to file statements and affidavits in response to the notification under rule 7 (1) (b) should be filed earlier and those on behalf of the respondents should be filed on a subsequent date."

Notification under rule 7 (1) (b) of the Orissa Commission of Inquiry Rules was ordered to be published in a number of English and Oriya papers requiring all persons acquainted with the subject-matter of the inquiry to furnish to the Commission at its office statement accompanied by affidavit relating to particulars of allegations filed by the State Government on or before January 31, 1968. It was directed that the affidavit should be verified by the person filing the affidavit and the verification should specify as to which part or paragraph of the affidavit was true to the knowledge of such person and which part was true to the information derived by him. In the latter event the source of information was also required to be specified. It was mentioned in the notification that the notification appointing the Commission of Inquiry as well as the particulars of allegations filed by the Government of Orissa could be inspected in the office of the Commission on any working day between the hours of 10 A.M. to 4 P. M. on an unstamped application having been filed for the purpose. The notification was required to be published in the papers before December 31, 1967. Statement and affidavits on behalf of the Government of Orissa were ordered to be filed on or before January 31, 1968, while those on behalf of the respondents were directed to be filed on or before March 15, 1968.

An application was filed on January 25, 1968 on behalf of the Government of Orissa praying for extension of one month's time to enable it to file statements, affidavits and documents on the ground that the work was of a voluminous nature and it was not possible to prepare the statements, affidavits and documents by January 31, 1968. I then extended the time for filing the statements, affidavits and documents by the State Governments till February 14, 1968. The time for filing statements and affidavits on behalf of the respondents was also consequently extended to March 29, 1968. On the application of number of third parties the time for filing statements and affidavits by them too was extended till February 14, 1968. The State Government filed some of the statements and affidavits on January 31, 1968

and the remaining statements and affidavits on February 14, 1968. A number of documents and copies were filed by the State Government by February 14, 1968 and the remaining documents and copies were allowed to be filed by February 20, 1968. Statements and affidavits were also filed by some third parties by February 14, 1968.

On February 20, 1968 I directed that original files, from which copies had been filed by the State Government, should be produced for inspection by the respondents. It was also directed that the inspection of the files could be made either by the respondents concerned or by their counsel and that they could be accompanied by Stenographers. It was further ordered that while making the inspection the respondents concerned or their counsel would not be confined to the inspection of the original document of which the copy had been filed by the State Government but they would also be entitled to inspect the other portions of the file. In case the State Government had any objection to the inspection of any part of the file, the said part should be put in a sealed cover and an affidavit should be filed by the officer concerned as to why the inspection of that portion was not being allowed. No such objection was, however, raised during the inspection which lasted for more than two weeks. When a request was made on behalf of the respondents that the inspection in respect of some of the files had not been completed, further inspection was allowed. On March 12, 1968 I heard arguments on two applications of the respondents stating that in the affidavits filed on behalf of the State Government new facts had been introduced which were not there in the original particulars of allegations. It was also mentioned that the affidavits had not been properly verified. I then passed on order, the material part of which reads as under—

“I have heard the learned counsel for the parties on the above two applications and am of the view that the subject of this inquiry are the matters mentioned in the notification appointing this Commission of Inquiry as amplified by the particulars of allegations filed by the State Government. The affidavits put in by the State Government constitute evidence on its behalf and have been filed to substantiate those allegations. Whatever facts answer to the description of evidence can legitimately and properly be mentioned in the affidavits. The affidavits are, I must observe at the same time, not intended to introduce fresh allegations or to set up a new case not covered by the particulars of allegations filed by the State Government. It is, however, not necessary or proper at this stage, in my opinion, to deal with each individual affidavit. It will be open to the respondents to refer in their statement

or affidavits to the alleged variance between allegations and proof and to agitate the matter at the time of final arguments. With that reservation the respondents shall file their affidavits in the light of the affidavits as they have been filed by the State Government.

So far as the stand of the respondents is concerned that there is an infirmity in the affidavits filed by the State Government on the ground that they have not been properly verified or sworn or that they are otherwise vague and not in conformity with law, I am of the view that this fact too may be mentioned in the statements or affidavits to be put in on behalf of the respondents and may be agitated at the time of final arguments."

On March 29, 1968 affidavits were filed on behalf of some of the respondents, while others prayed for extension of time by one month to file their affidavits. The respondents were then allowed to file their statements and affidavits till April 12, 1968. By the last mentioned date, all the statements and affidavits on behalf of the respondents were filed. Order staying further proceedings was then received from the Supreme Court in appeals filed by some of the respondents against the decision of the Orissa High Court, whereby the High Court had dismissed writ petitions challenging the validity of notification appointing this Commission of Inquiry. The matter was then adjourned to April 30, 1968 to await the orders of the Supreme Court. Before that date, the appeals of the respondents were dismissed by the Supreme Court and the stay order was vacated. In the mean time an application was filed by the State Government for summoning of witnesses for production of documents. Applications were also filed on behalf of the respondents for production of documents and files for inspection. Those applications were disposed of as per orders dated May 4 and May 7, 1968. Twenty-three witnesses were thereafter examined for production of documents including documents required by the respondents. Necessary orders were also made for inspection of files by the respondents. After the examination of the witnesses, the Advocate-General as well as the counsel for the respondents stated that whatever documents had to be procured from third parties had been produced before the Commission. The learned counsel wanted thereafter to file supplementary affidavits. It was accordingly ordered that supplementary affidavits should be filed by the State Government by June 27, 1968 and their copies be supplied to the counsel for the respondents also by that date. Supplementary affidavits by the respondents were further directed to be filed by July 12, 1968. Supplementary affidavits accordingly were filed by the State Government and the respondents.

During the proceedings before the Commission as many as 142 applications were filed by the parties. Necessary orders were passed on those applications after hearing the parties concerned. On July 15, 1968 the learned counsel for all the parties stated that nothing further had to be done in the matter except to hear arguments. They prayed for a period of fortnight to prepare for arguments. Arguments accordingly commenced on August 1, 1968 and concluded on December 26, 1968.

During the course of arguments the Commission, when necessary, with the concurrence of the learned counsel for the parties, held sittings on Saturday and Sunday. The time taken in arguments would give an idea of the immensity of the task entrusted to the Commission. The number of the respondents as well as the number of the allegations had the effect of prolonging the proceedings and diffusing attention on a very wide range of topics. Had the State Government selected lesser number of allegations and fewer respondents, the proceedings of the Commission, would have been finished earlier and the material furnished to the Commission would perhaps have been better.

I must at this stage express my gratitude to Mr. Asok Das, Advocate-General, Messrs. R. K. Mohapatra, S. C. Mohapatra, S. B. Satpathy, B. B. Ratho, S. N. Mitra, N. Bairesal and D. P. Patnaik who conducted the case on behalf of the Government of Orissa, and to Messrs. B. Misra, S. C. Roy, R. C. Mohanty, K. K. Patnaik, Dinabandhu Sahu, Chittaranjan Chakravarty, G. D. Mohapatra, G. C. Sahu, B. M. Patnaik, R. N. Mohanty, B. M. Mohanty, M. Raheman, Y. Sanyasi Rao and G. S. Rath who conducted the case on behalf of the respondents. But for their assistance, co-operation, diligence and erudition the task of the Commission would have been extremely difficult and it would have been hardly possible to sort out material from a bulky record covering thousands of pages. I must also record my appreciation of the help which I got from the members of my staff, Shri K. C. Rath, Secretary, Shri A. L. Sethi, Superintendent, Shri S. L. Nayyar and Shri P. N. Chopra, Private Secretaries-cum-Judgement writers of the Commission.

CHAPTER 5

THE GUIDING PRINCIPLES

Before dealing with the different allegations, which have been made by the State Government against the respondents, it would be necessary to lay down some guiding principles which should be kept in the forefront by the Commission in arriving at its findings. The resume of facts given in the preceding pages would go to show that the State Government has levelled various charges of impropriety against the respondents. The respondents have controverted those charges and described them to be baseless. The approach of the Commission in an inquiry like this, in my opinion has necessarily to be that it is the State Government upon whom should lie the onus to prove and substantiate the charges that it has levelled against the respondents. In order to come to the conclusion as to whether the charges have or have not been proved, the Commission would have regard to the documentary evidence, supplemented as it is by affidavits and the other material on record, taken in the context of all the surrounding circumstances. The quantum of proof in order to carry conviction has necessarily to be the same as is required in a case in a Court of law. The principles applied in this respect in courts of law would hold good equally in proceedings before the Commission, because those principles are essentially based upon rules of prudence and common sense and embody within themselves the distilled wisdom of years gone by.

Another guiding principle which should not be lost sight of is that the Commission would not impugn the acts of the respondents which are within their competence and are not vitiated by *mala fide* intention or actuated by ulterior motive. The task of administration is by its very nature of a stupendous character. A Government, if it is not to be struck by paralysis of inaction and inertia, has to venture in different directions. Bold decisions have to be taken and then implemented. Such activities, some of which are marked by a certain amount of daring, are essential and unavoidable, if all out steps have to be taken to ameliorate the lot of the masses especially in a country like ours where we have to make up for the lost time during which other nations have gone forward. Indeed, if we are in earnest to prise India

free from squalor and dead-weight of the past we must have purposeful dynamism, herculean effort and a spirit of enterprise. This approach would no doubt contain within itself elements of risk, but such a risk has to be taken for without recourse to that there can be neither real progress nor true nation-building. A Government that believes in the motto of perennial safety and no risks, must necessarily lag behind.

The concept of risk necessarily involves success and failure of the policy. If the venture succeeds, we achieve something substantial but if it fails the Government and the Ministers are bound to be criticised. Big mistakes and blunders might lead to resignation of the ministry or of an individual minister and also loss of popular support. But, though the party in power or a minister may be criticised and be thrown out of office for their mistakes, no stigma of impropriety, in the sense of moral turpitude or deviation from the path of rectitude, would attach to the ministers concerned if their policies were not actuated by any *mala fide* intention or ulterior motive of personal and pecuniary gain.

The ministers in order to carry on day-to-day administration have to take a large number of decisions. The Commission would not go into the question as to whether those decisions were right or wrong. It is only concerned with the question as to whether those decisions were *mala fide* or influenced by motive of personal gain. As long as the decisions of the respondents pertain to matters which lay within their sphere and jurisdiction and are not shown to be *mala fide* or motivated by extraneous consideration, those decisions would be immune and not liable to be assailed in these proceedings. The proper forum for criticising the mistakes of the ministers is the legislature or the Press or the public platform. Some of the ministers have indeed to pay a heavy price for their mistakes even though they were committed in good faith and were the result of error of judgement. This Commission is not concerned with such mistakes. What it is concerned with is whether a particular act or omission of the respondent was the result of a *mala fide* intention or oblique motive.

A minister in a given situation, to put the thing a little differently, can act in a variety of ways. A number of possible lines of action are open to him and he may choose one of them according to the best of his lights. Many imponderables and numerous factors join in the making of a decision though

they may not be all put on record. In respect of some of his decisions it may be difficult for a Minister after lapse of some time to give full facts constituting the justification of the decision. All that he may say is that he acted according to the best of his judgment and his explanation in this respect would have to be accepted unless it is shown that there was some bias, personal interest or other ulterior reason which motivated his decision. In such a contingency his decision would be vitiated by *mala fide*. Except for such a contingency, the Commission would not go behind the decision of the minister and question its correctness. The Commission does not act as a Court of appeal or a super body to express opinion and pass verdict on the correctness of the various decisions of the respondents. It is only concerned with the question as to whether the decisions were vitiated by *mala fide* intention. In dealing with the question as to whether former ministers are liable to be impeached for their errors of judgment, Finer, in the Theory and Practice of Modern Government, 1949 Edition, observes on page 601—

“It (impeachment) would have deserved to fail. It was too serious a penalty to use for small errors and too dreadful to carry out in any case, for to govern is to venture, to create and no creation is without risk or error; while even when a policy is successfully realised, the more successful it is, the less will political opponents like it and the more jealous and ready to impute sin will they be. To prescribe a great penalty for failure to satisfy avowed opponents, is to paralyse Government, while heavily to penalise error is to extinguish experiments, the result of which must always be speculative. Supposing impeachment and execution were the consequences of an ill timed return to Gold Standard, Mr. Churchill would have been condemned to death in 1925 by followers of J. M. Keynes.”

I may also observe that in order to prove *mala fide* intention or motive we need clear and convincing proof. The proof, however, need not be by direct evidence but may be inferred from the totality of circumstances. At the same time it has to be borne in mind that a bare assertion of *mala fide* conduct, however strongly worded, would be no substitute for positive proof of *mala fide* conduct.

Another question which arises for determination is as to how far is a respondent liable for the acts of a subordinate official. In this respect I may state that the constitutional position is that a minister is responsible to the legislature for everything done in his department and it is no excuse for him to tell the legislature that a particular act was done by a civil

servant without the minister's knowledge. The constitutional responsibility being that of the minister he cannot seek shelter behind the plea that he was not consulted by the departmental official before taking to a particular course of action. As has been observed by Shri Ivor Jennings in *Cabinet Government*, Third Edition, page 499—

“A minister cannot hide behind the error of a subordinate. Within a department there must be substantial delegation of power, but the most essential characteristic of the civil service is the responsibility of the minister for every act done in his department.”

To quote Lord Morrison in *Government and Parliament*, page 323—

“The proper answer of the minister is that if the House wants anybody's head it must be his head as the responsible minister.”

It has accordingly happened that in extreme cases a minister has to resign because of the lapse of his departmental official. It does not, however, follow from that that a minister would also be held guilty of impropriety in the sense of moral turpitude or deviation from the path of rectitude because of an act of impropriety on the part of the departmental official. The principle of vicarious liability of the minister cannot, in my opinion, be extended to the point of holding him guilty of impropriety because of the impropriety of a civil servant unless the circumstances of the case show that a minister by some positive act or deliberate omission has abetted the commission of that impropriety by the civil servant.

Another and a very vital principle which must be kept in view is that a person on becoming a minister becomes the custodian of public interests. A great trust devolves upon him and he owes it to the exalted office he occupies that he should so formulate his policies and plan his activities that there is no possibility of a clash between his personal interests and the public interests. This is specially true in the set up of a nascent democracy like ours wherein the role of a minister has got to be that of a pioneer rather than of a pirate, of a public sentinel rather than of a self-seeker, of one dedicated to the public weal and not one obsessed with the desire of personal gain. The moment a minister gets into a situation wherein there may be conflict between his personal and the public interests he is bound to make the tongues wag and his conduct must necessarily become the subject of criticism and censure. The old adage that the Ceaser's wife should be

above suspicion is equally true of the ministers in a democratic set up. As observed by Sir Ivor Jennings on page 106 of *Cabinet Government* :

“The most elementary qualification demanded of a Minister is honesty and incorruptibility. It is, however, necessary not only that he should possess this qualification but also that he should appear to possess it.”

Mr. Asquith, while dealing with the qualifications of a minister in a Marcony debate of 1913, observed :

“The first.....and the most obvious is that ministers ought not to enter into any transaction whereby their pecuniary interests might, even conceivably, come into conflict with their public duty.”

(See page 109 of *Cabinet Government* by Sir Ivor Jennings) A. B. Keith in *British Cabinet System 1830—1938* on page 186 observes :

“In the interests of sound administration, it is plain that a minister should have no business appointments or directorship which might interfere with complete regard for his duties, and that he should never have any commercial dealing of a kind which may give rise to the suggestion that he is preferring personal advantage to state interest.”

A minister has also a moral responsibility to see that he does not put the officials under him in an embarrassing position wherein the officials in the discharge of their public duties have to deal with matters which may impinge upon the pecuniary interest of the minister or the members of his family. The element of conflict between the pecuniary interest of the minister and the members of his family on one side and the public interest on the other is inherent in such a situation. The officials cannot be oblivious of the fact that their promotion and future prospects are dependent upon the goodwill of the Minister. Being human how many officials are prepared to jeopardise their future prospects in order to promote public interest ? Quite a number of them with streaks of martyrs or high sense of duty would no doubt be prepared to take personal risk for the sake of public good but there would also be a substantial number who would consider discretion to be the better part of valour. The more clever amongst the latter type would so put things on the record that the pecuniary interests of the minister and the members of his family may appear to coincide rather than clash with the public interests. There would also be quite a few unscrupulous officials who would try to prove more royal than

the King and on their own go out of the way to secure a pecuniary advantage to the minister at the cost of public interest in order to curry favour with the minister.

The ministers also set the tone of the administration. This is so because corruption percolates. If men at the top lose their integrity, corruption becomes ubiquitous. If however, men at the top remain honest, though they may not be able to root out corruption altogether at lower levels, they do set an example and can enforce standards with a vigour with which a dishonest person can never do.

Another question which arises is as to what is the value of CBI report which was submitted to the Home Minister after the presentation of memorandum by Shri R. N. Singh Deo and others to the President against Shri Patnaik, Shri Mitra and other ministers of Orissa, Shri Mitra in his letter dated March 7, 1965 to Shri Lal Bahadur Shastri, Prime Minister of India, requested that he might be supplied a copy of the CBI report. Shri Shastri in his reply dated March 11, 1965 informed Shri Mitra that he (Shri Shastri) had written to the Home Minister about the matter. Letter dated April 16, 1965 was thereafter received by Shri Mitra from Shri Gulzari Lal Nanda, Home Minister, and it reads as under—

“My dear Shri Mitra,

Kindly refer to your letter of 7th March 1965 to the Prime Minister. As you are aware, the CBI were entrusted with the limited task of collecting the relevant facts from the records of the Orissa Government and submitting a report on the basis of those facts. The object was to enable a Cabinet Committee, and ultimately the Prime Minister to consider whether there was any substance in the allegations made in the memorials submitted to the President. After going through the CBI's report we sent you and Shri Patnaik notes containing questions which appeared to arise from the CBI's report. After we received comments on those questions and had had the benefit of discussions with Shri Patnaik, and on certain points with the Chief Secretary, Orissa, the Cabinet Committee and the Prime Minister reached certain conclusions. Certain matters were cleared by the comments and discussions and the conclusions of the Cabinet Committee and the Prime Minister on those matters were, therefore, different from what they would have been if there was nothing before them except the CBI's report.

As I have stated earlier, the CBI report was intended only for the consideration of the Cabinet Committee and the Prime Minister, and as you are aware, we took the stand in Parliament that documents meant for the Cabinet or any of its Committees were always treated as secret. Apart from what I have said above, I doubt if any public purpose would be served by any further controversy or public discussion of this matter.

I am sure that when the Audit Report is placed before the Orissa Legislature, you will have an opportunity of clearing up any matters about there may be any misunderstanding. Kind regards.

Shri Biren Mitra, M. L. A.
Bhubaneswar (Orissa)

Yours sincerely
Sd. G. L. Nanda
(G. L. Nanda)

It appears that a document purporting to be a copy of the CBI report was laid on the table of the Lok Sabha by Shri Kamath, Member of Parliament. Shri Patnaik referred to this aspect of the matter in a letter, dated March 23, 1965 to Shri M. C. Chagla, Union Education Minister. In that letter Shri Patnaik protested against the remark of Shri Chagla in the Lok Sabha about Shri Patnaik being "unworthy of the high office of Chief Minister". Referring to the CBI report Shri Patnaik stated in that letter—

"As a Parliamentarian I must admit that I enjoyed the debate but I still fail to understand why the blame for laying the alleged Police Report on the table of the House should lie at the doors of Mr. Kamath and not criminal negligence that such a report which was even kept secret from us, could find its way from the strong room of the South Block to the Bus Stands of Orissa.

Secondly, I had urged on the Home Minister that this Report if true should be authenticated by the Government and all the massive facts which were at the disposal of the Cabinet Sub-Committee should also be placed on the table of the House, thereby making it easier for the Government to defend its position. I have not yet understood why my advice was rejected."

On an application of the State Government the Commission issued summons to the Secretary, Ministry of Home Affairs, for production of the CBI report and the explanatory statements given by Shri Patnaik and Shri Mitra. The afore-said report along with the explanatory statements and letters

of Shri Patnaik and Shri Mitra were thereafter produced by the Minister of Home Affairs. Question consequently arises as to what value is to be attached to the said report.

After giving the matter my consideration I am of the view that the conclusions arrived at by the Central Bureau of Investigation and its report would have to be excluded from consideration by the Commission in arriving at its own findings. It would, however, be open to the parties and the Commission to take into consideration and rely upon the documentary evidence, if any, procured by the Central Bureau of Investigation and produced before the Commission as well as the explanatory statements and the letters which were sent by Shri Patnaik and Shri Mitra to the Cabinet Sub-Committee. Apart from the said documentary evidence, explanatory statements and letters, the report of the Central Bureau of Investigation shall be considered to be not relevant in the proceedings before the Commission. The State Government, in the circumstances, would have to prove a charge independently before the Commission and the fact that a particular charge was found by the Central Bureau of Investigation to have been substantiated would be of absolutely no avail to it.

The report of the Cabinet Sub-Committee would no doubt be entitled to greater sanctity because of its having emanated from an august body and because of its composition with some of the best legal brains represented on it. At the same time it has to be borne in mind that the material which has been produced before the Commission was not before the Cabinet Sub-Committee and it cannot be predicated as to what would have been its findings if the said material had been before the Sub-Committee. After giving the matter my consideration, I am of the view that the Commission should decide each matter on the basis of the material placed before it uninfluenced by any finding of the Sub-Committee. It may be that some of the findings of the Commission may be the same as those of the Cabinet Sub-Committee. Those findings would, however, be arrived at independently by the Commission and not because of any findings of the Cabinet Sub-Committee. Likewise, it can equally be that some finding of the Commission may be at variance with that of Cabinet Sub-Committee.

PART II

ALLEGATIONS AND THE FINDINGS THEREON

CHAPTER 1

ALLEGATION No. 1

Re:

Kalinga Iron Works and the Mining Lease

Allegation No. 1 relates to the take over of the Kalinga Iron Works by the State owned Industrial Development Corporation from Kalinga Industries Limited as also to the mining rights of B. Patnaik Mines (Private) Limited. The respondents named in this allegation are Shri Patnaik, Shri Mitra and Shri Jagannath Rao.

According to the particulars of allegations filed by the State Government, Kalinga Industries Limited was a company developed by Shri Patnaik. Till he became Chief Minister of Orissa, Shri Patnaik was the Chairman of the Board of Directors of the company. He and his family members were major shareholders in the company. Shri Jagannath Rao, who too held a number of shares in the company, was taken into Shri Patnaik's cabinet. In 1959 Kalinga Industries established a Low Shaft Furnace which subsequently came to be known as Kalinga Iron Works. After the furnace had operated for a few months, Kalinga Industries found the plant to be uneconomical. On June 30, 1960 Shri Patnaik represented that the Low Shaft Furnace could not be an economic plant as the cost of production of pig iron of the Low Shaft Furnace was Rs. 289 whereas the market value of the pig iron was Rs. 255. These facts were represented to the Government of India in order to induce it to purchase and expand the plant. It was also stated in the representation that unless the plant was taken over it would remain uneconomic, unsound and become a national waste. Efforts were made to sell the plant but no purchaser could be found. In 1960 Shri Patnaik secured a licence for the 5 crore expansion programme of the plant. Expansion was to be made within six months but as Kalinga Industries had no funds to carry out the expansion, extensions were obtained for the purpose.

In June, 1961 when Shri Patnaik became the Chief Minister of Orissa, his wife Shrimati Gyan Patnaik became the Chairman of the Kalinga Industries. Shri Patnaik, it is

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stated, then used his position to thrust uneconomic Low Shaft Furnace plant on the Government of Orissa. Industrial Development Corporation (hereinafter referred to as the IDC) it is stated, was established with the funds of the State Government for the benefit of the State. The Government of Orissa is the sole owner of the IDC and the Board of Directors of the IDC consists of only Government officials. Shri Patnaik on behalf of the Government of Orissa as its Chief Minister as well as on behalf of Kalinga Industries Limited acting as its *de facto* agent carried on negotiations for the sale of the Low Shaft Furnace plant to the IDC. Kalinga Industries decided on the 28th January, 1963 to sell the Low Shaft Furnace to the IDC and made offer for the purpose. The IDC sent the proposal for sale to the Government of Orissa for approval. The proposal to purchase was approved on the 16th March, 1963 by Shri Mitra, who was acting on behalf of Chief Minister, as Shri Patnaik then chose to be absent. Shri Mitra in the name of his wife was the Commercial Agent for sale of the goods of Kalinga Industries. At the time of the offer of sale of the Low Shaft Furnace a memorandum was submitted to the IDC stating wrongly that the Furnace was making sizable profit. Even before the proposal to purchase the Furnace had been approved by the State Government, Shri Patnaik represented to the Central Government that the IDC had undertaken to take over the Low Shaft Furnace. He also requested the Union Government to transfer the licence relating to the expansion of the unit and the import licence in favour of IDC.

Shri Balan, who was an employee of Kalinga Industries according to the State Government, was deputed by Shri Patnaik for effecting the transfer of the plant on the 1st April, 1963. The work of the evaluation of the Low Shaft Furnace was entrusted to two Chartered Accountants Messrs. H. Naik & Co. and Messrs. G. Basu & Co., who, it is alleged, were already engaged as Auditors by Kalinga Industries and other concerns of Shri Patnaik. The value of the plant was found by the Chartered Accountants to be about Rs. 71 lakhs and this figure has been assailed by the State Government.

According to the agreement between the IDC and the Kalinga Industries, the price of the Low Shaft Furnace was to be paid out of the profits. Provision was also made to put Shri Balan on the Board of Directors of the IDC to become in charge of the Low Shaft Furnace.

While negotiations for the sale of the Low Shaft Furnace to the IDC were going on, on the 1st March 1963 Kalinga Industries entered into contracts for purchase of machinery towards the 5 crore expansion programme with the following German concerns:—

1. Gutahoffenungshytte Starkrade Aktiengesellschaft of Oberhausen-Ster-Krade in West Germany.
2. Aktien-Gesellschaft-Weser of Bremen in West Germany.
3. Messrs. Friedrich Kicks GMBH of Bremen in West Germany.
4. Fried Krupp Industriebau of Essen in West Germany.

These contracts too were passed on to the IDC along with the transfer of the Low Shaft Furnace. It is insinuated on behalf of the State Government that the contracts with the above foreign concerns were entered into to enable Shri Patnaik to make money and keep it in foreign countries.

Shrimati Gyan Patnaik, wife of Shri Patnaik, was the Chairman of another company known as Kalinga Otto (P) Limited. The aforesaid company was appointed Technical Consultant for the expansion programme of the Low Shaft Furnace, and the remuneration of the Consultant was fixed at Rs. 15,50,000. There was, according to the Government, no necessity for the appointment of such Consultant, and it is claimed that it was nothing but a device to defraud the State of Orissa and the IDC of the amount of Rs. 5 crores to be spent on the expansion. By the end of 1966 the expansion programme under the above mentioned Technical Consultant touched the figure of Rs. 9.11 crores.

As the price of the Low Shaft Furnace was agreed to be paid out of the profits, inflated figures of the profits, it is stated were shown during the three years following the transfer. The whole of the sale consideration was thus paid within a period of three years to the Kalinga Industries.

The agreement for transfer of the Low Shaft Furnace from Kalinga Industries to the IDC also provided that 2½ per cent of the ex-works cost of all products of the Low Shaft Furnace should go to run an institute of Technology and Designs to be called Kalinga Institute of Technology and Designs. The same was to be managed by three members out of which one was to be a nominee of Kalinga Industries.

It is stated that this condition had the effect of putting a substantial sum of money under the control of Shri Patnaik and his family and of permanently burdening the plant with such a payment.

The raw material for the Low Shaft Furnace, according to the State Government, was being secured from manganese and iron mines which were being worked in an area of 3,900 acres by B. Patnaik Mines (Private) Limited. Initially working permission in respect of the mines in that area was obtained by Shri Patnaik in 1952. The lease in respect of that area granted in favour of Shri Patnaik contained a condition that he would have to establish a Ferro Alloy Industry. Subsequently, in 1956 Shri Patnaik got the mines transferred to his concern, B. Patnaik Mines (Private) Limited. As the royalty for the above mines was not paid and the amount of royalty accumulated to Rs. 6 lakhs, the Government issued an order withdrawing the working permission in respect of the mines. Shri Patnaik thereupon filed a writ petition in the Orissa High Court in 1960 to compel grant of a mining lease in accordance with the terms of the original working permission. The writ petition came up for hearing on November 28, 1961 before the High Court. Shri Patnaik, who had in the meantime become Chief Minister, got the matter compromised. In accordance with the compromise, lease deeds were executed but the original condition to establish a Ferro Alloy Industry and other industries was not inserted as a term in the lease deed. According to the State Government, the above-mentioned mines should have also been passed on to the State consequent upon the transfer of the Low Shaft Furnace since it was intended that the industries established would be fed by the ores extracted from such mines. On March 26, 1963 Shri Mitra told the Legislature that the mines would definitely go back to the Government. On July 6, 1964 B. Patnaik Mines (Private) Limited made an offer to the State to take over the mines. The mining department thereupon asked that company to furnish balance-sheets as on 31-3-1964 and 31-3-1965 for reference so that the mines could be taken over. There was no response to the above letter in spite of a number of reminders having been sent. The State Government claims that by the above-mentioned two transactions relating to Low Shaft Furnace and the Mines the State Government has been put to loss of Rs. 11 crores and Rs. 10 crores respectively.

Shri Jagannath Rao is also stated to be responsible for the loss he has personally benefited by the aforesaid transactions.

Two affidavits of Shri M. C. Panda, an Accounts Consultant, have been filed in support of the above allegation by the State Government.

The case of Shri Patnaik, as it emerges out of his affidavit, may be briefly put at this stage. He has denied the charge of impropriety levelled against him. According to him, the policy decision for the take over of the plant was taken by him as Chief Minister with the concurrence and approval of the Government of India. The principal operative portion of this decision was that the unit was to be acquired by the State owned IDC without any investment whatsoever. After the decision was approved by the State cabinet, the Secretaries and officials of the Government, who were on the Board of Directors of the Kalinga Industries were directed to negotiate the final terms for the transfer of that plant to the IDC in conformity with the limitations laid down by the Government. It is further stated that if the market valuation of the plant had been undertaken through Technical consultants the Kalinga Industries would have received over Rs. 15 crores and not an amount of about Rs. 70 lakhs, which was the depreciated book value of the plant. As regards Shri Balan, it is stated, he was to remain only a nominee Director of the Kalinga Industries Limited on the Board of IDC to protect the interests of the Company. Shri Balan maintained the efficiency and profitability of the plant while his emoluments amounting to Rs. 4,000 per mensem were paid by his parent organization for more than three years. Shri Patnaik has further stated in the affidavit that the Kalinga Industries Limited was always prepared to take back the plant if the Government found the terms of acquisition unfavourable. An offer was made by Shri Tripathy, who was then Chief Minister, to Shri R. N. Singh Deo, who was then leader of the opposition that the Government would be willing to retransfer the Kalinga Iron Works to Kalinga Industries if the opposition so desired. This offer was not accepted by Shri Singh Deo. The allegation that there was any misstatement with regard to the project cost of Low Shaft Furnace has been denied. Likewise, the insinuation that foreign exchange with regard to the expansion project of the Low Shaft Furnace was taken away by Shri Patnaik has been described by him to be false, baseless and motivated.

In respect of the appointment of Kalinga Otto (P) Limited as Consultant, Shri Patnaik states, the same was an internal matter between the two companies and did not come to him for approval. According to Shri Patnaik, although he and the member of his family held 51 per cent shares in Kalinga Otto (P) limited, they could have had little material incentive for personal gain emerging out of the contract between the IDC and Kalinga Otto (P) Limited.

Shri Patnaik has also denied all the allegations and insinuations relating to the mining lease in favour of B. Patnaik Mines (Private) Limited. According to him the question of starting a Ferro Alloy Industry could have arisen only if the Government had informed him or B. Patnaik Mines (Private) Limited of the availability of the sufficient power supply which was prerequisite of the starting of the Ferro Alloy Industry. Shri Patnaik was not aware that the condition regarding the establishment of Ferro Alloy Industry had been omitted in the lease deed that was executed in favour of B. Patnaik Mines (Private) Limited in the year 1962 as the matter was never brought before him. The omission, it is stated, might also have been due to change of circumstances. The insinuation that the compromise in the writ petition filed by him in the High Court was the result of collusion or undue influence has also been denied by Shri Patnaik.

Shri Mitra in the course of his affidavit has stated that he never colluded with Shri Patnaik or any other person. Shri Mitra has further denied that he in the name of his wife was the Commercial Agent of Kalinga Industries. Shri Jagannath Rao in the course of his affidavit has denied the allegations levelled against him. According to him, his shareholding in Kalinga Industries is only 0.25% of the paid-up capital and the same was inherited by him from his father.

Five other affidavits in respect of this allegation have also been filed. Two of those affidavits are of Shri C. Balan, General Secretary of Kalinga Industries Limited, two affidavits are of Shri N. I. Venkataraman, Secretary of B. Patnaik Mines (Private) Limited and one of Shri Srinivasan Ramaswamy, Secretary of Kalinga Otto (P) Limited. Supplementary affidavit of Shri M. C. Panda on behalf of State Government and of Shri Patnaik have also been filed in respect of this allegation.

The first part of this allegation, as would appear from the above, relates to the alleged impropriety committed by Shri Patnaik and others in the taking over of the Kalinga Iron Works by the I.D.C. from Kalinga Industries. In order to appreciate the point of controversy, it would be necessary to give a background of the impugned deal, and history of the Kalinga Industries.

On August 5, 1952 Shri Patnaik applied to the State Government of Orissa for grant of a mining lease in respect of 3,900 acres of land near village Serma Bhadrasahi Raikora. On August 19, 1952 the Additional Secretary to the Government of Orissa, Revenue Department addressed a letter to Shri Patnaik, Para. 1 of which reads as under—

“With reference to your application, dated the 5th August 1952 for a mining lease for mining Manganese ore in the area given in the schedule attached, I am directed to state that the State Government have agreed to grant a mining lease to you subject to finalization of certain terms and conditions of the lease form in consultation with the Government of India. An extension area has been specially allowed on the understanding that you will put up a Ferro Alloy Industry at the earliest possible opportunity. This was further discussed with your representative Shri Ram Bhavani and the State Government desire that a condition shall be imposed in your lease that within three years of the State Government informing you firmly that hydro-electricity or thermal power will be made available to you in sufficient quantity for a ferro-alloy plant at or near Barbil you shall put up a complete Ferro-Alloy Plant. In case you do not put up the plant within the time stated, the lease is subject to immediate cancellation and the State reserves the right to enter upon the land directly without going to Court. The granting of the lease is subject to the condition and your specific acceptance of this is requested.”

On August 22, 1952 Shri Patnaik addressed a letter to the Additional Secretary to the Government of Orissa, Revenue Department, generally accepting the terms and conditions laid down in the Draft Mining Rules with certain modifications as stated in the Additional Secretary's letter. Para. 2 of Shri Patnaik's letter reads as under—

“With regard to Para. 1 of your letter, I accept the specific condition laid down by you regarding erection of a Ferro-Manganese Plant at or near Barbil within three years of a firm date of availability of power at or near the site.”

On August 31, 1954 Shri Patnaik entered into an agreement with Dr. C. Otto & Comp. G.m.b.H., Bochum, Germany, for the supply and erection by the second party of a Low

Shaft Furnace Plant for a daily production of 18 tons of pig iron and ferro-alloys. The total price of the services and supplies covered by the contract was mentioned to be DM 2,90,000. Another agreement was also executed on August 31, 1954 between Shri Patnaik and KO-WE Niederschachtöfen G.m.b.H Bad Godesberg (hereinafter referred to as "KO-WE") Clauses 2, 3, 4, 5, 6, and 12 of this agreement were as under—

- "2. Patnaik and KO-WE have a common interest in erecting in India as many Low Shaft Furnace Plants as possible and will take advantage of the results obtained and experience acquired by the erection and operation of the first plant built by Patnaik.
3. Furthermore, Patnaik will putforth his influence in India with a view to promoting the erection of further KO-WE Low Shaft Furnace plants to be operated either by himself or third parties. (Indian Patent Application No. 50094 of 17-8-53 'Process for smelting ore in the Low Shaft Furnace').
4. All industrial KO-WE Low Shaft Furnace Plants in India are subjects to royalty of 3% p. a. of the annual ex-Works price of the molten production for a period of 10 years.
5. For his promoting work Patnaik will participate in these royalties with one-third-1 per cent. Always after receipt of royalty payment this proportion will be credited to Mr. Patnaik on a Bank account to be indicated by him.
6. For all Low Shaft Furnaces that will be erected and operated in India by Mr. Patnaik at his own expense or his associated companies, he will be entitled to a preference royalty of 2 per cent p.a. of annual selling price of the molten production for a period of 10 years. Half of this royalty, i. e., 1 per cent will be reimbursed to Mr. Patnaik, immediately on receipt, to a Bank account to be indicated by him.
12. KO-WE grants on exclusive licence to Patnaik to erect and operate plants in India under this licence. Patnaik undertakes to erect within five years of successful operation of the first plant, two plants of 100 (one hundred) tons-a-day capacity each and in next 5 years three plants of 100 (one hundred) tons-a-day capacity. In case of failure by Patnaik, KO-WE reserves the right to grant the Licence to other parties".

On September 26, 1954, Shri Patnaik wrote an application for grant of a licence for the establishment of a Low Shaft Furnace for manufacture of pig iron to start with and ferro-manganese and other such ferro-alloys. In this application the capacity of the plant was stated to be 18/22 tonnes per

day. The total value of the equipment was mentioned to be about Rs. 11,50,000 out of which Rs. 3,50,000 were to be spent on import from sterling areas and Rs. 8,00,000 on an indigenous equipment. The above application was sent by Shri Patnaik to the Secretary, Ministry of Commerce and Industry, along with letter dated September 29, 1954. The Government of India on receipt of the above application invited the views of the Orissa Government on the proposal of Shri Patnaik to put up a Low Shaft Furnace for manufacture of pig iron and ferro-manganese. Shri H. B. Mohanti, Industrial Adviser to the Government of Orissa, then put up a note on November 3, 1954 stating that as regards the technical feasibility of the project, he was not in a position to express any opinion.

According to Shri Mohanti, the cost of pig iron manufactured by Low Shaft Furnace at Choudwar would be about Rs. 140 per ton, while the cost of a pig iron manufactured by the ordinary blast furnace method was somewhere between Rs. 80 to Rs. 100. The real advantage, it was stated, of the Low Shaft Furnace was that it could produce pig iron with the help of ordinary coal compared to metallurgical coal and coke required for producing pig iron by the orthodox blast furnace method. Shri Mohanti then referred to the fact that various European countries were experimenting with the Low Shaft Furnace in order to be able to use ordinary coal for iron making and stated that it would be desirable to try out such method in India. At the same time Shri Mohanti expressed his doubt about the working of Low Shaft Plant as a commercial venture.

On January 15, 1955 licence No. L/4/32/55 was issued by the Ministry of Commerce and Industry under Rule 15 (4) of the Registration and Licensing of Industrial Undertaking Rules, 1952 in favour of Shri Patnaik for the establishment of a new industrial undertaking under the name of Kalinga Ferro Alloy Corporation. It was specified that "the new industrial undertaking shall have an installed capacity for the manufacture of pig iron and/or Ferro-silicon, Ferro-Chrome or Ferro-manganese and cast iron pipes and special steel such as nickel-chrome or stainless, 18/22 tons per day". The licence was sent to Shri Patnaik by the Ministry of Commerce and Industry as per letter dated January 21, 1955.

At this stage it would be convenient to give a history of Kalinga Industries Limited. Shri Patnaik formed in 1948 a company, named, Kalinga Refrigerators Corporation Limited for the manufacture of refrigerators. Kalinga Refrigerators

obtained State-aid from the Government of Orissa against hypothecation of its assets as under:—

(1) By way of loan	..	Rs. 7,00,000
(2) 5 per cent cumulative redeemable tax free preference shares.		Rs. 2,80,000
(3) Ordinary shares	..	Rs. 20,000
Total	..	Rs. 10,00,000

In 1955 the paid-up capital of Kalinga Refrigerators Corporation, Limited, was Rs. 12,36,000 out of which the State Government held shares of the value of Rs. 3,00,000. Besides that, the State Government as stated above, had given a loan of Rs. 7,00,000 to the Company. On September 14, 1955, Shri Patnaik addressed a letter on behalf of Kalinga Refrigerators Corporation, Limited, to Shri Radha Nath Rath, the then Finance Minister of Orissa. Paragraphs 1 to 3 of that letter read as under—

1. Now that the Refrigerator Factory has turned its corner, I have decided to expand the finances of this Company to Rs. 50 lakhs paid-up capital. Today, we have got about Rs. 12½ lakhs paid-up capital with about Rs. 6,40,000 loan from the Government of Orissa.
2. We have decided to change the name of this Company to Kalinga Industries, Limited, and have a paid-up capital of Rs. 50 lakhs. I want to take up, apart from Light Fittings for Philips and A. E. I. which in the coming year are valued at Rs. 50 lakhs and Electrolux Refrigerators valued at Rs. 15 lakhs in 1955; the Low Shaft Furnace for manufacture of ferro-manganese, as well as wagon building will necessarily require structural shops of their own which would also be included in this group. We would also need oxygen and acid for these factories.
3. The total capital cost for these integrated industries is estimated at Rs. 130 lakhs. The Company would provide about Rs. 40 lakhs.

"and I have asked for State-aid either in the form of a guarantee or loan for about Rs. 90 lakhs. These industries will provide employment—direct and indirect—for about 7,000/8,000 people and would also provide training ground for scores of young technicians from our State."

A formal application was also sent by Shri Patnaik for State-aid of Rs. 90 lakhs to the Government of Orissa. The matter was then examined by the Secretary of the Department. He pointed out that the Company in question had taken a loan of Rs. 7 lakhs in 1948-1949. The loan was repayable in forty instalments but the Company had not paid even two full instalments and had defaulted in respect of seventeen instalments which were due by July 1, 1955. The total amount due from the Company was mentioned to be Rs. 6,40,000, besides an interest of Rs. 1 lakh. It was further pointed out that the Company had suffered a net loss of more than Rs. 8 lakhs. The Secretary, in the circumstances, did not accept the statement of Shri Patnaik that the Company had turned its corner. As regards the Low Shaft Furnace, the Secretary referred to the opinion of the Industrial Technical Advisor according to which the cost of the Furnace would not be in terms of lakhs but in terms of crores of rupees. The Secretary, accordingly, expressed the opinion that it would be unsafe to advance State-aid to the promoter unless further details were known and the Government was satisfied on each point. The proposal for loan of Rs. 90 lakhs did not bear any fruit thereafter.

In December 1955 the name of Kalinga Refrigerators Corporation, Limited, was changed to Kalinga Industries, Limited. On March 21, 1956 Shri Patnaik addressed a letter to the Ministry of Commerce and Industry seeking permission to change the name of the Undertaking, for which he had obtained licence dated January 15, 1955 from Kalinga Ferro Alloy Corporation to Kalinga Industries, Limited. On March 23, 1956 the Ministry of Commerce and Industry agreed to the change in the name of the Undertaking. On May 7, 1956 Shri Patnaik addressed a letter to the Under-Secretary, Industries Department, Orissa, Paragraphs 1, 3 and 6 of which read as under :—

- "1. Originally it was my plan to instal a pilot plant with hearth diameter of 1.5 m. and production capacity of 18 to 22 tons of pig-iron or ferro-alloys per day. The cost of this plant would have been in the neighbourhood of Rs. 11 to Rs. 12 lakhs. After my visit to Germany in October last, I decided to go in for commercial plant having a hearth diameter

2.5 m. which will have a production capacity of approximately 100 tons of pig-iron or 43 tons of Ferro-manganese per day and it has been estimated that the total cost of this plant including buildings, machinery, workshop and laboratory equipment would be approximately Rs. 37 lakhs.

3. As regards finance the Company is issuing for public subscription additional shares to the value of Rs. 10 lakhs. The additional issue has been fully subscribed. The entire additional capital will go towards the establishment of the plant. Further the Directors of the Company will subscribe for Rs. 5 lakhs of shares in the coming financial year of the Company. In all the Company will put in Rs. 15 lakhs towards this project.
6. We would require Rs. 25 lakhs from the Government of Orissa by way of State-aid."

Shri Patnaik in a schedule attached to that letter mentioned that with a capital investment of Rs. 37 lakhs and a working capital of Rs. 9,50,000 the plant could produce 94 tons of pig-iron per day at a cost of Rs. 10,219. Shri Patnaik also enclosed with that letter the following letter dated May 7, 1956 from the Iron & Steel Controller to Kalinga Industries:—

"With reference to your letter No. 16/224, dated the 7th May 1956, I am to say that if the cost of production of pig-iron in the proposed Low Shaft Furnace works out to more than the cost of production either at the existing steel plants or the new steel plants, one of the following alternatives will have to be applied:—

- (i) To determine on the basis of the recommendation of the Tariff Commission, the reasonable cost of production in your works including overheads and a reasonable margin of profit, etc.
 - (ii) To subsidise your production through the Equalisation Fund if the Government so desire.
 - (iii) If the Government decide not to equalise the price either to permit you to sell in the country at a higher cost or to permit you to export at a higher cost.
2. In this connection I would like to stress on you the need for starting your furnace as quickly as possible as we are very much short of pig-iron and have had to take recourse to large imports."

On 8th May 1956, Shri Patnaik sent Progress Report on Low Shaft Furnace. In that report Shri Patnaik stated that although the cost of putting up the plant had been given

as Rs. 37 lakhs, it was more likely that the cost of Railway siding Water Works would have to be increased and the estimate would go up by Rs. 10 lakhs.

On 22nd June 1956 Shri Patnaik addressed a letter to the Director of Industries, Orissa, requesting for a State-aid of Rs. 25 lakhs, i. e., Rs. 10 lakhs in the current financial year and Rs. 15 lakhs in the next financial year. It was pointed out in this letter that the plant would be at a distance of two miles from the mining area.

On 13th August 1956, Shri Manubhai Shah, Union minister of Heavy Industries wrote the following letter to Shri Patnaik:—

**“MINISTER OF HEAVY INDUSTRIES
GOVERNMENT OF INDIA**

MINISTRY OF COMMERCE AND INDUSTRY

No. A34/M(HI)-56

Dated New Delhi, 13th August 1956

My dear Patnaik,

I am glad to receive your letter. I do hope you will make all efforts to expedite the production. Once this beneficial experiment succeeds in the country, we can think of many such plants. Please keep me informed of the progress of this plant of Low Shaft Furnaces.

With kindest regards.

Yours sincerely
(Manubhai Shah)

On 4th September 1956 the Under-Secretary in the Industries Department of Orissa Government sent a letter to Shri Patnaik stating that it was not possible to give any loan

to Kalinga Industries from the allotment of the current year. Shri Patnaik then addressed letter dated the 8th September 1956 to the Secretary, Industries Department, stating that if the Government was unable to grant the loan as applied for, it should agree to give a guarantee for the sum of Rs. 25 lakhs to enable Kalinga Industries to raise this amount from private sources. On the 22nd October 1956 a letter was addressed, on behalf of Kalinga Industries to the Secretary, Industries Department, giving a list of properties which were intended to be hypothecated as security for the guarantee of Rs. 25 lakhs. The value of the properties was stated to be Rs. 54,21,000 out of which the plant and machinery were stated to be worth Rs. 28,68,000. A letter was thereafter addressed on the 12th February 1957 by the Secretary of the Kalinga Industries to the Director of Industries stating that machineries worth Rs. 4,72,426 had already been received for the Low Shaft Furnace and machineries worth Rs. 11,25,084 had been shipped by Messrs. Fried Krupp and would be received in India towards the end of March 1957. It was prayed that pending finalization of the loan or guarantee for Rs. 25 lakhs the Government might pay 70 per cent of the goods as loan. On the 6th June 1957 the Under-Secretary to Government of Orissa, Industries Department, informed Kalinga Industries that in view of the changed policy advocated by the Government of India in regard to the financing of major Industries in the private sector under the Second Five-Year Plan, it would not be possible for the State Government to give State-aid in the shape of loan or guarantee applied for by the Kalinga Industries. The Kalinga Industries was advised to approach the Orissa State Financial Corporation or the Industrial Finance Corporation of India. On the 5th July 1957 Dr. H. Mahatab, Chief Minister of Orissa, addressed to the following letter to Shri T. Krishnamachari, Union Finance Minister:—

“My dear Shri T. Krishnamachari,

As you know, Orissa is very backward in industries. I have been trying my best to encourage industrialists to take up various projects in a planned manner. However, with our meagre resources the progress is far from satisfactory.

In this connection Orissa Government had agreed to stand guarantee for loans in favour of two companies, viz., Kalinga Tubes, Limited, for their 1½ crores expansion project and Kalinga Industries, Limited, for their 55 lakhs Low Shaft

Furnace Project. On the understanding that the Orissa Government guarantee would be forthcoming the Companies have already placed their orders for the entire equipment. Some machineries have already arrived at site and the balance of the material would arrive very soon. Both these projects have high priority by the Ministry of Commerce and Industry, Government of India, and have also been mentioned in the Planning Commission's Report.

Recently the Planning Commission turned down Orissa Government's request for guaranteeing loans to these two Companies and suggested to us that these Companies should approach the Industrial Finance Corporation for their loans. The Companies have duly approached the Industrial Finance Corporation, but have been told that their application cannot be considered because the Industrial Finance Corporation have no funds available with them. "This is indeed a surprising situation and I do not know what help can be given to these companies by us to go ahead with the two very important Industrial Projects in Orissa."

It is my earnest request to you that you would kindly take a little personal interest in this matter so that the Industrial Finance Corporation can give the necessary help to these Companies to enable them to go into early production. It is estimated that if two plants are in full production, they would save foreign exchange to the tune of Rs. 5/6 crores every year.

I have every hope that you would kindly treat this matter as urgent.

With regards.

Yours sincerely

H. Mahatab

Shri T. T. Krishnamachari,

Union Finance Minister, Government of India,
New Delhi.

On July 19, 1957 Dr. H. Mahatab addressed a letter to Shri V. T. Krishnamachari, Vice-Chairman, Planning Commission, which reads as under:—

“My dear Shri V. T. Krishnamachari,

Enclosed please find a copy of my letter to Shri T. T. Krishnamachari. The Planning Commission had recently issued a circular to us debarring us from giving any guarantees for loans for industrial undertakings in Orissa and had recommended to us that the industries should go to Industrial Finance Corporation for necessary finance. I now find that the I. F. C. is unable to advance any money to the companies as they have no funds available with them. I also understand that the Finance Minister has found it difficult to give adequate funds to I. F. C. during the current year.

As the two industries are important and have high priority with the Ministry of Heavy Industries I am anxious that they should go into production without any delay. The machineries are under shipment and some parts have already arrived at the site. The Orissa Government had agreed to give the following guarantees:

- (a) Rs. 64 lakhs for Kalinga Tubes Ltd., for their expansion Project.
- (b) Rs. 25 lakhs for Kalinga Industries Ltd., for their Low Shaft Furnace Project.

It is clearly understood that as soon as the companies receive their funds from the I.F.C. these guarantees given by Orissa Government would be liquidated.

Shri Dinabandhu Sahu, our Industries Minister, is going to Delhi and I have requested him to meet you and obtain your sanction permitting Orissa Government to give those guarantees as originally decided by us. I should be thankful if you kindly treat this matter as most urgent.

Yours sincerely
H. Mahatab

Shri V. T. Krishnamachari,
Vice-Chairman, Planning Commission,
Government of India, New Delhi.

On July 26, 1957, Shri V. T. Krishnamachari wrote back to Dr. Mahatab stating that the Planning Commission had no objection to the Orissa Government standing guarantee for loans in the particular cases of Kalinga Tubes Limited and Kalinga Industries Limited. On August 27, 1957, the Secretary to the Industries Department, addressed a letter to Shri Patnaik asking for full details of the Low Shaft Furnace Process, with a copy of the agreement entered into with Messrs. Fried Krupps and the other relevant literature. Some papers were thereafter sent by the Kalinga Industries to the Secretary of the Industries Department. The Secretary of the Industries Department, Shri Menon thereafter put up a note dated October 24, 1957, stating that the Low Shaft Furnace Plant would not be economical commercially. On October 31, 1957, Shri Swaran Singh, Union Minister of Steel, Mines and Fuel, sent the following letter to Dr. Mahatab :—

My dear Dr. Harekrushna Mahatab,

Kindly refer to the letter of Shri Dinabandhu Sahu, dated the 27th August and yours of the 14th September to Shri Manubhai Shah regarding the Low Shaft Furnace to be put up by Kalinga Industries. As all the points raised by you concern me, I am replying to these letters.

Shri Dinabandhu Sahu has asked us for an opinion on the soundness of the project and on the prospects for the sale of pig-iron. We can reasonably say that the Low Shaft Furnace process is no longer an experiment. A team which we sent out last year to West Germany, Yugoslavia and Belgium has reported that a number of Low Shaft Furnaces are working in those countries. If Kalinga Industries manage the enterprise with efficiency, pig-iron and ferro-manganese can be produced in the quantities anticipated. From our experience with Krupps, we can say that it is a sound firm and can be generally relied upon to do what it has undertaken. At this stage, it is difficult to say what the cost of pig-iron would be. There is no doubt that it will be considerably higher than the pig-iron produced in a conventional blast furnace. We notice from an estimate submitted by Kalinga Industries themselves that they estimate that it will cost Rs. 162 to produce one ton of pig-iron. It is difficult to foresee the future. But, if, as Kalinga Industries estimate, they can produce pig-iron at about Rs. 160 per ton, it should be possible to export pig iron without difficulty, if current world prices do not fall steeply.

The demand for ferro-manganese is generally for the grade 80 per cent. But, Kalinga Industries' Low Shaft Furnace will produce only 50 per cent. ferro-manganese which has a smaller market. Mr. Patnaik of Kalinga Industries, however, tell us that there is a definite demand for this grade from Krupps themselves who would be prepared to buy a substantial portion of his production regularly at current prices.

Sahu has referred, in his letter, to the Iron & Steel Controller's letter, dated the 7th May 1956. This letter merely describes three possible ways of dealing with the situation, if the cost of production turns out to be high. It is not possible to foresee the nature of control in a future period and, therefore, it is not possible to give any specific assurance that the cost of production will be determined by the Tariff Commission or that the production will be subsidised through the Equalisation Fund. But I am prepared to confirm that permission to export will be granted if any difficulties arise in the pig-iron being consumed in the country.

Yours sincerely

Swaran Singh

Dr. Harekrushna Mahatab,

Chief Minister, Government of Orissa
Bhubaneswar (Orissa).

The note, dated October 24, 1957 of the Secretary of the Industries Department along with the letter of Shri Swaran Singh were thereafter put up before Shri Dinabandhu Sahu, Industries Minister, and on November 8, 1957 he expressed his disagreement with the note of the Secretary. As to the technical soundness of the Low Shaft Furnace Project, Shri Sahu stated, the letter of Shri Swaran Singh gave a complete answer. As regards commercial feasibility, Shri Sahu stated, the prospect of sale of pig-iron left a reasonable margin of profit for the Company. Shri Sahu referred to the estimate of Kalinga Industries that the cost of production would be Rs. 162 per ton. If that be so, Shri Sahu added, there would be no difficulty to export pig-iron as the world price of pig-iron was around Rs. 400 and pool price of pig-iron was around Rs. 200. As regards the extent of guarantee Shri Sahu stated that 70 per cent on the assets of the

Company could be given. Note was made of the fact that the Company had already acquired assets to the extent of Rs. 18.50 lakhs. Proportionate guarantee, it was stated, for that amount could be given and further sum to go up to Rs. 25 lakhs might be granted when the assets increased.

The matter was thereafter put up before the Council of Ministers and it was decided that the State Government should stand guarantee for Kalinga Industries for loan or debenture up to an amount of Rs. 25 lakhs. Intimation of this fact was sent to Kalinga Industries on December 12, 1957. On January 11, 1958 Kalinga Industries sent a Progress Report under Rule 19 of the Registration and Licensing of Industrial Undertakings Rules. In this report it was stated that the Project cost had been reduced to Rs. 40 lakhs besides which a working capital would be required. The machineries ordered from Fried Krupps, West Germany were stated to have been fully received and despatched to the site. On February 7, 1958 the Secretary of the Industries Department informed the Director of Industries that the Government had sanctioned a guarantee for Rs. 25 Lakhs in favour of Kalinga Industries under section 4 (b) of the Bihar and Orissa State-aid to Industries Act, 1923. The guarantee was stated to be subject to a number of conditions. One of the conditions was that in consideration of the guarantee sanctioned by the Government the Company would pay to the State Government an interest at the rate of $1\frac{1}{2}$ per cent per annum on the amounts actually received by the Company. Another condition was that until the entire amount of the guaranteed debenture or loan was paid back, Government would have the power to nominate two Directors on the Board of the Company, who would exercise such control over the conduct of the industry as would be sufficient to safeguard the interest of the Government. Still another condition was that the Company would give all facilities to the Accountant-General, Orissa, Auditor-General of India, the Director of Industries and their representatives to make special audit of the accounts of the industry to the extent considered necessary by them and comply with the suggestions regarding maintenance of accounts.

On April 26, 1958 the Indian Overseas Bank sanctioned an aggregate amount of Rs. 25 lakhs against 3 year $6\frac{1}{2}$ per cent mortgage debentures to be issued by Kalinga Industries on the unencumbered fixed assets of the Company valued at Rs. 36 lakhs and on the guarantee of the Orissa State. On April 28,

1958 the Kalinga Industries decided to enter into a Tripartite Agreement in respect of the above amount of Rs. 25 lakhs between the Government of Orissa, the Indian Overseas Bank and Kalinga Industries. Shri Patnaik and another Director were authorised to sign and execute the document. It was also resolved that as the total value of the fixed assets of the Low Shaft Furnace up to March 31, 1958 amounted to Rs. 27,97,000 the Company might borrow a sum of Rs. 19 lakhs from the Indian Overseas Bank. Rs. 19 lakhs were thereafter borrowed from the Indian Overseas Bank. The balance of Rs. 6 lakhs was borrowed after that in two instalments of Rs. 5½ lakhs on July 22, 1958 and Rs. 50,000 on October 10, 1958 with the further acquisition of the fixed assets. On the last mentioned date the assets were stated to be of the value of Rs. 38,90,094.27.

The Low Shaft Furnace Plant went into production in August or September 1959. On February 11, 1960 Shri Patnaik addressed the following letter to Shri Boothalingam, Secretary, Ministry of Steel :

“Dear Mr. Boothalingam;

SUBJECT : Cost of production of pig-iron in our Low Shaft Furnace Plant.

I am now in a position to advise you the actual cost of production of pig-iron in the Low Shaft Furnace. Enclosed please find a copy of the cost sheet for the months of September, October and November 1959. The cost has been worked out more or less on the method adopted by the Tariff Commission. You will find the average cost of pig-iron works out to about Rs. 289 per ton and the cost of production for the month of November alone works out to over Rs. 260 per ton.

We are producing in this plant special high-carbon, high-silicon foundry grade pig-iron for which there is a selected market among the large foundries who specialise in fine casting.

The reasons for this abnormally high cost can be traced out to the following :—

1. We use in this plant nut coke as fuel and this coke cost us as much as Rs. 60 to Rs. 65 per ton at the works. According to the Coal Control Order there is no difference in the rate for hard coke and nut coke whereas in the European countries nut coke is sold at a fraction of the price of hard coke.

2. It will be necessary to add two more furnaces so that the overhead expenses can be distributed to larger production and thus the cost can be substantially reduced.
3. There is no recovery from the top gas and unless we put up a power plant or a foundry this gas will continue to go waste.

We are applying to you separately for permission for expansion of this plant and also to erect a spun-pipe plant.

Until such time as the contemplated expansion is completed, in order to balance the cost of production in this plant I have to request you to exempt the application of statutory prices for the pig-iron produced in this plant. We can then negotiate with such of the selected foundries who continuously require high-carbon, high-silicon pig-iron and are prepared to pay high prices for continuity of special grades of iron. Control on distributing does not apply to us and I would request you to pass orders so that the statutory prices for pig-iron produced in our plant will not be applicable.

Our case deserves your special attention and I shall be grateful if your orders exempting the application of statutory prices is intimated to us at an early date. We have not asked for any special Tariff protection and are only requesting you to lift the embargo on prices so that we and our specialised customers may come to a working arrangement.

Yours sincerely

B. Patnaik

Mr. S. Boothalingam, I.C.S.,

Secretary, Ministry of Steel, Government of India
Udyog Bhawan, New Delhi

On February 13, 1960, Shri Patnaik sent a letter to the Secretary, Ministry of Commerce and Industry, along with application for expansion of Low Shaft Furnace. Paragraphs 2, 3 and 4 of this letter read as under—

“In this connection the undersigned had informed the Ministry in his letter of 30th December 1954 that eventually it would be necessary to instal five such furnaces. The Ministry acknowledged this letter and had suggested that individual application might be made for consideration (copies enclosed).

The existing furnace is now in operation for over five months and it has now been ascertained that unless more furnaces are put up and the overhead expenses distributed over a larger production, it would be uneconomical to run this plant.

We have also suggested to the Government of Orissa that the blast furnace gas which is available from these furnaces could be used for generating steam for a thermal station in this area. It has been worked both by M/s. Babcock & Wilcox India Limited, and M/s. Siemens Engineering & Mfg., Co., of India Private Ltd., that with the three furnaces working enough steam can be raised to run a power plant of 7,500 K. W. The Government of Orissa are giving their active consideration to include such a project in the Third Five-Year Plan. This will mean that instead of wasting the gas the same can be profitably used and uninterrupted supply of power to this area could be ensured by linking this supply to the Hirakud Hydel Grid in this area."

In the enclosed application for expansion it was stated—

"The present rated production of 2,000 tons a month is not economical. By addition of this two units, the production will be increased and the overhead expenses could be distributed over a larger production and thus economy achieved. High grade foundry pig-iron which is not easily available from the Steel Plants could be manufactured in these small furnaces to meet the special needs of the foundries. Besides, every third year, one furnace will have to be shut down for repairs."

As regards the capital required for the expansion and the sources from which it was to be secured, Shri Patnaik stated in the application—

"As the present furnace has been put up with surplus capacity in various departments to take care of further expansion it is anticipated that the two furnaces could be put up with a capital of Rs. 1 crore. To meet this additional requirement in capital it is proposed to apply to the Controller of Capital Issues for a sanction for issue of further equity capital for Rs. 50 lakhs. We have separately applied for a new licence for putting up a foundry. In addition to this capital, we shall borrow from the Industrial Finance Corporation or other similar institutions to meet the balance capital requirements."

Column 10 of the application deals with the requirement of capital equipment and it was filled in as under—

“10. Requirements of capital equipment, if any :

(i) Imported—

(a) from sterling areas Rs. 20 lakhs for each furnace, i.e., a total of Rs. 40 lakhs.

(b) from dollar and hard currency areas. Nil

(ii) Indigenous. .. Rs. 30 lakhs for each furnace, i. e., Rs. 60 lakhs total, including structures, refractory, etc.”

On June 30, 1960 Shri Patnaik submitted the following memorandum to the Prime Minister of India :—

“ The Prime Minister of India,
New Delhi.

Sir,

As desired by you, I am submitting a memorandum concerning the Low Shaft Furnace Plant set up in Orissa.

In pursuance of the policy recommendation of the Steel Advisory Board to reserve the entire Blast Furnace capacity of the Steel Works in the Public as well as the Private Sectors for making steel and meet the demand of the foundries for Pig-Iron by setting up small Blast Furnaces dispersed all over the country, we were the only company who successfully set up a Low Shaft Furnace in Barbil, Orissa. This Plant went into production in September, 1959 and has been in continuous operation since then. The adaptability of this Furnace to make High Grade Foundry Pig-Iron has been proved, and senior foundries engaged in precision castings in the country readily buy Pig-Iron from this Plant. This Furnace was specially designed to use only Nut Coke—10 mm to 40 mm size which is lying in abundance in all the Steel Plants.

The conventional Blast Furnaces of all the Steel Plants use Hard Coke over 40 mm in size. In producing this Coke in the Coke Ovens, certain percentage is automatically obtained in Nut Coke size 10 mm to 40 mm. This Nut Coke

was generally being used for domestic consumption so long. Our Furnace has proved high quality iron can be made in Low Shaft Furnace by using this Nut Coke.

Each of the Steel Works in the Public Sector produces about 300 tons of Nut Coke per day or roughly 90,000 tons annually. The two Steel Works in the Private Sector together produce 150,000 tons of Nut Coke annually; thus in all, over 420,000 tons of metallurgical nut coke is produced in the Eastern Region which, when used in the Low Shaft Furnaces, can turn out over 250,000 tons of High Grade Pig Iron for the Foundries. This quantity of Pig-Iron is sufficient to meet the demands of the Foundries in the Eastern Region including the projected Heavy Castings and Forging Plant at Ranchi.

Low Shaft Furnaces can also be set up in Andhra, Bombay, Madras, Mysore, Madhya Pradesh, Rajsthan and Jammu where Low Grade Iron-Ore and Non-metallurgical Coal is available. Thus the entire Iron making capacity of the major Steel Plants can be profitably diverted to Steel making which is in conformity with the finding of the Steel Advisory Board. In addition to meeting the demand of the Foundries, special quality steel can also be produced by adding small Convertors or Electric Furnaces as well as Special Rolling Mills.

Our Low Shaft Furnace with the existing statutory limitation in production of 15,000 tons annually (although the Plant is now producing over 2,000 tons per month) cannot be an economic venture when compared to the cost of production in Blast Furnaces whose production capacity is very high. In order that the entire output of Nut Coke in the Steel Plants may be used in making iron, it is suggested that we should be allowed to expand the capacity of our Furnace to 250,000 tons annually by adding larger number of similar Furnaces. Further, we should be allowed to make specialised Steel Products. This will make the Plant self-supporting. Necessary capital for such expansion could be found by us from public subscription.

If, however, such expansion in our hands, goes against the instrument of Government policy, I make the following suggestions to the Government for consideration—

- (a) The Central Government and ourselves can form a Corporation with 51 per cent Government control and 49 per cent investment by us and expand the Project,

- (b) A Joint Corporation may be formed both with the Central Government, Government of Orissa and ourselves with the Central Government and Orissa Government holding 51 per cent of the Capital, or
- (c) The Government buys the Plant outright from us at our book value duly scrutinized by the Government auditors and expand it entirely in the Public Sector.

I fear, that, unless some such rational approach is made to tackle this problem, this first successful Indian effort to make iron by using nut coke and/or other non-metallurgical coke will remain economically unsound and become a national waste.

I have carefully estimated that to expand our Plant to produce annually 250,000 tons of High Grade Foundry Iron including Power Plant would cost Rs. 12.5 crores by utilisation of otherwise unusable nut coke for making iron. This would be a positive gain for the country with rather low capital outlay.

Full production of 250,000 tons can be achieved within 2 to 2½ years. Most of the equipment will be manufactured in India. Foreign Exchange requirement would not exceed 40 per cent of the total capacity outlay.

I hope that my representation will meet with your favourable consideration.

Thanking you.

Yours sincerely

Sd. B. Patnaik"

Copy of the memorandum addressed to the Prime Minister was sent by Shri Patnaik to Dr. Mahtab, Chief Minister of Orissa. On November 14, 1960 the Under-Secretary to the Government of India informed Kalinga Industries that the Government of India would consider issuing a licence in favour of the Company for production of pig iron not exceeding 6,000 tons a month on certain conditions. The Kalinga Industries was also informed that it was the intention that the pig iron in small plants not exceeding 100,000 tons a year capacity would not be subject to either price or distribution control. On December 10, 1960 Shri Patnaik wrote to Secretary, Industries Department, Orissa, that initial difficulties in getting the optimum production from the plant had been overcome. It was pointed out that price of special grade pig

iron had been raised by Rs. 30 per tonne with effect from December 1, 1960. The value of fixed assets of Kalinga Industries was stated to be Rs. 73,67,317 on October 31, 1960. Request was made for extending guarantee for three years. Extension it would appear was thereafter granted. On December 15, 1960 licence was granted under rule 15 (4) of the Registration and Licensing of Industrial Undertakings Rules by the Ministry of Commerce and Industry in favour of Kalinga Industries for effecting expansion to the extent of 100,000 tons of pig iron per annum in the Company's plant at Barbil. One of the conditions for the issue of licence, *inter alia*, was that the substantial expansion would be effected within a period of 12 months from the date of the issue of the licence.

The paid-up capital of Kalinga Industries, it may be stated, was gradually raised after 1955 and in the year 1960-61 the paid-up capital was Rs. 42,44,750. The same is stated to be the paid-up capital till today. The following statement gives the profit or loss made by Kalinga Industries from 1955-56 till 1961-62:—

Year		Net profit or loss
		Rs.
1955-56	..	2,26,821
1956-57	..	3,51,227
1957-58	..	30,047
1958-59	..	2,54,362
1959-60	..	3,85,548 (Loss)
1960-61	...	9,57,593
1961-62	..	12,10,000

The loan of Rs. 7 lakhs taken from the State Government was gradually paid off by Kalinga Industries. Out of the loan of Rs. 7 lakhs, an amount of Rs. 5,85,000 was standing due on March 31, 1959, Rs. 3,51,000 on March 31, 1960, Rs. 2,34,000 on March 31, 1961, Rs. 1,17,000 on March 31, 1962 and Nil on March 31, 1963.

Mid-term elections to the Orissa Legislative Assembly took place in June 1961. The Congress was returned in absolute majority and Shri Patnaik, who, was elected leader of the Congress Party, was sworn in as Chief Minister on June 23,

1961. In 1962, the IDC was formed by the Government of Orissa for the purpose of undertaking direct business ventures. The IDC was registered as a Public Limited Company under the Companies Act on March 29, 1962 and the certificate for commencement of business was obtained on May 16, 1962. The Company was solely financed by the State Government and all its directors were to be employees of Government. The authorised capital of the Company was Rs. 50 crores divided into 50 lakh shares of Rs. 100 each, out of which one lakh shares worth Rs. 1 crore were issued as fully paid-up to March 31, 1963 to the Government of Orissa.

In a meeting of the Board of Directors of the IDC held on January 13, 1963, a note suggesting that the Chairman of the corporation should negotiate with the Kalinga Industries for purchase of Low Shaft Furnace was considered. In that note it was pointed out that Orissa had very rich deposits of high grade iron-ore but suffered from a lack of Metallurgical coal. The major steel plants, according to the note, were not in a position to produce sufficient foundry grade pig iron to meet the demands of the country, because it was more profitable for them to process the pigs into steel and intermediate steel products. Government had, therefore, the note continued, encouraged production of pig iron in Low Shaft Furnaces and had granted exemption from the steel price control mechanism. A suggestion was made that it would be in the interest of IDC to enter the field of making pig iron in Low Shaft Furnaces as early as possible so that in course of time the State Government would be owner of major industrial complex comprising basic metallurgical and by-product industries covering a very wide range. Paragraphs 6 to 9 of the note read as under:—

6. Keeping the above and the current development in view, the Corporation should explore the possibility of owing a Pig Iron Plant as early as possible. During the past few weeks exploratory talks have been made with Messrs. Kalinga Industries, Limited, to find out whether they would be interested in parting with control over their Barbil Low Shaft Furnace Plant. The indications are encouraging.

7. The above-mentioned plant is the first Low Shaft Furnace in India to produce Pig Iron. It has been built with West German Collaboration. Its present daily rated capacity is about 95 tons and it is producing 28,000 to 30,000 tons of pig iron. The plant went into production in 1960. It has

firmly established itself in the export market already and has been making sizeable profits. Its net asset value as on 31st March 1962, was Rs. 68,00,000 approximately.

8. The Company has obtained from Government of India licence to expand the capacity to more than 1,00,000 tons by installing two more furnaces with a daily rated capacity of 130 tons each. It has also obtained a licence to produce 40,000 tons of Cast Iron Spun Pipes and Specials. The Plant and equipment will be supplied by West German Firms of G. H. H. Krupps, Siemens or Weser, Klockner or Kocks and the Technical Collaborators and the Kalinga Ottos, Private, Limited, in which Dr. C. Otto and Company are partners. This expansion programme would cost Rs. 5.00 crores of which Rs. 2.10 crores will be in Foreign Exchange, Government of India have also granted the Foreign Exchange Clearance for the entire amount. The cost calculations show that even at the present rate for pig iron and specials and castings, there will be a margin of profit nearing 20 per cent on the capital invested.

“9. The Company may sell the entire assets of the existing plant to the Corporation on a short-term deferred payment basis at the depreciated book value and the Corporation will get without much difficulty the transfer of the exchange clearance and licences.”

The Board then authorised the Chairman to carry on negotiations and complete it to the advantages of the IDC after obtaining necessary directives from the State Government.

On February 2, 1963, the Secretary of IDC addressed a letter to the Industries Department of Orissa intimating about the decision of the Board of the IDC and requesting for the decision of the Government at an early date. Paragraphs 2, 3 and 4 of the above letter read as under—

“In the above context the possibility of entering early into the field of making pig iron on Low Shaft Furnaces has engaged our attention for sometime past. The Board of Directors of the Corporation has been of the view that the Corporation will be in a position of advantage to promote the growth of other metallurgical industries if it can arrange to establish a pig-ore plant or acquire one sufficiently early during this plan period. Exploratory talks with the Management of Messrs. Kalinga Industries, Limited, who

at present own a Low Shaft Furnace Plant producing 30,000 tons of pig iron ore per year at Barbil, to buy over the entire plant at its depreciated book value, have met with encouraging response. A copy of the note prepared in connection with this and placed before the Board of Directors of this Corporation is enclosed. Reference to the note would high-light the advantages that will accrue in case the Corporation decides to buy the existing pig iron plant and in course of time expand it to a production capacity of more than 100,000 tons of pig iron per year and add to the unit a plant to produce cast iron spun pipes and specials.

3. The assets value of the pig iron plant at Barbil stood above Rs. 68,00,000 on 31st March 1962. In course of this year certain further assets have been added and the old machineries have undergone further depreciation. It is estimated that the net assets value will still be around of Rs. 70 lakhs by the end of the current financial year but the exact price has to be ascertained on reference to the books of the Company and settled by negotiations.

4. Messrs. Kalinga Industries Limited had an expansion programme for the plant and had obtained an industrial license to increase

“the installed capacity to 100,000 tons per year and to establish a plant for production of cast iron spun pipes and specials. They have also assured Technical Collaboration and the necessary Foreign Exchange clearance and the Import Licence. The estimated capital outlay on the expansion project is Rs. 5.00 crores approximately. Any decision of the corporation to buy the existing plant would also imply a decision to expand it up to the licensed capacity as otherwise sooner or later the existing plant would loose its competitive ability against pig iron produced in the main Steel Plants. Thus the total capital investment to which the corporation would be committed by any decision to buy the Low Shaft Furnace at Barbil would be in the order of Rs. 5.70 crores which would be required in full by the end of 1965-66.”

On February 6, 1963, the Secretary of the I. D. C. wrote a letter to Kalinga Industries drawing attention to the negotiations between the two companies regarding the transfer of the Low Shaft Furnace Plant. The Secretary of the I. D. C. mentioned that for the purpose of making the valuation of the assets the I. D. C. proposed to appoint Messrs. H. Naik & Co., who were the Statutory Auditors of the Corporation as assessors. It was stated that this proposal should be acceptable

to the Kalinga Industries. On the same day a letter was addressed to Messrs. H. Naik & Co., Chartered Accountants, enquiring if they would be willing to undertake the valuation work. Another letter was also addressed to Messrs. G. Basu & Co., Chartered Accountants of Calcutta. Both Messrs. H. Naik & Co. and Messrs. G. Basu & Co., expressed their willingness to undertake the job.

On February 14, 1963, a letter was sent on behalf of the Kalinga Industries to the Ministry of Steel and Heavy Industries stating that for the expansion of Low Shaft Furnace Plant at Barbil for production of 100,000 tons of pig iron and for putting up a Power House for utilizing the lean gas from the furnace, the foreign exchange required for the import of essential equipments had been established to be Rs. 2.18 crores. Since then, it was pointed out, the company had found it possible to include the essential equipment for the Cast Iron Spun Pipe Plant and Foundry within the West German loan granted to the company of Rs. 2.18 crores. Request was made to include the essential equipment for the Spun Pipe Plant as well within the West German credit. It was also mentioned that an integrated Pig Iron and Spun Pipe Plant would ensure maximum efficiency as it would eliminate installation of cupolas and instead would result in transport of molten metal itself in ladles from the furnace to the Spinning Plant. On February 19, 1963, Shri Patnaik addressed a letter to Shri Subramaniam, Union Minister of Steel, requesting him to take prompt action on the letter, dated February 14, 1963 of Kalinga Industries, para. 1 of the above letter reads as under—

“Further to our discussions, I am to inform you that the Orissa Industrial Development Corporation (a State Government owned company) has undertaken to take over the Low Shaft Furnace Plant at Barbil, Orissa, belonging to Kalinga Industries, Limited and expanded plant of 100,000 tons capacity with a 12,000 tons/year (single shift) of spun cast iron pipes. The project was sent to Bonn through the Economic Affairs Ministry and the Steel Ministry who had worked out the details of this combined project for economic considerations and had received the approval of Bonn and consequential credit for Rs. 2.18 crores. This also included the Power House of 12,000 KW. capacity by using the excess gas from the furnace, gas holders, etc. Thus it would be an economic plant and that is why the State Corporation agreed to take it over.”

On February 20, 1963, the Secretary of the I. D. C. wrote to the Deputy Secretary to the Government of Orissa stating that the detailed particulars of profit earning of the Low Shaft Furnace were not immediately available with the I. D. C. as the balance of the Kalinga Industries showed a consolidated profit and loss account for its three factories including the Pig Iron Plant. It was pointed out that the financial results of the year 1961-62, showed that the company had earned Rs. 16,45,339 as gross profit and Rs. 12,10,000 as net profit. It was further stated that the pig iron being the major unit of Kalinga Industries major portion of the profit might be directly attributed to it. Reference was also made to the fact that it had been possible for Kalinga Industries to sell its products at the rate of Rs. 245 per ton against the controlled price of Rs. 201 per ton, and also to export nearly one-third of the production to foreign countries. On March 1, 1963, orders were placed by Kalinga Industries with four German concerns for supply of machinery in connection with the expansion programme of the Low Shaft Furnace. A letter was addressed on March 2, 1963, by the Kalinga Industries to the Ministry of Commerce and Industry for the transfer of industrial undertaking licences for the expansion of the plant to I. D. C. On March 6, 1963, Shri Patnaik sent the following note to the Union Planning Minister:—

“Further to our discussion today regarding transfer of the assets of the Iron Plant of Kalinga Industries Ltd., in Orissa to Orissa Industrial Development Corporation Ltd., (Orissa Government Undertaking) the decision is as follows :—

(1) The assets of this Plant, the market value of which is over Rs. 1 crore, is being handed over to the State Company at the book value which would be in the neighbourhood of Rs. 70 lakhs. The valuation is being done by the joint auditors of the Kalinga Company as well as the State Company.

(2) The payment by the State Company to the Kalinga Company will be in easy instalments, commensurate with the profit earned by the Plant. The present annual gross profit of the Plant is about 15.20 lakhs.

(3) When the State Company takes over the assets, there would be no interest charged by the Kalinga Company, i. e., the take over is free of any accruing interest charges.

(4) Kalinga's royalty of $2\frac{1}{2}$ per cent on the total ex-works value of this Plant's production has also been transferred to the State Company on the basis that the State Company will create a fund with the Orissa State Government in their Department of Industries, to develop an Institute of Technology and Designs (Machine Building) in Orissa.

2. In short this Plant virtually goes as a gift to the State Company without any direct payment whatsoever, for the benefit of the Industrial and technical development of the State of Orissa.

B. Patnaik

Chief Minister, Orissa

6-3-1963

The transfer of industrial licences in favour of the I. D. C. having been sanctioned by the Government of India, on the 8th March 1963, Shri Patnaik addressed the following letter to Shri D. Purakasthya, Secretary, Industries Department, Orissa, who was then Chairman of the I. D. C.

"My dear Purakasthya,

I am sending Mr. Balan to you with a transfer of industrial undertaking licence sanctioned by Government of India. I would suggest that the formal takeover by the State Corporation from Kalinga Industries should take place on the 1st April 1963, i.e., the new financial year.

Kalinga Industries should continue to effect the sales, etc., till bank arrangements have been made by your Corporation for operating the account from 1st April 1963. Mr. Balan may be taken on the Board and should remain in full charge of the plant expansion etc. The import licence would be released by Government of India next week. Das Mohapatra will obtain it from the Chief Controller of Imports and post it to Balan to Calcutta. After that, you and Balan sit together and sort things out, so that the necessary advances to the foreign suppliers can be made within this month as stipulated. I am leaving Delhi on the 10th night for U. S. A. and should be back in Bhubaneswar before the end of this month. I would like to look into the arrangements before the formal seal is put.

I wish the State Corporation and the new Plant all success.

Yours sincerely,

B. Patnaik

Shri D. Purakasthya,
Secretary, Industries Department,
Bhubaneswar

On March 16, 1963 the papers were put up before Shri Mitra as Shri Patnaik had gone abroad. Shri Mitra then gave his formal approval to the proposal for purchase of Low Shaft Furnace Plant by the I. D. C. Intimation about the Government approval was conveyed to the I. D. C. on March 19, 1963. A draft agreement was then prepared and was sent by the I. D. C. to the Orissa Government for approval. The Secretary of the Planning & Co-ordination Department thereafter noted on March 26, 1963 on the file that it was necessary for the Government to satisfy itself that the valuation of the assets was in fact done meticulously by a reliable authority. The Secretary emphasised the desirability of appointing a Chartered Accountant other than the one appointed by the Company for audit. He also pointed out that there might be a need for technical valuation. The Secretary further wanted clear indication about the instalments by which future payments of the consideration for the Plant were to be made. The matter was thereafter considered by the Finance Department. The Secretary of the Department made a note as under—

“Draft agreement has been examined carefully. Finance Department presume that before taking the decision to take over the Factory, the Industrial Corporation have satisfied themselves regarding profitability of the undertaking. Subject to this, F. D. have no comments to offer.”

The draft sale agreement was then put up before Shri Patnaik and he approved it in the following terms:—

“Appd.

Subject to deletion of clause 9 of the agreements

Sd. B. Patnaik

2-4-1963.

The sale-agreement was then executed between Kalinga Industries and the I. D. C. Although the agreement is dated April 1, 1963, the material on record shows that it was actually executed on April 2, 1963. Clauses 1 to 11 of the agreement are material and read as under—

“1. The Company shall sell absolutely and the Corporation shall purchase the Low Shaft Furnace Pig Iron Plant of the Company at Barbil together with all its block assets such as land, buildings, machinery, plant and equipments described in the schedules ‘A’ and ‘B’ hereto attached on the terms and conditions herein contained.

2. The consideration for the sale shall be equivalent to the aggregate of the following :—

- (a) The depreciated book value of the block assets as on 31st March 1963 certified to be correct by the auditor or auditors appointed by the Company and the Corporation jointly.
- (b) The value of the raw-material and spares and stores at cost and the value of such of the finished products as would be taken over by the Corporation at the end of 31st March 1963 as certified by the auditors referred to in clause 2 (a).
- (c) The agreed value of the deposits with and advances to third parties made by the Company which the Corporation may require to be transferred to it.

3. The net consideration to be paid by the Corporation to the Company shall be arrived at in accordance with clause (2) above as reduced by the sum total of the following :—

- (a) The amount of overdraft outstanding on the cash credit account with the Indian Overseas Bank, Ltd.
- (b) Any payment which the Corporation may or may be lawfully called upon to make to any third parties in order to secure the assets to be transferred to the Corporation free of encumbrance, in pursuance of these presents.
- (c) Any other dues for which there may be subsisting a lawful charge on the assets to be sold to the Corporation or which the Corporation may be lawfully called upon to discharge by decision of any Court or Statutory Authority.

4. The Corporation shall pay to the Company the net consideration as arrived at in accordance with the preceding clauses 2 and 3 in suitable monthly instalments, the aggregate of such payments in any financial year (period between 1st April, of one year to the 31st March of the next succeeding year) not being more than the profits of the Kalinga Iron Works (by which name the Plant shall be called as provided hereinafter) provided that no payment shall be made to the Company out of such profits till payment if any made by the Corporation under clauses 3 (b) & 3 (c) has been completely recovered by the Corporation out of such profits.

5. The Company shall transfer to the Corporation all spare parts which may be received hereafter by the Company relating to the said Low Shaft Furnace Plant and for the import of which orders might have been placed on the strength of import licence or licences already received by it and the Corporation shall take over all such spare on payment of the actual cost, freight and insurance and other charges incurred by the Company.

6. So long as any amount remains due by the Corporation to the Company on account of the sale price, the Company shall have the following rights and powers, viz. :—

- (a) A lien or charge on the properties and assets described in schedules 'A' and 'B' to be sold and transferred by the Company to the Corporation under this agreement.
- (b) Right to appoint from time to time, and if necessary to remove such person as it thinks fit to be a Director on the Board of Directors of the Corporation and the Director so appointed shall have the same fee and privileges as the other Directors of the Corporation.

7. In the event of the Corporation desiring to mortgage the said property or assets agreed to be transferred by the Company under these presents or any part on thereof for the purpose of expansion under the Industrial Undertaking Licences hereinbefore mentioned, the Company shall agree to a postponement of its rights in favour of the persons in whose favour such mortgage is executed by the Corporation and in such event the Company shall have a second charge on the said property and assets subject to the first mortgage in favour of the said mortgage.

“8. The Company had decided to establish and run an institution of Technology and Designs to be named as Kalinga Institute of Technology and Designs, with the sole view of providing scientific research which may ultimately lead and/or facilitate an expansion of the business. Low Shaft Furnace Plants are new to these parts of the country and considerable research work is necessary for economic output, expansion of business and development of the scientific process of manufacture. It is, therefore, hereby agreed

between the Company and the Corporation that 2½ per cent of the ex-works cost of all products of the Kalinga Iron Works (by which name the Plant shall be called as hereinafter provided) in the Low Shaft Furnace, Spun Pipe Plants and Grey Iron Foundry shall constitute the nucleus for the establishment and running of the said Institution of Technology and Designs as aforesaid, the said Institute would get registered under the Societies Registration Act, 1860, and shall be run by a Board of Management with three members, one each being the nominee of the Company, the Corporation and the Government of Orissa.

9. The Company agrees that the contracts with machinery suppliers mentioned below and their consultants Messrs. Kalinga Otto Private Limited to effect supplies of Plant, machineries, equipments and services shall be transferred to the Corporation or re-executed between the Corporation and the said suppliers and consultants on the same terms and conditions on which the said suppliers and the consultants had agreed to undertake supplies and services to the Company.

Names of the Suppliers

1. M/s. Fried Krupp Industriebau, West Germany, for plant and equipments for two Low Shaft Furnaces-Contract, dated 1st March 1963.
 2. Messrs. Friedrich Kocks, West Germany, for a gasholder contract, dated 1st March 1963.
 3. Messrs. A. G. Weser, West Germany, for a Power Plant Contract, dated 1st March 1963.
 4. Messrs. Gutehoffnungshutte-Starkrade AC, West Germany, for a spun Pipe Plant-Contract, dated 1st March 1963.
10. The Corporation shall name the said Plant at Barbil and any expansion thereof as 'Kalinga Iron Works' and no change shall be made in the said name without previous written consent of the Company.

"11. The Company shall make over possession of the said Low Shaft Furnace Plant together with its assets detailed in schedules 'A', 'B', 'C', to the Corporation on the 1st day of April 1963. As soon as possible after the making over of possession the Company shall execute and register in favour of the Corporation a proper Deed of Transfer in

respect of the said assets. As regards the current assets made over by the Company under clause 2 (b) hereof the Corporation shall after receiving the valuation report of the auditors pay to the Company the value thereof less the amount lying to the debit of the Company with the Indian Overseas Bank Limited as mentioned in clause 3 (a) in the Cash Credit Account, all liability in respect of the said Cash Credit Account being taken over by the Corporation. The aforesaid payment may be made in such monthly instalments or otherwise as may be mutually agreed between the Company and the Corporation."

The agreement was signed on behalf of Kalinga Instrues Industries by Shrimati Gyan Patnaik (wife of Shri Biju Patnaik), Chairman of the Company, and Shri Purakasthya, Secretary of the Industries Department who was also a Director of the Kalinga Industries. On behalf of the I. D. C. Shri Purakasthya, who was also Chairman of the I. D. C., and Shri H. Gosh, Finance Secretary and Director of I. D. C. signed the agreement. Besides that, the Secretaries of the Company and Corporation signed the agreement.

In accordance with clause 6 (b) of the agreement, Kalinga Industries appointed its General Secretary, Shri C. Balan on the Board of Directors of the I. D. C. Shri Balan, it is stated, continues as Director of the I. D. C. till the date of arguments.

An amount of more than rupees two lakhs was spent by the I. D. C. after taking over the Low Shaft Furnace Plant on repairs in the nature of relining in 1963-64.

On February 26, 1964 Messrs. G. Basu & Co., sent with their valuation report to the I. D. C. It was stated in the letter that Messrs. G. Basu and Co., had checked the books of account of the Low Shaft Furnace, Pig Iron Plant Division of Kalinga Industries as on March 31, 1963, on the basis of clause 2 (a) and (b) of the agreement dated 1st April 1963. The value of the assets was given as under—

Fixed Assets	Cost to 31-3-1963	Depreciation to 31-3-1963	Written down value as on 31-3-1963
	Rs.	Rs.	Rs.
Land ..	88,061	..	88,061
Factory Building ..	9,10,278	1,06,840	8,03,438
Residential Building	8,86,761	58,479	8,28,282

Fixed Assets	Cost to 31-3-1963	Depreciation to 31-3-1963	Written down value as on 31-3-1963
	Rs.	Rs.	Rs.
Plant and Machinery	56,53,931	10,96,089	45,57,842
Vehicles ..	30,300	8,976	21,324
Furniture & Fixtures .	94,273	11,376	82,897
Typewriter and office equipment.	10,930	1,634	9,296
Railway sidings ..	59,188	4,845	54,343
Laboratory equip- ment.	74,166	14,295	59,871
Water-supply Installa- tions.	3,37,860	57,745	2,80,115
Electric Installations	21,593	2,729	18,864
Telephone Installa- tions.	21,406	3,760	17,646
Library ..	3,193	198	2,995
Safety Equipment ..	13,860	1,238	12,622
Casting Moulds ..	22,226	2,948	18,276
Structures for Slag Works.	2,021	606	1,415

68,57,289"

Out of the above amount Messrs. G. Basu & Co., deducted Rs. 7,305 which, in their opinion, was revenue expenditure and should not have been included in the fixed assets. The written down value of the fixed assets as on March 31, 1963 was accordingly, found to be Rs. 68,49,984. The value of the stocks was assessed to be Rs. 20,64,399 as under—

“ Stock.

STOCK OF FINISHED GOODS

	Rs.
Pig Iron & Runner Iron at below Market price	2,18,338
Stock of Raw Materials & Fuel at cost ..	11,54,800
Stock of stores & spare parts at cost ..	6,80,407
Goods in transit at cost ..	10,854
	20,64,399"

The total value of the assets was thus found to be Rs. 89,14,383. Messrs. G. Basu & Co., further stated :

“ The value of Fixed Assets has been arrived at on the basis of actual cost of the assets including installation and other incidental charges. The cost of Fixed Assets also include revenue expenditure under different heads during the period of implementation of the Low Shaft Furnace Pig Iron Project up to its attaining full production, i.e., from 1956 to 31-3-1960 amounting to Rs. 10,60,033 incurred by the Vendor Company.

Since the allocation of expenditure during construction to Fixed Assets was made several years back and was approved by the Directors and the statutory auditors of the Vendor Company we have not made any further verification of such allocation. The written down value of the fixed assets has been arrived at after charging depreciation on straight line method as prescribed under the provisions of section 205 (2) (b) of the Companies Act, 1956, in the case of the Steel Plant from the date of operation, in the case of buildings from the date of completion and in other cases from the date of purchases. While the cost of Fixed Assets to 31-3-1963 as shown in this report (except in case of land and Vehicles) is in agreement with the books of accounts and the Register of Fixed Assets of the Vendor Company as on that date, the total depreciation computed as aforesaid for the purpose of this valuation report is less than that charged in the books of the Vendor Company by Rs. 1,36,020. This is mainly due to the fact that for the financial year 1959-60 depreciation of Low Shaft Furnace Pig Iron Division was charged in the books of the Vendor Company on reducing balance method, that is more or less according to the provisions of Section 205 (2) (a) of the Companies Act, 1956 and for the financial years from 1960-61 to 1962-63 depreciation was charged on straight line method, that is more or less according to the provisions of section 205 (2) (b) of the Companies Act, 1956. Since for the purposes of depreciation out of its four years' operation, for three years' provision of section 205 (2) (b) and for one year that of section 205 (2) (a) was more or less followed in the Vendor Company's book, we have for the purpose of our valuation followed the provision of section 205 (2) (b) uniformly”.

In a further Para. the Chartered Accountants stated :

“ We have not been able to physically verify the fixed assets. For the purpose of this report we have assumed that all the fixed assets as appearing in the books of accounts of the Low Shaft Furnace Pig Iron Division of the Vendor Company with the exception of the following assets are being transferred to the Corporation.”

It was observed later in report :

“ In the case of stocks, it would appear from the books of accounts that stocks of Raw Material, Finished Goods, Fuel and Stores and Spares were verified by the Vendor Company by physical verification and necessary adjustment for short of excess stock have been made in the books of accounts of the Vendor Company.

Subsequent to handing over the assets to the Corporation we have physically verified over 75 per cent of the items of stores and spares and found them in order. In the case of stock of finished goods and raw materials and fuel, we have checked the inventories submitted by the Management with the books of accounts of the Vendor Company. We have relied on the physical verification carried out by the Management in respect of these inventories ”.

Mention was also made of the fact that the valuation of the stock of the finished goods had been done in the valuation report at market rate less Rs. 50 per ton on the basis of Vendor Company's previous practice.

Messrs. H. Naik & Co., Chartered Accountants, gave their report, dated March 27, 1964. In the course of their report Messrs H. Naik & Co., stated:

“At the outset it may be stated that the assets proposed to be transferred are mostly tangible assets which fall under the 2 broad categories of Fixed Assets and Current Assets. So far as the Fixed Assets are concerned it is found that the depreciated book value of the same has been arrived at by charging depreciation by Reducing Balance method for the first year and by the straight line method for the subsequent years. We have adopted the straight-line method for all the years and have made appropriate changes in the amounts of depreciation to be provided for any particular asset in accordance with the provisions of section 205 (2) (b) read with section 350 of the Companies Act, 1956. We have, however, accepted the original cost of the assets as per books and have ignored any inaccuracies that might have crept into the allocation of cost of installation and others including some items of revenue expenditure wrongly capitalised while calculating the cost of

any particular asset in the firm belief that the totality of the effect of same on the value may be too trivial to be taken notice of. A comparative statement, prepared by us, showing the original cost of the assets up to the 31-3-1963 their depreciated book value as at that date and the valuation made by us after making suitable adjustments in the amounts of depreciation chargeable as at that date is enclosed herewith. The depreciated book value of all the assets proposed to be transferred is Rs. 67,21,269 and the valuation of the same made by us is Rs. 67,30,430. As regards the Current Assets proposed to be transferred we have accepted their book value as per the certificates furnished by the Vendor Company regarding their actual existence and valuation. We have, however, verified the certificates to ascertain the correctness or otherwise of the valuation made by the Vendor. The results of our examination have been given hereafter in this report.

To sum of the net value of all assets proposed to be transferred, subject to our detailed report, stands as follows:

	Rs.
Fixed Assets	67,30,430
Current Assets	23,15,111
Total	90,45,541
Less liabilities proposed to be transferred.	2,73,397
Grand Total	87,72,144

The following statement was prepared in respect of the fixed assets by Messrs. H. Naik & Co.:—

Serial No.	Name of Assets	Original cost of the assets proposed to be transferred	Depreciated book value of the assets proposed to be transferred	Valuation of the assets proposed to be transferred
		Rs.	Rs.	Rs.
1	Land including factory premises and vacant plots 200.08 acres.	88,061	88,061	88,061
2	Factory Buildings ...	9,10,278	8,15,573	8,13,570
3	Residential and office buildings.	8,86,761	8,22,917	8,28,797
4	Plant and Machinery	56,53,931	44,22,369	44,30,216
5	Transport Vehicles ...	30,300	21,031	22,129
6	Furniture and Fixure	94,273	87,616	83,783
7	Type writer and office equipments.	10,930	9,402	9,394
8	[Railway siding ..	59,188	55,351	54,400
9	Laboratory equipments.	74,166	55,812	57,998
10	Water-supply installation and roads.	3,37,860	2,72,880	2,71,945
11	Electric installation	21,593	18,513	18,314
12	Telephone installation	21,406	17,199	17,128
13	Library ..	3,191	2,554	2,890
14	Safety equipments ..	13,860	12,474	12,320
15	Casting Moulds ..	21,220	18,278	17,688
16	Structure for Slag wool	2,021	1,239	1,797
Total ..		82,29,045	67,21,269	67,30,430

Following statement was prepared in respect of the Current Assets proposed to be transferred to the I. D. C. :—

"Sl. No.	Nature of asset	Reference to schedule	Full value as per books on 31-3-1963	Value of assets proposed to be transferred
(1)	(2)	(3)	(4)	(5)
1	Finished goods	.. 12	2,97,693	2,18,338
2	Raw materials on hand	.. 13	11,54,800	11,54,800
3	Raw materials in transit	.. 14	13,900	10,854
4	Building materials, stores, spares, tools, etc.	15	7,14,025	6,80,407
5	Book debts		2,06,515	..
6	Advance and Deposits	.. 16	1,87,827	83,025
7	Cash and Bank Balance		60,569	..
8	Development expenses	.. 17	1,66,415	1,62,190
9	Pre-paid expenses	.. 18	5,497	5,497
Total ..			27,97,241	23,15,111

On March 3, 1964 the Secretary of the I. D. C. sent to the Secretary of the Industries Department a copy of the memorandum which had been submitted by the Chairman of the I. D. C. to the Orissa State Electricity Board for concessional power Tariff for the Low Shaft Furnace. In that memorandum it was submitted that the plant had a rated capacity of 94 tons of pig iron per day and that during the preceding four years the average production had been of the order of 27,000 tons per year, i.e., 75 tons per day. Paragraphs 2, 3, 4, 5, 7 and 11 of this memorandum have a bearing and may be reproduced as under—

"2. The Low Shaft Furnace process of pig iron making is absolutely new to India. The Barbil furnace has been operating more or less as an experimental furnace since the day its first operation. In the context of the shortage of foundry pig iron in the country, this unit has rendered very substantial service to the foundry Industry over the past five years.

- “ 3. The past five years of operation have, however, shown that such pig iron plants can be economically competitive only if all possible efforts are made to make use of the by-product gas and to convert a part of the pig iron to cast products so that there would be a reasonable margin on the capital investment on such units. As a result of this experience appropriate action has been planned by undertaking an expansion which would add a power plant to generate 19,000 KW of power by using the Blast Furnace top gases, two additional furnaces, a cast iron spun pipe plant and a grey iron foundry. The existing furnace, however, has been yielding a return of the order of a little above 5 per cent before payment of taxes on the capital investment. The above return is not even considered reasonable in the commercial world where a minimum of 2½ to 3 per cent over and above Bank rate is expected after payment of taxes.
4. A statement showing the cost of production per ton of pig iron in the existing plant is enclosed. This would show that the cost of production per ton of pig iron inclusive of depreciation comes to Rs. 282.65 Paise which itself is higher than the controlled price for pig iron produced by the Integrated Steel Works. The high cost of production in this unit is due to several factors principal among which are as follows :—
- (i) The ratio of raw material input to output of finished pigs in Low Shaft Furnace plant is higher than the ratio between the two in conventional blast furnace designed to produce about a thousand tons of pig iron a day. For example, in a conventional blast furnace for every ton of pig iron, the input of iron ore is about 1.2 tons, coke about 1 ton and lime-stone 5 tons. In the Low Shaft Furnace the ratios particularly the coke ratios is very much higher as would be seen from the cost of production statement. Since the size of the raw material used in the Low Shaft Furnace is very much finer the slog ratio in this Furnace is also higher than in the case of conventional blast furnaces. In the total production cost of every ton of pig iron more than 50 per cent constitutes the direct raw material cost.
 - (ii) Our present level of salaries and wages are very much lower than those prevailing in the Integrated Steel Works for the same grade of skilled and unskilled personnel. But in spite of this, because of the low productivity of the furnace and want of optimum use of the various gases produced, the salaries and wage bills accounts for Rs. 40 per ton of pig iron to which another 15 per cent has to be added to enter for Provident Fund, Employees State Insurance Charges and other welfare expences and Medical benefits granted to the employees. These are charges which cannot be avoided.
 - (iii) The maintenance cost of the Plant is high because the Plant is of a new type and has various intricacies and complexities which have to be looked after very carefully.

Because of operation with sub-standard raw material there is a greater wear on the linings which have to be repaired or replaced quite frequently. For this purpose the Plant has to be shut down off and on and investigations have to be made which result in loss of production. Interruptions in power supply also constitute a substantial factor in this high cost of repairs and maintenance.

(iv) In the cost of production statement, we have shown Rs. 39 per ton as depreciation charges and such charges have been calculated at the rates prescribed in the Income-Tax Rules.

5. The Industrial Development Corporation of Orissa Limited took over the Furnace from Messrs. Kalinga Industries Limited on 1-4-1963. At the time the Plant was taken over, a major repair had become overdue. This was proved too soon by a substantial fall in the daily production which came down from an average of 70 tons per day to about 40 tons per day between April, 1963 and August, 1963. While the production gradually fell down, the fixed overhead charges on wages and salaries, insurance, rents and taxes, labour welfare charges as well as expenses on Banks interest and commissions continued to be proportionately high for every ton of pig-iron produced. In order to rectify the defects the plant was closed down on the 31st August 1963 and was recommissioned on the 7th November 1963. During the two months of closure, overhead charges had to be borne including a very high charge on account of electricity even though there was absolutely no production in the Plant. After relining of the furnace and storen which cost a substantial amount of money and which can only be charged to the revenue expenses over a period of next 4 years, the production has reached the expected average. In spite of this, however, the short fall in production during more than two months closure, cannot be made up during the current financial year. The point we want to make is that particularly during the year 1963-64, the finance of the Plant cannot sustain any further increase in costs on any account.

7. The standard tariff of 9 N. P. per Kwt. of electricity will add an extra cost of Rs. 14 per ton of pig-iron produced and this would practically completely wipe off the gross profit of Rs. 15-30 N. P. per ton at present available before taxation. In other words this would mean that the unit will not earn any return on the capital investment.

11. We request that the above points may be taken into careful consideration and a review of the decision to charge standard tariff to the unit may be made".

The profit and loss made by Low Shaft Furnace from its inception till 1966-67 may be given below. The statement includes the four years 1959-60 to 1962-63 when the Plant

was owned by Kalinga Industries as well as the subsequent years when the Plant was run by the I. D. C.

Year	Gross profit Rs.	Net profit or loss Rs.
1959-60	4,02,353	(—)17,26,090 (Loss)
1960-61	6,52,984	2,63,043
1961-62	10,56,277	6,39,416
1962-63	8,23,139	4,11,926
1963-64	17,26,382	6,25,204
1964-65	30,84,085	20,67,525
1965-66	..	3,83,650
1966-67	(Figure not on record)	(—) 5,69,000 (Loss)

Note—The figure of net loss suffered in 1959-60 was arrived at after allowing a development rebate of Rs. 13,32,726. The figure of net profit for the year 1961-62 has been arrived at after deducting a development rebate of Rs. 40,127 from the amount of Rs. 6,79,543 which represented the aggregate of the net profit and development rebate. Likewise the figure of net profit for 1962-63 has been arrived at after deducting Rs. 21,516 on account of development rebate from an amount of Rs. 4,33,442 which represents the total of the net profit and development rebate. For the year 1963-64 the gross profit as reproduced above is that mentioned in the Audit Report and the annual report. According, however, to a note circulated on March 28, 1968 to the members of the Board of the I. D. C. the figure was Rs. 20,09,166. This discrepancy, according to the learned counsel for Shri Patnaik, is due to the fact that the figure given in the note is arrived at according to trading account. As regards the year 1964-65 the annual report of the I. D. C. shows that the gross profit transferred from manufacturing the trading account was Rs. 30,84,885 to which amount was added another amount of Rs. 20,035 on account of non-operative income in the shape of house rent, water charges and income from miscellaneous sources. The total income from operative and non-operative sources was thus shown to be Rs. 31,04,120. In the note circulated on March 20, 1968 referred to above, the gross profit was mentioned to be as Rs. 35,99,773.

On November 27, 1964 Audit Report in respect of the I. D. C. for the year 1963-64 was sent by the office of the Accountant-General, Orissa to the Secretary to the Industries Department. One of the objections raised in the Audit Report was that though under clause 4 of the Agreement, dated April 1, 1963 net consideration payable by the I. D. C. to the Vendor Company would be in suitable monthly instalments, the

aggregate of which should not exceed profits of the Kalinga Iron Works, the word 'Profit' had not been defined in the Agreement. It was further mentioned that during the year 1963-64 a sum of Rs. 12,94,881 had been paid by the I. D. C. as against a net profit of Rs. 6,25,204 for the year. The details of the payment of Rs. 12,94,881 were given as under—

Rs.

- | | |
|--|----------|
| (1) To repay debenture loan to Indian Overseas Bank Ltd. | 6,00,000 |
| (2) Payment of Electricity charges payable, to the Electricity Board for the unit. | 1,37,819 |
| (3) Central Sales Tax due up to 31-3-1963. | 42,000 |
| (4) Bisra Lime Stone Co. for raw materials on Kalinga Industries, Ltd. | 33,000 |
| (5) For payment accounts profit showing bonus to the staff of Kalinga Iron Works. | 45,000 |
| (5) Payments to Vendor towards purchase consideration. | 2,00,000 |

(It may be stated that there was obvious wrong calculation because the total of the above six items does not come to Rs. 12,94,881 as stated in the Audit Report. In a subsequent communication the Accountant-General has stated that in the break up of Rs. 12,94,881 an amount of Rs. 2,37,062 relating to payment for pig-iron had been inadvertently omitted.

Another point made in the Audit Report was that as per books of the Vendor Company the value of the fixed assets included revenue expenditure amounting to Rs. 10,60,033. The Audit Report pointed out that the orders of the Board in the matter should be taken.

The Directors of the I. D. C. in a meeting held on February 27, 1965 recorded a decision which reads as under :—

“The Directors considered the valuation report submitted by Messrs. G. Basu & Co., and Messers. H. Naik & Co., in the contest of the provisions of the sale-agreement executed between Messrs. Kalinga Industries Limited, and the Corporation. It was found that so far as the fixed assets were concerned, the depreciated book value of Rs. 67,21,268 recorded in the books of the Company was the lowest valuation of the fixed assets. Out of this an amount of Rs. 7,305 should

be deducted in accordance with the report of Messrs. G. Basu & Co., as wrongly capitalised. The net valuation would, therefore, come to Rs. 67,13,963."

The Directors also accepted the valuation of finished stocks, raw materials, stores and inventories, advances and deposits, development expenses, pre-paid expenses and cash balance taken over valued at Rs. 23,30,385 in round figures by both Messrs. G. Basu & Co. and Messrs. H. Naik & Co., Auditors. As against the above valuation liabilities to be taken over on account of Kalinga Industries and to be deducted from the above valuation was fixed at Rs. 16,99,099 representing the liabilities on cash credit account, provision of leave salary and advances and deposits already received by Kalinga Industries Limited. The net valuation of assets taken over was, therefore, fixed at Rs. 73,45,339. It was further decided that Messrs. Kalinga Industries be requested in writing to accept the above net valuation of Rs. 73,45,339 payable to them against which payments would be made in accordance with the provisions of the sale-agreement. After their reply is received, the Government of Orissa be informed to approve of the valuation so that necessary sale-deeds may be executed.

Mr. Balan being a Director nominated on behalf of the Kalinga Industries abstained from expressing any opinion on the decision of the Board.

In the year 1964-65 Rs. 12 lakhs were paid by the I. D. C. to Kalinga Industries towards sale consideration of Low Shaft Furnace. On May 13, 1965 a letter was sent on behalf of the Accountant-General, Orissa to the Secretary, Finance Department of Orissa. In that letter attention was invited to the decision of the Board of the I. D. C. in that meeting held on February 25, 1965. The Secretary of the Finance Department was asked to intimate whether the valuation of the Plant had been accepted by the Government even though it might entail possible over-valuation by including a revenue expenditure amounting to Rs. 10,60,033 incurred by the Vendor Company. On June 12, 1965 the Board of the I. D. C. decided that the stock of pig-iron and Runner Iron of the value of Rs. 2,18,338 existing at Kalinga Iron Works on April 1, 1963 would not be treated as part of the assets taken over by the I. D. C. and as such should be excluded from the value of the current assets. On October 27/28, 1965 the Secretary of the I. D. C. addressed a letter to the Secretary to Government of Orissa, Industries Department, in respect

of the valuation of the assets of the Low Shaft Furnace Plant transferred by Kalinga Industries to the I. D. C. The letter from paragraph 2 onwards reads as under :—

“ In accordance with the provisions of the sale-agreement the Corporation and Messrs. Kalinga Industries Limited by mutual consent appointed Messrs. H. Naik & Co., Chartered Accountants, Cuttack, and Messrs. G. Basu & Co., Chartered Accountants, Calcutta. The valuation report of both the Firms of Auditors were duly considered by our Board of Directors and the final valuation as determined by the Board was as follows :—

	Rs.
(1) Fixed assets at their depreciated value ..	67,13,964-00
(2) Current assets consisting of raw materials on hand and in transit building materials, stores, spares and tools, advances and deposits, development expenses, pre-paid expenses and cash balance at Barbil.	21,15,205-00
(3) Current liabilities consisting of loans and advances and provisions for leave salary and outstanding cash credit loan of Indian Overseas Bank.	16,95,259-00

The net valuation of the assets was arrived at by deducting the valuation of current liabilities taken over from the sum of the value of fixed assets and current assets and was determined to be Rs. 71,33,910-00 as on 1-4-1963.

On 1-4-1963 Messrs. Kalinga Industries had in stock 390 tonnes of pig-iron and 635·241 tonnes of runner iron at the factory. Since these finished products had been practically pre-sold against definite orders by Kalinga Industries Limited, the stock was not taken over by the Corporation but was held on account of Kalinga Industries and was despatched to the customers. The total sale-proceeds of the finished stock was Rs. 2,64,669·10 Paise. The Directors of the Corporation decided to pay the sale-proceeds to Kalinga Industries after deducting therefrom service charges of Rs. 5·00 per tonne to cover sales expenses incurred by the Corporation. The amount so deducted came to Rs. 6,797·21 Paise and the net balance of Rs. 2,57,871·89 Paise was therefore paid to Kalinga Industries Limited during the years 1963-64 and 1964-65.

By a resolution of their Board of Directors on 3rd September 1965, Messrs. Kalinga Industries Limited have accepted the valuation of fixed assets, current assets and current liabilities as mentioned above and a copy of the resolution together with a letter of their Chairman accepting the valuation determined by the Board of Directors of the Corporation, has been received by us.

The stage of completing the formalities of transfer has now been reached. We would, therefore, request you to kindly communicate to us the approval of Government to the valuation of the assets and liabilities taken over and the net valuation so that regular deeds of sale may be executed by Messrs. Kalinga Industries Limited in favour of the Corporation.

As regards stamp duty payable on the sale-deed we shall be moving Government very soon”.

On November 11, 1965 a letter was addressed by Kalinga Industries to the Chairman, I. D. C., which reads as under:—

“From the 1st April 1963 when your Corporation took over the Low Shaft Furnace Plant from this Company, we have so far received Rs. 30 lakhs leaving a balance of about Rs. 42 lakhs due to us. We note that up to the end of September 1965 Industrial Development Corporation of Orissa Limited has gross profit of Rs. 68 lakhs from this Plant, whereas we have so far received only Rs. 30 lakhs instead of Rs. 68 lakhs.

As you are aware, we have not charged any interest whatsoever on the amounts outstanding as we were confident of the profitability of the Plant and its ability to pay our dues within a short time out of its own earnings. It would, however, appear from the rate of repayment that we are only getting a part of the amount earned by way of profit.

We now find that our own Company's work has begun to suffer due to lack of adequate working funds of which a major portion is unduly blocked in the amount due to us from your Corporation. We have been obliged to borrow from banks at 10 per cent and in the market at rates as high as 15 per cent.

We would, therefore, request you to either arrange repayment equivalent to the profits earned and make up the arrears or agree to pay us interest of 10 per cent on the amount outstanding to us so that the interest which we may have to pay to banks and outside parties would stand reimbursed to us to some extent.

Please let us have your views in this matter.

The question of the valuation of the Low Shaft Furnace thereafter became the subject of the notings on the Government file. On March 26, 1966 the Joint Secretary of the Finance Department in his note referred to the objection of the Accountant-General, on the point as to whether the

revenue expenditure amounting to Rs. 10.60 lakhs incurred by the Vendor Company should form part of the fixed assets. The Joint Secretary stated that under the principle as adopted by the Government or commercial concerns under the Accounts Code and otherwise, all expenditure incurred up to the end of completion was to be considered as Capital Expenditure. It was further stated that the profits so far earned by the unit minus income-tax and other liabilities came to Rs. 52.56 lakhs against which the Kalinga Industries had been paid Rs. 38.37 lakhs. A note was thereafter made by the Finance Secretary on March 28, 1966 and he expressed the view that the I. D. C. was not bound under the agreement to pay the revenue expenditure incurred during the period of construction. Capitalization of the revenue expenditure, according to the Finance Secretary, did not necessarily mean increasing the price of the fixed assets. He suggested that the same should be treated as a development expenditure to be gradually written off against future profits. The Chief Minister thereafter passed an order on March 31, 1966 that to finalize the matter a conference should be held which might include Deputy Minister, Development Commissioner and the Secretaries of the Industries and Finance Departments. Rs. 5 lakhs were also paid by the I. D. C. to the Kalinga Industries on that day. On April 11, 1966 the General-Manager of Kalinga Industries addressed a letter to the Chairman of the I. D. C. which reads as under:—

Attention of Shri D. L. Purkayastha

DEAR SIR,

We have come across a Press Report in the Hindustan Times, dated the 9th April 1966, under the caption 'Govenment took over Kalinga Plant without valuation'. To us this makes very bad reading, particularly when we transferred the profitable Plant to the Industrial Development Corporation at the book value, payable out of the profits earned by this Plant, free of interest, thus enabling the Industrial Development Corporation to acquire this Plant without any investment of their own funds.

The capitalization of the preliminary expenses until the Plant goes into production is a universally accepted accounting practice, whether the Plant is in private sector or in public sector. This capitalization was done by us in the year 1959-60 duly approved by the statutory auditors and subsequently accepted by the Income-tax authorities. In fact, certain items of expenditure, which in the opinion of one of the auditors, who were appointed for Joint valuation, should have been

charged to revenue account and not to capital accounts, were taken off the fixed assets, at the instance of the Industrial Development Corporation.

Nevertheless, since this vague audit objection raises a public doubt that the entire Rs. 10 lakhs and odd of capitalized preliminary expenditure is an overcharge on the fixed assets, we would request you to immediately appoint a Committee of auditors consisting of the two auditors who jointly valued the fixed assets, as well as an auditor from the Accountant-General of Orissa, to go into these details and come to a final conclusion. This one will remove any public doubts. This Committee can also go into the correctness or otherwise of the two other points raised by the audit regarding some bricks and pig-iron.

The audit also seems to have raised certain queries that the Company does not contribute anything to the Technical Institute for the Research Students provided for in the contract. The reason that the Company did not charge any interest on outstanding amounts due from the Industrial Development Corporation is to make it possible for the Industrial Development Corporation to contribute 2½ per cent of the cost of its products towards this Institute, and yet make large profits. If it is felt that the Company should not have a nominee on the Board of Trustees of this Institute, the Company would have no objection to withdraw such a stipulation. This is a matter for the Industrial Development Corporation and the State Government to decide.

It is regretted that these trivial matters should be brought up now after the Barbil Plant has already earned during the last three years of its operation, a total gross profit exceeding the book value of the Plant at about Rs. 71.33 lakhs (of which nearly Rs. 28 lakhs is still outstanding), at which the Industrial Development Corporation acquired this Plant. We also reiterate that if the Industrial Development Corporation feels that this Plant has been a bad acquisition for them, the Company is prepared to take it back.

Finally, we would urge that the re-examination of the audit objections, as pointed out above, should be concluded very early, so that all misunderstandings could be cleared once and for all.

Yours faithfully
 For KALINGA INDUSTRIES LIMITED
 Sd/ (B. N. Tankha)
 General Manager

On April 12, 1966 Dr. B. R. Nijhawan, Director of National Metallurgical Laboratory, Jamshedpur, addressed a letter to Shri Purkayastha, Chairman of the I D C. In that letter, Dr. Nijhawan stated that the Metallurgical Laboratory and the Low Shaft Blast Furnace at Barbil had been collaborating for several years. At the instance of Dr. Nijhawan some trials were conducted at the Kalinga Small Blast Furnace. Following the Pilot Plant scale trials, a small pig-iron production Plant was approved for installation in the Punjab. Dr. Nijhawan had kept in touch with the operations of the Small Low Shaft Blast Furnace Plant at Barbil and was glad to note that the Kalinga Iron Works would shortly be completing the installation of two more small blast furnaces to raise the capacity to 100,000 tons of pig-iron. This, Dr. Nijhawan added, was a move in the right direction. Dr. Nijhawan then referred to some Press statements doubting the viability of small pig-iron production Units and stated that he had advocated the installation of small pig-iron making plants in different parts of the country to suit the regional raw materials available. Rs. 35 lakhs were stated to have been spent by the National Metallurgical Laboratory on a Low Shaft Furnace Pilot Plant for trials on the production of high grade foundry iron by employing sub-standard and inferior grades of raw materials. The Low Shaft Blast Furnace at Barbil was stated to have not only assisted the Pilot Plant scale trials of National Metallurgical Laboratory but to have also assisted in the establishment of small pig-iron making plants in different parts of the country including Punjab. It was further stated that the expansion programme of the Low Shaft Furnace to 100,000 tons pig-iron output per annum had been approved by the Government of India with the full technical support of National Metallurgical Laboratory. The other State Government were also stated to be anxious to build similar plants in their regions. The remaining part of the letter reads as under:—

“You may be aware the capital costs are raising very rapidly. The total capital cost structure of the Punjab Pig-iron Project is the order of over 3½ crores for 100,000 tons annual output of pig-iron. On the same basis, to instal 30,000 tons annual capacity pig-iron plant currently may cost anything up to Rs. 1½ crores.

Recently, I came across in the press some audit observations concerning the Kalinga Pig-Iron Plant. Although, we are not in any way directly concerned with the financial evaluation of the Kalinga Iron Works or the actual process of its transfer

to the Orissa Government, I would like to draw your attention that some of the observations are likely to detract from the value of small pig-iron making plants now under active study and consideration by the State and Central Government. Whilst the appropriateness of the technical and financial details of the transfer to the Orissa Government of the Kalinga Plant can well be adjudged by you, we can equally well state that the plant itself has given very valuable results in terms of industrial scale production of pig-iron in small iron production plants in the country and has indeed been a national asset and has also fully justified the risks, financial and technical, taken by the Industrial entrepreneurs when the iron and steel expansion was considered only in terms of integrated complexes of million tons annual capacity and bigger. I have no doubt that the Barbil Plant of Kalinga Iron Works will continue to yield adequate profits for the State Government in years to come. I am also sure the Barbil Plant will continue to provide the sound technical base in the very important field of iron production metallurgy in our national economy.

As I said before, I am not an expert in accounts or in audit, but at the same, I felt both from the research and development point of view, we should continue to take enterprising steps for the introduction of new inventions in iron and steel metallurgy and for the design and technology development such as the Low Shaft Blast Furnace of Kalinga Iron Works represent.

I have not had the pleasure of meeting you so far but I can assure you of the NML's full co-operation and collaboration with the technical operations of the Low Shaft Blast Furnace of Kalinga's at Barbil and that of the proposed Talcher Complex which I hope will materialise before long."

Towards the end of April or beginning of May, 1966 following press note was issued by the Orissa Government:—

"Recently there have been some statements in the Press expressing doubts about the technical feasibility and financial propriety of the acquisition of the Low Shaft Furnace at Barbil by the Industrial Development Corporation of Orissa from Messrs. Kalinga Industries Limited. In order to dispel doubts which are apparently based on lack of proper information, Government would like to bring the following to public notice.

1. The National Metallurgical Laboratory at Jamshedpur which erected a small Pilot Plant for experimental production of high grade foundry iron by use of inferior raw materials, particularly non-coking coal, had been closely associated at

all stages of technical development of the Kalinga Iron Works at Barbil. After the Barbil Plant had gone into production and its technical and financial success assured, the Government of India authorised expansion of the Plant from 30,000 tons a year to 100,000 tons a year and released valuable Foreign Exchange to the Kalingas for Rs. 2-18 crores.

2. The Plant with a daily production capacity of about 100 tons of foundry pig-iron was transferred to the Industrial Development Corporation of Orissa on 1st April 1963 at a book value of about Rs. 71 lakhs, payable only out of the profits earned by this Plant and without any interest charges. Thus the I. D. C. acquired this Plant on most favoured terms, without any investment either by the I. D. C. or by the State Government. The Public would be pleased to know that this Plant has already earned a profit of about Rs. 74 lakhs during the last three years of operation, i.e., from 1st April 1963 to 31st March 1966 of which Rs. 5.15 lakhs has been earmarked for the Kalinga Technical Institute.
3. It could be of interest to note that the Low Shaft Furnace Pilot Plant of the National Metallurgical Laboratory, having a production capacity of about 15 tons a day was erected at a capital cost of Rs. 35 lakhs. Recently, 100,000 tons Pig-iron Plant has been sanctioned for Punjab at a capital cost of Rs. 3.5 crores. On this basis the market price of the Kalinga Works at Barbil would be more than Rs. 1 crore. The State Government take pride in the I.D.C. acquiring such a Plant which is continuously yielding profits without any investment whatsoever.
4. The State Government are also proud of the fact that the Low Shaft Furnace at Barbil is the only one of its kind in India today running commercially. The National Metallurgical Laboratory, Jamshedpur and Regional Research Laboratory at Hyderabad have taken or propose to take advantage of this Furnace to test the efficiency of various types of inferior grades of raw materials used for iron making industry."

On May 6, 1966, the Conference of Chief Minister, Deputy Minister, Industries and the other senior officers as ordered on March 31, 1966, by the Chief Minister, was held. The issue of capitalization of the expenditure of Rs. 10.60 lakhs in the valuation of Kalinga Industries Iron Works was discussed at length. It was then decided that there should be no objection to the capitalization of the expenditure at that stage and the case be closed. A decision was also taken to accept the net valuation of Rs. 71,33,910. The question then arose about the amount payable by the I.D.C. to

Kalinga Industries. In this context the opinion of the Legal Advisor of the I.D.C. was taken. According to the Legal Advisor the word "Profits" as used in the agreement, would include depreciation, development rebate, provision for future relining besides net profit before taxation. The Development Commissioner on July 28, 1966 put up a note which reads as under:—

" Notes on P. 72N. *ante* may kindly be glanced through. On the basis of the legal opinion obtained by the I.D.C., the total profits available for clearance of the dues of M/s. Kalinga Industries Limited would be of the order of Rs. 65 lakhs (vide P 115/C). The proposal now for consideration is whether we should take an extremely legalistic view of the term 'Profits' or whether I.D.C. would be allowed to pay back the balance of the dues of M/s. Kalinga Industries and close the account with that Firm. At present under the terms of the Agreement there is a Director of the I.D.C. nominated by the Kalinga Industries Limited. If we close the financial transactions with the former proprietors, will have the advantage of severing all connection with former proprietors of the K. I. and also undertake reorganisation and streamlining of the working of the Earbil Iron Works. A major portion of the dues have already been paid out of the profits and I am of opinion that we may advise the I.D.C. to pay up the balance and close the accounts relating to Kalinga Industries. This may amount to about Rs. 25 lakhs."

On July 28, 1966, the Deputy Minister, Industries, as well as the Chief Minister ordered that action in accordance with the suggestion of the Development Commissioner might be taken. On August 12, 1966, the Managing Director of the I.D.C. was informed that the Government desired that the balance dues of Kalinga Industries towards sale of Low Shaft Furnace might be paid by the IDC and the account relating to that Company be closed. In the meantime the following statement was placed before the Orissa Legislative Assembly by the Chairman of the I. D. C.:—

**" FINANCIAL RETURNS FROM KALINGA IRON WORKS
TO THE INDUSTRIAL DEVELOPMENT CORPORATION
OF ORISSA LIMITED FROM 1-4-1963 to 31-3-1965.**

1. The Low Shaft Furnance Pig-iron Plant of M/s. Kalinga Industries Limited was taken over by the Industrial Development Corporation of Orissa Limited on 1-4-1963.

2. According to the balance sheet of the Kalinga Industries Limited for the year 1962-63, the original cost of fixed assets of the Plant as on 31-3-1963 was Rs. 82,55,972. The Company agreed to transfer the Plant on rather unusual terms of fixing the price at the depreciated book value as on 31-3-1963. The book value was audited by the Auditors of the Company as well as those of the Corporation and the final book value of the fixed assets taken over was settled at Rs. 67,21,563. IT IS TO BE NOTED THAT THE ANNUAL ACCOUNTS OF THE KALINGA INDUSTRIES LIMITED AND THE INDUSTRIAL DEVELOPMENT CORPORATION OF ORISSA LIMITED ARE ALSO AUDITED BY THE ACCOUNTANT-GENERAL OF ORISSA.
3. At the time of taking over the Plant, the Corporation did not pay any amount at all to Kalinga Industries Limited towards the price of assets taken over. It is a provision of the agreement that the Industrial Development Corporation of Orissa Limited is to pay the amount due to Messrs. Kalinga Industries Limited in EASY INSTALMENT AT THE DISCRETION OF THE CORPORATION ONLY OUT OF THE PROFITS EARNED BY THE PLANT. FURTHER NO INTEREST IS PAYABLE TO KALINGA INDUSTRIES LIMITED ON THE OUTSTANDING AMOUNT AT ANY TIME THE CORPORATION'S INVESTMENT IN THIS UNIT OUT OF ITS OWN FUNDS (AS DISTINGUISHED FROM PROFITS EARNED BY THIS UNIT) FOR THE TWO YEAR PERIOD 1-4-1963 to 31-3-1965 IS NIL.
4. Three statements are attached to this note showing the profits earned by this Plant, Statement 'A' relates to the Financial year 1963-64 and Statement 'B' relates to the Financial year 1964-65 and Statement 'C' relates to the utilisation.
5. IT WOULD APPEAR FROM STATEMENT 'C' THAT THE TOTAL PROFITS EARNED BY THIS UNIT DURING THE FIRST TWO YEARS OF ITS OPERATION AMOUNTS TO Rs. 6,70,233. OUT OF THIS AMOUNT MESSRS KALINGA INDUSTRIES LIMITED HAVE BEEN PAID ONLY Rs. 4,94,881 IN PART SATISFACTION OF THE PRICE PAYABLE TO THEM. AFTER PAYMENT OF THIS AMOUNT AND THE BONUS TO THE WORKMEN AMOUNTING TO Rs. 47,657 THE ENTIRE BALANCE OF Rs. 35,27,695 HAS BEEN

UTILISED BY THE CORPORATION FOR ACQUISITION OF OTHER ASSETS in connection with the expansion scheme which consists of—

- (a) Installation of two new Low Shaft Furnaces with installed capacity of 70,000 tonnes of pig iron per year.
 - (b) A Spun Pipe Plant to produce 36,000 tonnes of Spun Pipe per year.
 - (c) A cast Iron Foundry to produce 5,000 tonnes of special castings per year.
 - (d) A Power Plant to produce 12 M. W. of power per year.
6. Phased production of the new units would commence only at the end of this year.
7. It will thus be seen that without making any investment out of its own capital, the Corporation has acquired an assets of an original value of Rs. 82,55,972. It has added further assets valued at Rs. 35,27,695 out of the earnings of this unit and has as on 1-4-1965 acquired assets of the total value of Rs. 1,17,83,667 (RUPEES ONE CRORE SEVENTEEN LAKHS, EIGHTY-THREE THOUSAND AND SIX HUNDRED AND SIXTY-SEVEN) WITHOUT ANY INVESTMENT.
8. It is clear from the above note and the statements attached that Kalinga Industries Limited have not only lost this profit of Rs. 60,70,233, during the last two years which would have normally accrued to them but for the transfer, but have lost even the interest charges of about Rs. 7 lakhs for the money not paid to them out of the profits but utilised for the expansion of the Project.

D. L. PURKAYASTHA

Chairman

Industrial Development

Corporation of Orissa Limited

Regular sale-deed in respect of the Low Shaft Furnace Plant, it is stated, has not till the date of arguments been executed by the Kalinga Industries in favour of the I.D.C. because of some hitch about the payment of stamp duty and registration charges. Shri Balan, it is further stated, still continues to be on the Board of Directors of the I.D.C.

because some amount is still due to the Kalinga Industries from the I. D. C. According to audit report 1968 of the Government of Orissa against an amount of Rs. 73.60 lakhs payable by the I. D. C. to Kalinga Industries, Rs. 72.25 lakhs were paid up to March 1967.

Clause (ix) of the agreement dated April 1, 1963 between Kalinga Industries and the I. D. C. contemplated the continuation of Kalinga Otto (P) Limited as consultants. The last named Company was formed on November 19, 1959 to continue the activities of Dr. C. Otto & Comp. G.m.b.h. Dr. C. Ottos & Comp. G.m.b.h. worked as Technical Consultants for the preparation of the Project report for the Durgapur Project of the West Bengal Government and some other big units. The details of shareholding of Messrs. Kalinga Otto (P) Limited at the time of the formation of the Company in November 1959 were as follows:—

- | | |
|--|-----------------|
| 1. Shri Biju Patnaik | .. 2,100 shares |
| 2. Shrimati Gyan Patnaik,
wife of Shri Biju Patnaik. | .. 350 shares |
| 3. Shri C. Balan
(General Secretary of Kalinga Industries) | .. 50 shares |
| 4. Shri Bishan Narayan Tankha
(General Manager of Kalinga Industries) | .. 50 shares |
| 5. Dr. C. Otta & Comp. G.m.b.h. | .. 2,300 shares |
| 6. Mr. Walther wenck | .. 50 shares |
| 7. Mr. Arthur Wischmeier | .. 50 shares |
| 8. Mr. F. Middelmaon | .. 50 shares |

Shri Balan disposed of his 50 shares as soon as he was nominated by the Kalinga Industries as a Director of the I.D.C. At present, it is stated, Shrimati Gyan Patnaik has 1,860 shares. Shri Prem Patnaik, son of Shri Biju Patnaik, has 2,340 shares. Shri Tanka has 100 shares and the Germans have 360 shares. On November 4, 1961 Kalinga Industries entered into an agreement with Kalinga Otto (P) Limited appointing the latter Company as Consultants in connection with the expansion programme of the Low Shaft Furnace. The remuneration of Kalinga Otto (P) Limited was fixed at Rs. 1½ lakhs in cash and 5 per cent of the purchase price of all India material. In pursuance of clause 9 of the agreement dated April 1, 1963 an agreement was entered into between Kalinga

Otto (P) Limited and the I.D.C. on April 27, 1964 in connection with the project for the expansion of Low Shaft Furnace. By that agreement Messrs. Kalinga Otto (P) Limited were appointed technical Consultants for the Project. The duties of Technical Consultants *inter alia* were :

- (a) to correspond with the four main foreign suppliers in connection with the expansion of the project with regard to all technical matters,
- (b) to prepare all enquiries for Indian supplies and services to be undertaken for the complete Project on the basis of the technical data and drawings,
- (c) to prepare blue-prints from reproducible drawings received from foreign suppliers for purposes of selling out enquiries and for furnishing the same to the contractors,
- (d) to check all quotations received for supplies and services from the Indian dealers and to negotiate with them and submit recommendation to the I.D.C.,
- (e) to undertake inspection and acceptance of supplies from Indian suppliers in order to ensure that the supplies were in accordance with the contract with the suppliers,
- (f) to inspect and check all supplies from outside India and to report to the I.D.C. about any shortcoming or discrepancies or damage,
- (g) to scrutinize bills submitted by the suppliers,
- (h) to supervise civil engineering, erection, refractories and electric installations, and
- (i) to co-ordinate all foreign and indigenous supplies and services.

Clause 7 of the agreement made provision for the remuneration of the Technical Consultants and read as under—

7. In consideration of the services rendered and work done by the Technical Consultants and obligations undertaken by them under this agreement, they shall receive as their remuneration a total sum of Rs. 15,50,000 (Rupees fifteen lakhs fifty thousand only). This sum of Rs. 15,50,000 will be payable as follows:—

The Technical Consultants will submit bills for their services to the Corporation at the rate of Rs. 51,600 (Rupees fifty-one thousand six hundred only) per month commencing from January 1964. Within seven days of the receipt of the

bill, the Corporation will pay 85 per cent of the bill and retain the balance 15 per cent. The Technical Consultants will thus bill the entire sum of Rs. 15,50,000 within 30 months from January 1964, the last bill to take care of any adjustment required to arrive at Rs. 15,50,000. The 15 per cent retention money will be released by the Corporation to the Technical Consultants after fulfilment of all their obligations to the entire satisfaction of the Corporation or at the latest after successful completion of guarantee tests or within a period of 12 months of complete erection of the Plant if the putting into operation or guarantee tests could not be performed for reasons beyond the control of the technical Consultants.

Payment in accordance with the above clause was made by the I. D. C. to Kalinga Otto (P) Limited.

Although the original cost of expansion of Low Shaft Furnace was estimated to be Rs. 5 crores and the total investment to be Rs. 5.70 crores, the estimated cost during the course of expansion went up to Rs. 9.11 crores. On August 1, 1966 there was a meeting to discuss the resources position of the I.D.C. A memorandum was submitted by the I.D.C. showing a requirement of Rs. 288 lakhs. The question of having a loan from the Central Government was then considered. On November 3, 1966 the Managing Director of the I.D.C. stated that the capital cost of the expansion had gone up to Rs. 835 lakhs. He wanted the Government of India to be moved for providing Rs. 332 lakhs. A team from the Centre thereafter visited Orissa during January 1967 and expressed the opinion that in view of the pig-iron surplus in the country the expansion programme of Low Shaft Furnace did not call for priority. The State Government was asked to meet the additional requirement from its own resources. According to the affidavit of the State Government Rs. 5.66 crores had been spent on the expansion programme up to December 31, 1966. On the pressing demand of the I. D. C., the State Government sanctioned Rs. 20 lakhs out of the contingency fund during January, 1967 and another Rs. 23 lakhs during February, 1967. This amount was, however, hardly sufficient for the requirements of the I. D. C. The audit report of 1968 of Government of Orissa shows that an expenditure of Rs. 733.73 lakhs has been incurred up to March, 1967.

I have reproduced above either wholly or in part or given the gist of the documents on which the learned counsel for the parties have relied. What emerges from the record is

that Low Shaft Furnace was installed by Shri Patnaik as a wing of Kalinga Industries after Shri Patnaik had accepted on August 22, 1952 the condition of setting up a Ferro Manganese Plant at Barbil which had been stipulated by the State Government when it agreed to grant a mining lease of 3,900 acres of land subject to finalization of terms and conditions in consultation with the Central Government. An agreement was entered into on August 31, 1954 between Shri Patnaik and the German concern for purchase of Low Shaft Plant of a production capacity of 18 tons a day for a price of DM 2,90,000. It was to be a new type of Plant for India and on the very day of agreement for purchase of the Plant i.e., August 31, 1954. Shri Patnaik entered into another agreement with KO-WE Niederchachtoven (for abbreviations's sake referred to as KO-WE). Under that agreement Shri Patnaik undertook to use his influence in India to promote the erection of KO-WE Low Shaft Furnace Plants in India. It was agreed that Shri Patnaik would get royalty on annual price of molten production for a period of ten years. Shri Patnaik thereafter applied on September 26, 1954 a licence for establishment of Low Shaft Furnace with production capacity of 18/22 tons a day. The Government of India invited the views of Orissa Government on proposal of Shri Patnaik. Shri H. B. Mohanty, Industrial Adviser to the Government of Orissa, then pointed out that the cost of pig-iron manufactured by Low Shaft Furnace would be about Rs. 140 per ton against the cost of Rs. 80 to Rs. 100 of pig-iron manufactured by ordinary blast furnaces. As such, Shri Mohanti expressed his doubt about the working of Low Shaft Furnace as a commercial venture. It is no doubt true that Shri Mohanti expressed his opinion on the assumption that the Plant would be located at Choudwar and would have a production capacity of 18/22 tons a day, the fact remains that difference between the prices was so wide that even if an allowance be made for those incorrect assumptions, there would still be a considerable gap, according to the estimate of Shri Mohanti, between the price of pig-iron produced by ordinary blast furnace and that produced by Low Shaft Furnace.

Shri Patnaik chose to go ahead with his plan to set up Low Shaft Furnace. On January 15, 1955 licence for setting up the Low Shaft Furnace was granted to him in the name of Kalinga Ferro Corporation. On March 23, 1956 the Ministry of Commerce and Industry agreed on the application of Shri Patnaik to change the name of the Undertaking,

for which he had obtained licence from Kalinga Ferro Alloy Corporation to Kalinga Industries. Shri Patnaik was the founder and Chairman of Kalinga Industries. This Company had been formed in 1948 and its previous name was Kalinga Refrigerators Corporation Limited. After his visit to Europe, Shri Patnaik decided to have a bigger Low Shaft Plant with hearth diameter of 2.5 meter instead of 1.5 meter and with a production capacity of 100 tonnes of pig-iron. As the cost of this Plant was much more than that of the smaller plant Shri Patnaik on May 7, 1956 asked for loan from the State Government. On being informed that it was not possible for the State Government to give the loan, Shri Patnaik asked the Government to give a guarantee for a sum of Rs. 25 lakhs to enable Kalinga Industries to raise amount from private sources. On June 6, 1957, the State Government informed Kaling Industries that in view of changed policy of Government of India in regard to financing of major project it would not be possible to give State-aid. Dr. Mahtab then intervened and wrote personal letters in July 1957, to Shri T. T. Krisnamachari, Union Finance Minister and Shri V. T. Krisnamachari, Vice-Chairman, Planning Commission, to permit the grant of aid. The Planning Commission, then waived objection to the Orissa Government standing guarantee for the loan. Shri Patnaik was thereafter asked the details of Low Shaft Furnace Plant by the Secretary of Industries Department. On October 24, 1957, the Secretary recorded a note that the Low Shaft Furnace would not be economical commercially. The Secretary was, however, overruled by the Industries Minister, Shri Dinabandhu Sahu. Shri Sahu recorded a note that State Government should give guarantee for a loan of Rs. 25 lakhs to Kalinga Industries on the security of its assets to the extent of 70 per cent. The Council of Ministers accepted the suggestion of Shri Sahu to stand guarantee. Kalinga Industries thereafter took a loan of Rs. 25 lakhs from Indian Overseas Bank against 6½ per cent mortgage debenture. The loan was taken in 1958 in three instalments Rs. 19 lakhs, Rs. 5½ lakhs and Rs. 50,000, because the increase in the value of the fixed assets of Kalinga Industries was only gradual. The Low Shaft Furnace Plant went into operation on August 21, 1959 and started production in September 1959. Within six months of the Low Shaft Furnace going into production the dark forebodings of Shri H. B. Mohanti, Industrial Adviser in his note dated November 3, 1954 and the Secretary of Industries Department in his note October 24, 1957 about the plant being not commercially economical came out true. Shri Patnaik in his letter to

Shri Boothalingam, Secretary, Ministry of Steel, stated that the average cost of production of pig-iron in the months of September to November 1959 in the Low Shaft Furnace had worked out to be Rs. 289 per ton and in November 1959 it was Rs. 260 per ton which was much more than controlled price of pig-iron. Prayer was, accordingly, made for exemption of the pig iron produced in the Low Shaft Furnace from the application of statutory price. Again in a letter dated February 13, 1960 to Secretary, Ministry of Commerce and Industry, Shri Patnaik wrote :—

“The existing furnace is now in operation for over five months and it has now been ascertained that unless more furnaces are put up and the overhead expenses distributed over a larger production, it would be uneconomical to run this plant.”

The same thing was reiterated by Shri Patnaik in the enclosed application wherein he stated :

“The present rated production of 2,000 tons a month is not economical.”

The fact that the Low Shaft Plant in its existing state was uneconomical was stated in most unequivocal language by Shri Patnaik in his memorandum dated June 30, 1960 to the Prime Minister. In that memorandum Shri Patnaik stated :

“Our Low Shaft Furnace with existing statutory limitation in production of 15,000 annually (although the plant is now producing over 2,000 tons per month) cannot be an economic venture when compared to the cost of production in Blast Furnace whose production capacity is very high.”

It is further stated by Shri Patnaik in the memorandum :

“I fear, that unless some such rational approach is made to tackle this problem, this first successful Indian effort to make iron by using nut coke and/or other-non metallurgical coke will remain economically unsound and become a national waste.”

It may be that in the above letters Shri Patnaik had to make out a case for exemption of pig-iron produced in the Low Shaft Furnace from application of statutory prices and for the expansion of the Plant, the fact remains that he stated in clear unqualified words that the Plant in its existing was from an uneconomic venture. It is difficult to believe that Shri Patnaik would represent the Plant to be commercially uneconomical even though it was really economical, especially when we consider that one of the above representations was made to the Prime Minister to take over the Plant for the Central

Government or run it as a joint venture. Shri Patnaik in that memorandum also suggested the establishment of Low Shaft Furnace Plants in other States so that the entire iron making capacity of major steel Plants could be profitably diverted to steel making. This suggestion, if accepted, would have yielded considerable royalty to Shri Patnaik in accordance with his agreement dated August 31, 1954 with KO-WE. The reasons why Low Shaft Furnace in its existing shape could not be commercially economical are given by Shri Patnaik in various communications and they are as under:—

(1) Nut coke was used as fuel in Low Shaft Furnace. Under the Coal Control Order, there was no difference in the rate for hard-coke and the nut coke, whereas in the European Countries nut coke was sold at a fraction of price of hard-coke.

(2) There was no recovery from the top gas in the Low Shaft Furnace and unless a power Plant or Foundry was put up the said gas would go waste.

(3) Every third year the Low Shaft Furnace had to be shut down for repairs.

The reasons for the high cost of production in the Low Shaft Furnace were given in much greater detail by the Chairman of the I. D. C. in his memorandum in March 1964 to the State Electricity Board as under:—

“(i) The ratio of raw material input to output of finished pigs in low shaft furnace plant is higher than the ratio between the two in conventional blast furnace designed to produce about a thousand tons of pig iron a day. For example, in a conventional blast furnace for every ton of pig iron, the input of iron ore is about 1.2 tons, coke about 1 ton and limestone 5 tons. In the Low Shaft Furnace the ratios particularly the coke ratio is very much higher as would be seen from the cost of production statement. Since the size of the raw material used in the Low Shaft Furnace is very much finer the slag ratio in this furnace is also higher than in the case of conventional blast furnaces. In the total production cost of every ton of pig iron more than 50 per cent constitutes the direct raw material cost.

(ii) Our present level of salaries and wages are very much lower than those prevailing in the integrated Steel Works for the same grade of skilled and unskilled personnel. But in spite of this, because of the low productivity of the furnace and want of optimum use of the various gases produced, the salaries and

wage bills accounts for Rs. 40 per ton of pig iron to which another 15 per cent has to be added to enter for Provident Fund, Employees State insurance charges and other welfare expenses and medical benefits granted to the employees. These are charges which cannot be avoided.

(iii) The maintenance cost of the plant is high because the plant is of a new type and has various intricacies and complexities which have to be looked after very carefully. Because of operation with sub-standard raw material there is a greater wear on the linings which have to be repaired or replaced quite frequently. For this purpose the plant has to be shut-down off and on and investigations have to be made which result in loss of production. Interruptions in power supply also constitute a substantial factor in this high cost of repairs and maintenance."

Both Shri Patnaik and the Chairman of the I. D. C. were the Chairman of the Companies which owned the Low Shaft Furnace Plant at the time they gave the above reasons and it is obvious that those reasons must have been based on their experience with regard to the actual working of the Plant.

As the existing Plant was found to be commercially uneconomical Shri Patnaik decided to go in for expansion of the Plant by having two more furnaces and thus raising the production to one lakh tons a year. Besides, that it was proposed to set up a power house. The object of the expansion was (i) to reduce the overhead charges, (ii) to utilise the top furnace gas, which was otherwise going waste, for generating steam for a thermal station and (iii) to prevent the periodic stoppage of production. The cost of expansion for setting up two additional furnaces was estimated by Shri Patnaik in his letter dated February 13, 1960 to be one crore out of which Rs. 40 lakhs were to be spent on import of machinery. Subsequently, it was also decided to include within the expansion scheme the setting up of a Plant to produce cast iron, spun pipes and specials. The cost of expansion was estimated to be about Rs. 5 crores out of which machinery worth Rs. 2.18 crores, according to the letter dated February 19, 1963 of Shri Patnaik to Shri Subramaniam, was to be imported from Germany as the amount was included in the West German loan.

The material on the record also shows that Kalinga Industries was hardly in a position to meet the expenditure involved in expansion. It is in the affidavit of Shri Balan upon which Shri Patnaik has relied, that during 1962-63 capital market for raising funds from the public was rather shy. According, however, to Shri Balan, it would have been

possible to raise the funds from financial institutions. This expectation, in my opinion, was without basis as would be evident from the following facts:—

In the annual report of Kalinga Industries for 1962-63 the Directors referred to difficult financial conditions in the market. It was observed about the expansion of the Low Shaft Furnace Plant:—

“ This programme involved a total capital outlay of more than Rs. 5 crores. In view of the difficult financial conditions in the market it was felt that the necessary capital may not be easily forthcoming and as the country's need of pig Iron has increased considerably on account of Defence requirements, it was felt imperative that the expansion programme should be pushed through without delay. It was, therefore, decided at the instance of Shri B. Patnaik, the Founder of the Company, that the whole project be handed over to the Industrial Development Corporation of Orissa, a State Government undertaking, who were in a position to implement the expansion scheme immediately. Accordingly, the Plant was transferred to the Corporation on the 1st April 1963 after executing the necessary agreement and sale deeds.”

The subscribed capital of Kalinga Industries could be raised only gradually to Rs. 42,44,750. Although Shri Patnaik in his application dated the 13th February 1960 stated that it was proposed to apply to the Controller for sanction for issue of equity capital of Rs. 50 lakhs and although permission to issue further shares of an amount of Rs. 54 lakhs was given, the shares were not issued and the capital was not raised. It is not clear as to why the capital was not raised in spite of the above permission if there was no difficulty about the same.

The note of the Secretary of Industries Department, when Shri Patnaik applied for loan of Rs. 90 lakhs, shows that Kalinga Industries could not pay even the instalments of the loan of Rs. 7 lakhs in time and committed default in respect of most of the instalments. The loan could only be cleared in 1962-63. So far as the credit of Kalinga Industries in the financial market is concerned, I find that the Company found it difficult to raise money, on the security of its assets from the banking institutions and that is why it had to ask the State Government to stand guarantee to Indian Overseas Bank even though it resulted in extra payment of interest at the rate of 1½ per cent per annum on the amount received to the State Government on account of its agreeing to stand guarantee. If Kalinga Industries found such difficulty in raising a loan of Rs. 25 lakhs, it is plain that it would not have been possible for it to raise a loan involving crores of rupees.

It has been argued on behalf of Shri Patnaik that if he was so minded as Chief Minister he could have given State Aid to Kalinga Industries under the provisions of Bihar and Orissa State Aid to Industries Act on the security of its fixed assets. In this respect I find that the printed report of Kalinga Industries for the year 1962-63 shows that its total fixed assets for all the three units including Low Shaft Furnace were of the value of Rs. 81,01,587. Only aid to the extent of 70 per cent of value of the fixed assets can be given under provisions of the Act referred to above. As such the total aid, which Kalinga Industries could have was of the amount of about Rs. 57 lakhs. Out of that amount, Rs. 6 lakhs, which were still due to India Overseas Bank and for which the State Government had stood guarantee, were to be deducted. The total amount which could thus be received was about Rs. 51 lakhs. This amount could be hardly sufficient to meet the cost of expansion of about rupees five crores. It may also be mentioned that though provision for the amount of Rs. 2.18 Crores on account of the cost of imported machinery had been made in West German Loan it did not absolve Kalinga Industries of its obligation to immediately pay an amount to the extent of 90 per cent of the cost of imported machinery as would be explained hereafter.

Another difficulty which faced Kalinga Industries in the beginning of financial year 1963-64 was that during that year the Low Shaft Furnace needed major repair in the form of relining which was to cost more than Rs. 2 lakhs. The repair would have also necessitated the shut down of the Plant for some months. Money had also to be found for payment of rupees six lakhs due to the Indian Overseas Bank. Shri Patnaik must thus obviously have been in a predicament. The existing plant was found to be uneconomical and the expansion required an amount which was much beyond the resources of Kalinga Industries. A way out from the predicament had to be found to meet the situation. Shri Patnaik in the meantime had become Chief Minister of Orissa. I.D.C. was registered as a Company on the 29th March 1962 and certificate for commencement of business was obtained on the 16th May 1962. The Company was solely financed by State Government and all its Directors were employees of State Government. A note was put up in the meeting of Directors held on the 13th January 1963, suggesting that Chairman of I. D. C. should negotiate with Kalinga Industries for purchase of Low Shaft Furnace. The note has been reproduced earlier and its perusal reveals that all the details about

the Plant including those relating to expansion were given. The materials on record tends to show that the inspiration for that note must have come from Shri Patnaik. Indeed, Shri Patnaik in his statement in Assembly on September 2, 1963, admitted that the transfer had taken place at his instance. This fact is also mentioned in the report of Kalinga Industries for 1962-63. The Directors of IDC accepted the suggestion made in the above-mentioned note and authorised the Chairman to carry on negotiations after obtaining directive of State Government. As the whole thing was being done at the initiative of Shri Patnaik, it was taken for granted that the approval of the State Government would be forthcoming. Messrs. H. Naik & Co. and Messrs. G. Basu & Co., were approached for the purpose of evaluating the assets.

On March 6, 1963, Shri Patnaik in his note to the Planning Minister gave the details of the transfer and concluded :—

“In short this Plant virtually goes as a gift to the State Company without any direct payment whatsoever, for the benefit of the Industrial and Technical Development of the State of Orissa.”

On March 8, 1963, Shri Patnaik in his letter to Shri Purkayastha, Secretary, Industries Department and Chairman of the IDC suggested that Shri Balan, General Secretary of Kalinga Industries, be taken on the Board of the IDC and should remain in full charge of the Plant expansion, etc. This suggestion from the Chief Minister, who was also in charge of the Industries Department, to the Secretary, Industries Department, was to all intents and purposes a command and was taken as such because Shri Balan was made Director in charge of the Plant after its take over by the IDC.

Approval for the purchase of Low-Shaft Furnace Plant was given by Shri Mitra on March 16, 1963. The approval was more or less a formality as Shri Patnaik had already committed himself in writing to the transfer of the Plant to the IDC vide his letter, dated February 19, 1963 to Shri Subramaniam, his note, dated March 6, 1963 to the Union Planning Minister and his letter dated March 8, 1963 to Shri Purkayastha, material parts of which have already been reproduced earlier. Agreement for sale, dated April 1, 1963 was thereafter executed. Shrimati Gyan Patnaik, wife of Shri Patnaik, signed the agreement on behalf

of Kalinga Industries as its Chairman. Clauses 2 and 3 of the agreement dealt with the consideration of the sale, and those two clauses have been reproduced earlier. Briefly the consideration was equivalent to the aggregate of the depreciated book value of the block assets as on March 31, 1963 and the value of the raw materials and spares and stores at cost and the value of finished products as would be taken over by the Corporation at the end of March 31, 1963 as certified by the auditors. Out of the above amount, the liabilities in respect of the Low Shaft Furnace Plant taken over by the IDC including the amount due to Indian Overseas Bank had to be deducted. Messrs. H. Naik & Co. and Messrs. G. Basu & Co., Auditors, were appointed for the purpose of evaluation. According to the State Government, the Auditors were not independent but were connected with Shri Patnaik. The opposite stand, however, is that Messrs. H. Naik & Co. were the Auditor of the IDC having been appointed by the Central Government under section 619 of the Companies Act. Messrs. G. Basu & Co. are stated to be leading Chartered Accountants with no connection with Kalinga Industries. The position on the face of it appears to be correct but a little deeper probe reveals that there is another side of the picture. The association of Messrs. H. Naik & Co. with the IDC had not lasted for even a year when they were asked to make the valuation. As against that, their association with the Vendor Company has been for more than a decade. Messrs. G. Basu & Co. were the Auditors of Kalinga Tubes which too had been formed by Shri Patnaik and was a sister concern of Kalinga Industries. It may be that the two Auditors acted honestly, in view of the fact that the transaction involved the purchase of a Plant for more than Rs. 70 lakhs, it would in my opinion, have inspired greater confidence if the evaluation had been done by an independent agency. It appears to be all the more inappropriate to appoint Messrs. H. Naik & Co., for the purpose of evaluation, because the Auditor appointed for the purpose had to scrutinise the depreciated book value of the fixed assets, and Messrs. H. Naik & Co., on account of their being statutory auditors of Kalinga Industries, were already committed in a way to the correctness of the value as entered in the books of Kalinga Industries.

No physical verification of the finished goods and raw material was made by the Auditors and they relied upon the certificate in this respect of the Vendor Company. No technical evaluation of the Plant was carried out to find the conditions of the machinery. It is argued that technical

evaluation was not necessary because the Plant had been found to be working in excess of its rated capacity. These circumstances, in my opinion, would not necessarily show that there was no necessity for technical evaluation. We have to judge the things from the angle as to whether the IDC did what a reasonable prudent purchaser would have done if he was out to purchase the plant of the value of about Rs. 70 lakhs. It is hardly conceivable that a reasonably prudent purchaser would not take that precaution. Reference has been made on behalf of Shri Patnaik to the letter, dated October 31, 1957 of Shri Swaran Sing to Dr. Mahtab reproduced earlier to show that there was no need for technical evaluation. The said letter stated that Low Shaft Furnace process was no longer at the stage of experiment in Europe. It did not and indeed could not have vouchsafed about the condition and serviceableness of the Low Shaft Furnace Plant which was being transferred to the IDC. It was taken that the Plant was almost new. The technical evaluation, if carried out would have revealed that the Plant needed major repair in the shape of relining in the near future, and that the same would not only entail considerable expenditure but would also result in the shut down of the Plant.

According to the valuation Report of both the Auditors the depreciated book value of the plant was more than the depreciated book value in the books of the Vendor Company. Messrs. G. Basu & Co. found the depreciated book value of the Plant to be Rs. 68,57,289 out of which they deducted Rs. 7,305 which amount in their opinion was revenue expenditure and should not have been included in the fixed assets. The written down value of the fixed assets was accordingly found by Messrs. G. Basu & Co. to be Rs. 68,49,984. Messrs. H. Naik & Co. found the depreciated book value of the assets to be Rs. 67,30,430. According to the book of the Vendor Company the depreciated book value of the fixed assets was Rs. 67,21,269. The excess estimate by the Auditors was due to the fact that for the year 1959-60 the Vendor Company had charged depreciation according to the reducing balance method, and for the year 1960-61 to 1962-63 according to straight line method. The Auditors computed depreciation for all the four years uniformly according to straight line method. Ultimately, IDC and Kalinga Industries accepted the valuation as given in the books of the Vendor Company and reduced from it the amount of Rs. 7,305 which had been found by Messrs. G. Basu & Co. to be wrongly included in the fixed assets.

The report of Messrs. G. Basu & Co. shows that the cost of fixed assets included revenue expenditure under different heads during the period from 1956 to March 31, 1960 amounting to Rs. 10,60,033 incurred by the Vendor Company. Dealing with this amount, the Auditors stated—

“Since the allocation of expenditure during construction to fixed assets was made several years back and was approved by the Director and the statutory auditors of the Vendor Company we have not made any further verification of such allocation.”

Messrs. H. Naik & Co. in their report stated—

“We have, however, accepted the original cost of the assets as per books and have ignored any inaccuracies that might have crept into the allocation of cost of installation and others including some items of revenue expenditures wrongly capitalized while calculating the cost of any particular asset in the firm belief that the totality of the effect of the same on the value may be too trivial to be taken notice of.”

Question consequently arose as to whether the I. D. C. should pay the amount of Rs. 10,60,033 which though revenue expenditure, had been capitalized and shown as part of the fixed assets. There was a difference between the Joint Secretary and the Secretary of the Finance Department as to whether the I. D. C. was liable to pay Rs. 10,60,033. According to the Joint Secretary, the expenditure incurred up to the date of completion of the Plant could be considered as capital expenditure. As against that, the Finance Secretary in his note dated March 28, 1966 stated that capitalization of the revenue expenditure did not necessarily mean increasing the price of the fixed assets. He suggested that the same should be treated as a development expenditure to be gradually written off against future profits. A conference was thereafter called on the 6th May 1966. It was decided that there should be no objection to capitalization of the expenditure at that stage and the case be closed.

It would appear from the above that though the amount of capitalized revenue expenditure was to the tune of Rs. 10,60,033 the same was accepted without further verification as it had taken place several years ago. The general principle of capitalization of revenue expenditure has been reproduced in Annexure ‘L’ to the affidavit of Shri Balan from the Member’s Hand Book Series No. 1 Statement of Auditing, Practices of the Institute of Chartered Accounts of India 1964 as under—

“When a new factory is being erected, the question often arises regarding the treatment of general administrative and overhead expenses during the construction period.

All expenses directly relating to construction, such as wages of workmen and salaries of technical staff and material consumed should be capitalized. As regards general administrative expenses, these may also be capitalized but, before this is done, it must first be ensured that during such period the Company has not carried out any trading, manufacturing or selling activities or any activities preparatory to them. If such activities have been carried out then the proportion of the cost relating to them should be excluded and only the balance of the administrative cost capitalized. In most cases it is likely that a newly started limited company would have some activities other than those relating to the construction of the factory, e. g., maintenance of share department, secretarial department, etc. In such cases an appropriate proportion of the overhead cost relating to such activities should not be capitalized. It will, therefore, be clear that in the majority of cases it would not be appropriate to capitalize all costs incurred as relating to construction."

Reliance on behalf of the State Government has been placed upon the observations on page 470 of Carters Advanced Accounts 5TH Edition where it is stated that a number of preliminary expenses for formation and promotion are usually written off to revenue over a period of years, three, five or seven, according as the amount is small, large or very large. The observations of the different authorities, in my opinion, underline the importance of verification to come to the conclusion as to whether a particular expenditure was appropriately capitalized or not. Such verification, as would appear from the above, was not done and it was taken for granted that the whole of revenue expenditure of Rs. 10,60,033 had been properly capitalized and made a part of the fixed assets for payment of which the IDC was liable as part of the sale-consideration. Messrs. H. Naik & Co. did not rule out some inaccuracies in this respect but they ignored them in the firm belief that the totality of the effect of the same might be too trivial to be taken notice of.

Bricks of the value of Rs. 33,619 belonging to Kalinga Industries were lying in the Low Shaft Furnace Plant on March 31, 1963. The IDC had the option to take over the above bricks at the price of Rs. 33,619 as per terms of the agreement. The bricks were not, however, taken by the IDC when the Plant was taken over but were subsequently purchased from Kalinga Industries at a cost of Rs. 50,169. This obviously resulted in an extra expenditure of Rs. 16,550.

It may be stated that an objection was raised in the audit report CA—11—39/45 relating to the financial year of 1964-65 about an amount of Rs. 24,110. It would appear that the Board of the IDC initially decided on February 27, 1965 to take the entire current assets of the value of Rs. 23,30,385. Subsequently it transpired that out of those assets finished goods worth Rs. 2,18,333 had been sold by Kalinga Industries prior to the agreement of sale. The Board thereafter decided in a meeting, dated June 12, 1965 to exclude those goods worth Rs. 2,18,338 from the assets taken over. According to the audit report, if those goods had also been taken over, the IDC would have received the profit of Rs. 24,110 which accrued by the sale of those goods. As a result of the subsequent decision of the Board, the IDC was deprived of that profit and received only Rs. 5 per tonne for service in the clearance of those goods. After giving the matter my consideration, I am of the view that the decision of the Board to exclude the goods worth Rs. 2,18,338 from the assets taken over cannot be considered to be improper as those goods had been previously sold and were not the property of the Kalinga Industries.

It has been argued on behalf of Shri Patnaik that the Low Shaft Furnace Plant was very profitable and Shri Patnaik was actuated by a high ideal to transfer this Plant to the IDC. Reference in this connection has been made to the letter, dated October 31, 1957 of Shri Swaran Singh to Dr. Mahtab, note, dated November 8, 1957 of Shri D. B. Sahu, Industries Minister and the letter, dated April 12, 1966 of Dr. B. R. Nijhawan. The material portions of the above documents have reproduced earlier. So far as the letter of Shri Swaran Singh is concerned, I find that he stated in his letter that the cost of pig iron produced in a Low Shaft Furnace would be considerably higher than that produced in a conventional blast furnace. Shri Swaran Singh no doubt referred to the possibility of export of pig iron produced by the Low Shaft Furnace but it was on the assumption that the estimate of the Kalinga Industries about the production cost of pig iron being Rs. 162 per ton would come out to be true. The words used in the letter were as under—

“We notice from an estimate submitted by Kalinga Industries themselves that they estimate that it will cost Rs. 162 to produce one ton of pig iron. It is difficult to foresee the future. But, if, as Kalinga Industries estimate, they can produce pig iron at about Rs. 162 per ton, it should be possible to export pig iron without difficulty, if current world prices do not fall steeply.”

It is, in my opinion, difficult to draw an inference of the Low Shaft Furnace Plant being commercially economical from the letter of Shri Swaran Singh, as admittedly the cost of production of pig-iron from the Low Shaft Furnace Plant in actual operation was found to be much more than Rs. 162 per ton. The same remarks would apply to the note of Shri Dinabandhu Sahu because that note was also based upon the assumption that the estimated cost of production of Rs. 162 per ton as given by Kalinga Industries was correct. Coming to the letter, dated April 12, 1966 from Dr. Nijhawan to Shri Purkayastha, Chairman of the IDC, I find that the writer of that letter, at the time it was written, was the Director of National Metallurgical Laboratory, Jamshedpur. The aforesaid Laboratory, it has been said, is a clearing house for information. It collects data and disseminates the result of the scientific research to the industries. It also solves complicated problems for different metallurgical units. In view of the position of Dr. Nijhawan, the opinion expressed by him regarding technical and scientific progress and success of the Low Shaft Furnace can be taken to have a stamp of authority. We are, however, concerned with the commercial viability of the Low Shaft Furnace Plant in question. So far as this aspect is concerned, Dr. Nijhawan admits that he is not an expert in accounts or in audit. The low shaft plant might have been a great success from the point of view of science, technology or industrial research, and these are the aspects with which National Metallurgical Laboratory and Dr. Nijhawan were and could be concerned, but this would not necessarily show that the Plant was a success in the commercial sense. The field of science, technology and research, and that of commercial economics are different and though in the long-run the former is bound to have a great impact on the latter, a purchaser is essentially more concerned with the monetary profit he can make out of the Plant. The Plant could be commercially attractive only if it yielded a good return on the amount invested and that would normally can note a substantial margin of profit above the Bank rate. The Low Shaft Plant in question was obviously acquired by the IDC not with a view to set it up as a research centre but to make profits out of it.

Dr. Nijhawan in his letter, which purports to have been sent gratuitously just at the time when the question of the valuation of the Low Shaft Furnace Plant was engaging the attention of authorities concerned, has also referred to the cost of a Low Shaft Furnace Plant proposed to be set up in the Punjab. The full details of the said Plant are not before

us and in the absence of the same it is difficult to base any conclusion about the valuation of Barbil Low Shaft Furnace Plant upon the cost of the proposed Plant in the Punjab.

Argument has then been advanced on behalf of Shri Patnaik that the Plant made profits both before and after its transfer by the Kalinga Industries to the IDC. This fact, it is submitted, would go to show that the Plant was a profitable unit. In this respect I am of the view that we have to judge the profitability of the Plant in the context of the position as it prevailed on the date of transfer, i. e., April 1, 1963. If the Plant was then profitable the impact of new factors, not in contemplation of the parties, which made the Plant cease to be profitable at a future date, would not detract from the prudent nature of the transaction from the point of view of the buyer. If on the contrary the past working result showed on the date of the transfer that the Plant was not very profitable, the subsequent change of circumstances, not in contemplation of the parties, which made the Plant profitable, would not go to show that the original transaction of purchase was a prudent one. Judged in this light we find that the Plant had worked during four financial years preceding the date of the transfer. In the first year the Plant suffered a net loss of Rs. 17,26,090. The loss included a development rebate of Rs. 13,32,126 and even if we exclude that amount from consideration the fact still remains that the Plant suffered over and above the amount of development rebate a loss of about Rs. 4 lakhs. In the year 1960-61 the net profit made by the Plant was Rs. 2,63,043. In the year 1961-62 the net profit was Rs. 6,39,416 and in the year 1962-63 the net profit was Rs. 4,11,926. Considering the fact that there was an investment of over Rs. 70 lakhs on the Plant as is the case of Shri Patnaik, the return from the Plant can hardly be considered to be commensurate with the amount invested. After the Plant had been worked for about 11 months by the IDC, the Chairman of the IDC in his memorandum to the Electricity Board in the beginning of March 1964 stated :

"The existing furnace, however, has been yielding a return of the order of a little above 5 per cent before payment of taxes on the capital investment. The above return is not even considered reasonable in the commercial world where a minimum of $2\frac{1}{2}$ to 3% over and above Bank rate is expected after payment of taxes."

It would appear from the above, and that, in my opinion, is the correct position, that unless a Plant yields a return of at least $2\frac{1}{2}$ or 3% over and above the Bank rate after payment

of taxes, the return cannot be considered to be reasonable and the Plant cannot be taken to be profitable. Taken in this light, the Low Shaft Furnace Plant on April 1, 1963 was not a commercially profitable Plant.

Argument has then been advanced on behalf of Shri Patnaik that the fact that Kalinga Industries agreed to receive the consideration at a future date without any interest out of profits made by the Low Shaft Furnace Plant would go to show the confidence of Shri Patnaik and the others connected with the management of Kalinga Industries in the capacity of the Plant to yield profits. This argument, though attractive on the face of it, cannot stand closer scrutiny. Although it was stipulated in the agreement dated April 1, 1963 that the sale consideration would be payable by instalments, not being more than the profits made by the Plant in a year, the word "Profit" was not defined in the agreement. This omission becomes significant because the Secretary of the Planning & Co-ordination Department in his note, dated March 26, 1963 had asked for clear indication about the instalments by which the future payments of the consideration for the Plant were to be made. The absence of the definition of the word "profit" in the agreement led to the placing of different interpretations by different persons:

According to the audit report and annual report of IDC, the net profits for the years 1963-64 and 1964-65 were Rs. 6,25,204 and Rs. 20,67,525. respectively. Gross profits for the years 1963-64 and 1964-65 were Rs. 17,26,382 and Rs. 30,84,085 respectively. The total amount of net profits for the two years came to Rs. 26,92,729, while that of gross profits came to Rs. 48,10,467. Although the agreement dated April 1, 1963 did not indicate as to whether the profit to be taken into account for the purpose of payment of consideration was to be gross profit or net profit, the letter, dated November 11, 1965 addressed by the Kalinga Industries to the Chairman, IDC (reproduced earlier) shows that the Kalinga Industries took it that the profit to be taken into account was the gross profit and not the profit. The concept of gross profit in that letter would also appear to be not the same as that of the Auditors, because it was stated on behalf of Kalinga Industries in the letter that the IDC had "grossed a profit of Rs. 68 Lakhs" till the end of September, 1965. According, however, to the annual reports, the total amount of the gross profit of the IDC from the plant for the two years from April 1, 1963 till March 31, 1965 was Rs. 48,10,467. Adding to that the amount of Rs. 12,90,554, which has been

mentioned to be the gross profit for 1965-66, in a note circulated to the Board of IDC on March 28, 1968 and which note has been relied upon by Shri Patnaik, the total gross profit till the end of March 1966 comes to Rs. 61,01,021. The gross profit till the end of September, 1965 would obviously be much less than that amount. The above letter from the Kalinga Industries also shows that though no interest was mentioned in the agreement, the Company now started clamouring for interest, if the payment of the balance of consideration was to be further delayed. The Chairman of the IDC in his statement placed before the Orissa Legislative Assembly mentioned that a profit of Rs. 60,70,233 had accrued to the IDC during the two years from April 1, 1963 to March 31, 1965. It would thus appear that figures, which were widely divergent from those of gross and net profits as given in the audit and annual reports, were being taken as the amount of profit of the IDC from the Low Shaft Furnace Plant. Shri Biren Mitra in reply to a question in the Orissa Legislative Assembly stated on March 20, 1963 as under—

"I have already said during the Budget discussion that the initiative was taken by the Chief Minister to hand over the Plant to the State Government. It has given a profit of 10 to 12 lakhs in the year 1962-63 net. In 1961-62, it gave 6 lakhs and odd. In course of time it will give a profit of one crore a year. It is a very profitable concern. The Chief Minister has done it because he has accepted the Socialistic pattern of society and as first step he has handed over the Plant to the State Government on which the Government of Orissa will pay the written-down book value of 60 to 70 lakhs to the Company at easy instalments. It will take 12 years to pay the 70 lakhs out of the profit of the Plant. No interest will be paid to the Company by the Government."

The figure of profit given by Shri Mitra for the year 1961-62 as Rs. 6 lakhs and odd was that of net profit for that year and not of gross profit, as the net profit made by the Kalinga Industries from the Plant in that year was Rs. 6,39,416 while the gross profit was Rs. 10,56,277. As regards the year 1962-63, although Shri Mitra gave the figure of the profits as Rs. 10 to 12 lakhs as against the real figures of Rs. 8,23,139 as gross profit and Rs. 4,11,926 as net profit, he made it clear that he was taking into account the net profit because, while giving the figure of profit for that year, he used the word "net". Shri Mitra obviously could not give the correct figure for the year 1962-63, because he gave the reply on March 20, 1963 before the close of that year when the accounts could not have been finalized. Shri Mitra also added in that reply that it would take 12 years to pay Rs. 70 lakhs out of the profit

of the Plant. It would follow from the above statement that what was in contemplation immediately before the agreement was that the profit to be taken into account for payment of consideration would be net profit. The fact that this particular matter was left vague and undefined in the actual agreement in spite of the note of the Secretary, Planning & Co-ordination Department, is susceptible of the inference that this was done deliberately so that there might be no difficulty to pay the sale consideration to Kalinga Industries at an early date. I am, therefore, not impressed by the argument that the provision in the agreement about the payment of consideration out of the profits made by the Low Shaft Furnace Plant would go to show the confidence of Shri Patnaik and others connected with the management of Kalinga Industries in the capacity of the Plant to yield substantial profits.

It may also be mentioned that IDC had a considerable amount of money at its disposal in connection with the expansion programme of the Low Shaft Furnace after its acquisition. IDC had also other funds. I have not been referred to any cogent material on the record to show that payments of sale consideration made to Kalinga Industries by the IDC were only out of the profits from the Low Shaft Furnace and not from other money at its disposal.

Another fact which may be mentioned in this context is that compared to the loss or comparatively moderate profit in other years, much higher amounts were shown as gross profits from Low Shaft Furnace Plant during years 1963-64 and 1964-65. Those were the years when the payment of sale consideration had to be made to Kalinga Industries out of "profits". The fact that profits were much lower or there was actual loss during the years preceding those years as well as those following them, is something significant of which one cannot fail to take notice of.

Another argument advanced on behalf of Shri Patnaik is that there was great demand for pig-iron at the time the agreement was made. The demand, it is stated, according to the experts was likely to go up in future. So far as the pig-iron produced by the plant in question is concerned, the same is stated to have a higher content of silicon compared to the pig-iron manufactured by bigger steel plants and as such more suited for foundries. Reference in this context is made to Volume I of the booklet published by Dr. P. S. Lokanathan, Director-General of National Council of Applied Economic Research on behalf of that Council on September 9, 1963. According to the observations made therein the demand of pig-iron (foundry grade) in 1965-66 was expected to be a

little over 2 million tonnes and in 1970-71 3.462 million tonnes. It was further stated that the gap between production and demand would become bigger unless steps were taken to improve the supply position of the pig-iron. The view that demand for foundry grade pig-iron would go up in future was also expressed in other publications. In the Lok Sabha the Deputy Minister, in the Ministry of Steel and Heavy Industries, stated on May 3, 1963 that production of pig-iron was approximately one million tonnes as against the estimated requirement of about 1.5 to 2 million tonnes. On September 3, 1965 the Minister of Steel and Mines stated in the Lok Sabha that with effect from August 20, 1965 price and distribution control on pig-iron had been lifted and that the Government was encouraging the setting up of pig-iron units in the private sector, apart from going ahead with the programme for setting up more blast furnaces in the public sector. The statements referred to above, in my opinion, would only show the contemplated and actual demand of pig-iron including the foundry grade pig-iron. It would not, however, necessarily follow from the above that the Low Shaft Furnace Plant in question was a profitable concern in the commercial sense of the term.

After giving the matter my earnest consideration I am of the view that the different factors, which have been referred to on behalf of Shri Patnaik and have been discussed above, do not militate against the conclusion I have arrived at earlier that the existing Low Shaft Furnace Plant was found by Shri Patnaik to be commercially uneconomical when he decided to transfer it to the IDC.

An argument has been advanced on behalf of Shri Patnaik that the transfer of Low Shaft Furnace Plant by Kalinga Industries to IDC was made with the approval of the Government of India. In this respect I find that apart from Shri Patnaik's letter to Union Planning Minister that the plant was going as a gift to IDC, the intimation about the transfer of the Plant was given to the departments of the Government of India only in the context of the expansion programme and the necessity of transfer of licence from Kalinga Industries to the IDC. Before the transfer the Government of India was never asked and never went into the question of the propriety or the prudent nature of the transaction relating to the transfer of the plant by Kalinga Industries with which the Chief Minister had been associated to the State owned IDC. In fact the reasoning adopted by Shri Patnaik in his letter dated February 19, 1963 to Shri Subramaniam, Union

Minister of Steel, was that the Low Shaft Furnace would be an economic plant and that was why the State Corporation agreed to take it over.

The material on the record shows that the plan to transfer the Low Shaft Furnace Plant to the IDC was set in motion in January 1963. It was in the meeting of the Board of Directors of the IDC held on January 13, 1963 that a decision was taken to carry on negotiations for the take over of the Plant after obtaining necessary directive from the State Government. On February 19, 1963, Shri Patnaik informed Shri Subramaniam, Union Minister of Steel, that the IDC had undertaken to take over the Low Shaft Furnace Plant at Barbil from Kalinga Industries. Despite the above undertaking of the IDC to take over the Low Shaft Furnace Plant, orders for supply of machinery in connection with the expansion programme of the Plant were placed with four German concerns on March 1, 1963 by Kalinga Industries. There is nothing on the record (at least I have not been referred to any material) to show that the IDC was brought into the picture and was consulted about the orders before those orders were placed with the German concerns. The orders are stated to be for an amount of Rs. 2.18 crores. It is rather strange that orders to the extent of Rs. 2.18 crores were being placed on behalf of the IDC and a liability to that extent was being fastened upon it without even consulting it or associating it while placing those orders. All that appears to have been done is that the IDC was told that there was an expansion scheme which would entail the import of machinery worth Rs. 2.18 crores from German concerns and subsequently it was informed that orders for import of machinery of that amount had been placed with four German concerns. The IDC in the matter of placing orders was treated more or less as a puppet and it was taken for granted that it would act as a rubber stamp and sign on dotted lines on what was done by the Kalinga Industries in the matter of the above contracts with the German concerns.

It is submitted on behalf of Shri Patnaik that there was great urgency in the matter and if the orders had not been placed on March 1, 1963 the West German loan would have lapsed. This circumstances even if true, constitutes no justification for not bringing the IDC into the picture and consulting it before placing the order. There was sufficient time between January 13, 1963, when decision on the note for taking over the Low Shaft Furnace was taken by the members of the Board of IDC and March 1, 1963, when the contracts were entered into with the German concerns.

By February 6, 1963, when the auditors were approached for evaluating the Plant, the matters were in a pretty well advanced stage. There was in any case a period of more than three weeks between that date and March 1, 1963.

On behalf of the State Government it has been urged that the contracts with the German concerns were not all above board and resulted in earning of foreign money by Shri Biju Patnaik. As against that, it has been argued on behalf of Shri Patnaik that this allegation is baseless. It is further pointed out that the method of payment to the German suppliers was such as did not leave any scope for the making of illicit money in the transaction. It, therefore, becomes necessary to deal with the method of payment to the German suppliers as given in affidavits of Shri Balan. Kreditanstalt Fur Wiederaufbau (West German Bank of Reconstruction, hereinafter referred to as KFW) with prior approval of West German Government and that of the Government of India, agreed to finance the expansion scheme of Barbil Plant to the tune of DM 15 Millions on a deferred payment basis for import of the Plant and machinery from West Germany. The payment to the suppliers was made by KFW on authority being received from the High Commissioner for India, London after certification by the IDC. So far as the IDC is concerned it had to make payment of 10 per cent advance through the Accountant-General. 80 per cent of the amount was paid by KFW upon presentation of shipping documents and invoices of machinery after authorization from the Indian High Commissioner against presentation of payment particulars. The Indian High Commissioner in London raised a debit against the IDC for 80 per cent of the value of the machinery. This debit was squared up by payment through the Accountant-General. The balance of 10 per cent was payable to the Accountant-General, Orissa, on fulfilment of the performance test in terms of the agreement.

The above method of payment undoubtedly ensures that the full payment of the amount is made to the suppliers. It does not and cannot prevent an underhand deal between a party placing the order and the supplier by over-invoicing the price of goods supplied. At the same time I must record a finding that there is no evidence on the record to show that there was any underhand dealing between Shri Patnaik and the German suppliers. The argument of the State Government in this respect must remain in the realm of speculation and suspicion.

Another contention raised on behalf of Shri Patnaik is that under the Foreign Exchange Regulation Act, the Reserve Bank of India exercises control over use of foreign exchange. Reference is also made to the Registration and Licensing of Industrial Undertaking Rules, 1952, according to which an application for a licence or permission for establishment of a new industrial undertaking or any substantial expansion of such an undertaking has to be considered by a Licensing Committee which is then to submit a report. Rule 12 provides that the report shall among other matters contain recommendations regarding capital and its structure, suitability of the location proposed from the point of view of the approved plans for the industry, capacity of the plant to be installed, availability of rail transport capacity, availability of technical and other skilled personnel required, and collaboration, if any, with foreign manufacturers. It is urged that the consideration of the matter by that Committee, the control of the different ministries and of the Reserve Bank provide sufficient guarantee against any improper manipulation or underhand deal to make foreign money in a transaction. These provisions, in my opinion, are intended to plug loopholes but it cannot be said that they make the system fool-proof against any improper deal in foreign exchange. There is, however, as stated above, no evidence on the record to show that in the impugned transactions there was any such underhand deal. The learned Advocate-General has argued that it is difficult to procure positive evidence about such a deal. This may be so but such a difficulty would not induce the Commission to accept speculation and guess-work as a substitute for evidence which may be direct or circumstantial.

Another feature of the agreement of sale of the Low Shaft Furnace Plant by the Kalinga Industries was that the IDC had to accept Messrs. Kalinga Otto (P), Limited as technical consultants for the expansion scheme of the Plant. The technical consultants were put in charge of the work of expansion. Shri Biju Patnaik and the members of his family and employees held 51 per cent shares at the time of the formation of that Company in 1959. At present the wife and son of Shri Biju Patnaik hold 4,200 shares out of the 5,000 shares. Rs. 15,50,000 were agreed to be paid by the IDC to the above company in lieu of the work as technical consultants. The entire amount was stipulated to be paid by equal monthly instalments within thirty months from January 1964 even though the agreement was executed between Kalinga Otto (P), Limited and the IDC on April 27, 1964.

The payment was thereafter made in accordance with the agreement. Although the original cost of expenditure for Low Shaft Furnace was estimated to be Rs. 570 lakhs, the estimated cost during the course of expansion went up to Rs. 911 lakhs. The Audit Report of 1968 of the Orissa Government shows that an expenditure of Rs. 733.73 lakhs has already been incurred up to March 1967 by the State Government on the Plant. The Project has still not been completed due to various reasons one of which was that the construction work had to be suspended as some of the machinery and equipment imported from West Germany was reported to be missing in transit during Indo-Pakistan conflict in 1965.

What emerges from the above is that steps were taken to ensure that both in the matter of placing orders with German concerns as well as in that of expansion of Low Shaft Furnace Plant the effective control should remain with the companies of Shri Patnaik and their employees. It was during the period of such control that the estimated cost went up to Rs. 9.11 crores. This is evident from the following fact:—

- (i) Orders with four German concerns for import of machinery Rs. 2.18 crores were placed on March 1, 1963 by Kalinga Industries.
- (ii) Kalinga Otto (P), Limited was entrusted with the task of supervision of expansion scheme as well as that of correspondence with the German concerns.
- (iii) Shri Balan was made Director in charge of the Low Shaft Furnace Plant after its transfer to the IDC.
- (iv) The estimated cost during the course of expansion went up to Rs. 9.11 crores.

The Government of Orissa appointed an Evaluation Committee headed by Dr. P. S. Lokanathan on Public Sector Undertakings in Orissa. The Committee submitted a report on June 19, 1968. Referring to the Kalinga Iron Works the Committee observed—

“ Similar unit launched by a private entrepreneur would probably make do with a 30 per cent to 40 per cent reduction in this massive capital outlay.”

Although on the material on record it is not possible for the Commission to express any opinion on the above view, the material does indicate that both before and after the transfer of the Low Shaft Furnace there was a sharp rise in the estimated cost of expansion. So far as the rise after the transfer is concerned, reference has already been made to it above. As regards the rise before the transfer, I find that Shri Patnaik in his application dated February 13, 1960 for licence for expansion mentioned the cost of expansion for setting up two additional furnaces to be rupees one crore out of which Rs. 40 lakhs were to be spent on imports. In the Project Report, copy of which was sent along with letter dated February 20, 1963 the cost of expansion for setting up two furnaces was mentioned by Kalinga Industries to be Rs. 2,17,06,000. The costs of spun pipe factory and power plant were not included in the above amount and were shown separately. I thus find that apart from the rise in the cost of expansion after the Plant was transferred to the IDC, the cost of the two additional furnaces was shown by Kalinga Industries to have gone up from rupees one crore in 1960 to over rupees two crores seventeen lakhs near about the time move was made to transfer the Plant to the IDC but before the actual transfer.

Argument has then been advanced on behalf of Shri Patnaik that as Shri M. C. Panda is not a Government employee, the State Government cannot build its case upon his affidavits. In this respect I find that the findings on this allegation are based upon documents, and not upon anything derived from the personal knowledge of Shri Panda. I have consequently no hesitation in rejecting the above contention.

Clause 8 of the agreement contemplated the establishment by the IDC of Kalinga Institute of Technology and Designs. The IDC agreed to set apart 2½ per cent of the ex-works cost of all products for the establishment and running of the said Institute. It was also provided that the Institute would be run by a Board of Management with three members, one each of Kalinga Industries, the IDC and the Government of Orissa. A recurring liability was thus undertaken by the IDC for the establishment of an Institute and the Kalinga Industries was given a voice in the management of that Institute without any monetary contribution by the Kalinga Industries. Subsequently, after the act of transfer had been assailed in the Assembly, the Kalinga Industries agreed to forego its right to appoint its nominee on the Board of

Management of the Institute. We are, however, concerned with the actual terms of the agreement in judging the propriety and prudent nature of the transaction and not with what transpired subsequently. Perusal of clause 8 of the Agreement also shows that the main emphasis of the scientific research in the Institute would be on the Low Shaft Furnace Plant. Shri Biju Patnaik in view of the terms of the Agreement dated August 31, 1954 with KO-WE was obviously interested in the establishment of such Plants.

Lastly, it has been argued on behalf of Shri Patnaik that an offer has been made on behalf of Kalinga Industries to take back the Plant from the IDC in case the same is found to be unprofitable. This offer, in my opinion, can hardly be taken seriously. The paid-up capital of Kalinga Industries is about Rs. 42 lakhs, while the Audit Report of 1968 shows that an amount of over rupees seven crores has been spent on this Plant by the IDC. The value of the total assets of Kalinga Industries are just a fraction of the amount already spent on the Plant and it cannot be believed that Kalinga Industries would be able to raise the funds to pay the amount spent by the IDC on the Plant.

The material referred to above shows that the transfer of the Low Shaft Furnace Plant to the IDC has proved to the Corporation a pretty costly venture and not a gift as it was perhaps euphemistically described by Shri Patnaik in his note to the Union Minister of Planning.

During the course of arguments as also at the conclusion of arguments on all the allegations request was made on behalf of Shri Patnaik and the State Government that the Commission should visit Barbil to see the Low Shaft Furnace Plant. It was also represented that the Commission should thereafter visit the bigger steel plant at Rourkela with a view to see the difference in the process of manufacture of pig iron and thus have a complete picture of the matter. Accordingly, I visited Kalinga Iron Works at Barbil on December 29, 1968 and Rourkela Steel Plant on the following day.

Kalinga Iron Works has a sprawling factory covering a wide area. I was informed that it has a permanent strength of 1,000 workers and 30 officers. In addition to the original Low Shaft Furnace, which was transferred by Kalinga Industries, two new furnaces had been installed. Power

generating plant too has been set up. By the side of the power generating plant there stands a huge cylindrical structure for containing water at the lower level and gas at the upper level. The cylindrical structure, intended to produce steam, is linked with the power generating plant and is in a way a part of that plant. A plant for casting molten iron has also been installed beyond the two additional furnaces. Kalinga Iron Works has its internal railway track. A diesel locomotive and a few wagons are used for transport of the materials. The internal railway track is connected with the main railway track which also runs through the land of Kalinga Iron Works at a distance about 200 yards from the factory.

At present the old Low Shaft Furnace Plant only is functioning. The two additional new furnaces have not yet been commissioned. The power plant has likewise not gone into operation. Some of the equipment of the plant, which was detailed at Karachi during Indo-Pakistan conflict, is stated to have been released and received at the plant. Some other equipments have not been received and the claim has been settled by the Insurance Company though at pre-devaluation rate. The plant has started generating a small quantity of power for internal use.

Lack of finance was mentioned to be the reason for not putting into operation the new furnaces. It has been stated that in order to put into operation a furnace there must be in store raw material for at least two months. The reason for that is that a furnace once put into operation has to remain functioning for all the 24 hours of the day and cannot be allowed to cool down. A continuity in the process has to be maintained and it admits of no break.

After the power generating plant goes into operation, the gas released by the furnace, it is stated, would not go waste but would be utilized for the production of electricity.

Attached to the Kalinga Iron Works are residential quarters for the officers and the workers. There are about 400 quarters for the workers. Out of them, about 300 quarters are stated to have been constructed by the IDC after the transfer of the plant.

Molten iron came out of the furnace, in presence of myself and the counsel for the parties, and found its way in furrows of sand in the same way as the irrigation water finds its place in different furrows in a vegetable garden. The slag also flowed into similar furrows of sand on the other side.

Although Kalinga Iron Works by itself presented to some extent an imposing appearance, compared to the big steel plant at Rourkela, it is something modest and tiny. Kalinga Iron Works is also not an integrated plant in the sense that the plant at Rourkela is with its numerous coke ovens and various sections, of colossal size producing steel and steel material. At Rourkela only a small percentage of nut coke is used for the manufacture of pig-iron in the blast furnace while in the Low Shaft Furnace plant the coke used is mostly nut coke and the same, it is stated, is procured from the steel plant at Rourkela. It would, however, not be fair to compare Kalinga Iron Works with Rourkela steel plant wherein the investment is stated to be of the tune of more than Rs. 400 crores.

Whatever might be the controversy about the initial transfer of the Low Shaft Furnace plant by Kalinga Industries to IDC, the impression, I have formed after the visit, is that now that the plant has been acquired by the IDC and the two additional furnaces and the power generating plant have more or less been set up, full use should be made of them in accordance with the opinion of technical and economic experts. In view of the investment of crores of rupees in the plant it may look to be not prudent to keep the new equipment idle and not to derive the maximum benefit out of it. The cloud of controversy should not be allowed to obscure the fact that the plant is now a part of State owned company. It would, however, be for the technical and economic experts to devise the best way of extracting the optimum utility out of the plant.

The second part of the allegation relates to the mining lease in respect of 39,000 acres of land near village Serma Bhadrasahi. It has already been mentioned that on August 19, 1952, the Additional Secretary to the Government of Orissa, Revenue Department, addressed a letter to Shri Patnaik stating that the Government had agreed to grant mining lease to him subject to the finalisation of terms and conditions of the lease in consultation with the Government of India and subject further to the condition that within three years of the State

Government informing Shri Patnaik firmly that hydro-electricity or thermal power would be made available in sufficient quantity, he would put up a complete ferro-alloy plant. Shri Patnaik in his letter, dated August 22, 1952, accepted the condition regarding erection of a ferro-manganese plant at or near Barbil within three years of the firm date of availability of power at or near the site. The relevant parts of those letters have been reproduced earlier.

On an application, dated October 30, 1956, filed by Shri Patnaik the Government of Orissa by its letter dated November 3, 1956, approved the change of the name of the grantee in respect of the four mining concessions from Shri B. Patnaik to Messrs. B. Patnaik Mines Private Limited. This Company, according to affidavit filed on behalf of State Government, was a concern of Shri Patnaik, his family members and employees. On December 8/9, 1959, the Secretary to the Government of Orissa, Mining & Geology Department, addressed a letter to Messrs. B. Patnaik Mines Private Limited in respect of an area of 1,006 acres of land out of the mining area. It was stated in that letter that the Government order granting mining lease in respect of that land had already been sent and the addressee Company should perform the necessary formalities like deposit of money and demarcation of area with a view to execute the mining lease. On July 9, 1960, the Additional District Magistrate of Keonjhar addressed a letter to the Secretary, Mining & Geology Department, saying that Messrs. B. Patnaik Mines Private Limited had been asked to convey in writing willingness to accept the terms and conditions of the model form of the mining lease and observe the other formalities. The said party was stated to have deliberately neglected to get the lease executed within the prescribed period of six months. It was also mentioned that the party had not paid royalty and was not producing accounts in spite of repeated calls. Suggestion was, accordingly, made that the temporary working permission granted to the party might be withdrawn. Messrs. B. Patnaik Mines Private Limited were thereafter asked to vacate the mining area. A writ petition was then filed in the High Court by Messrs. B. Patnaik Mines Private Limited and Shri Patnaik against the State Government. The said writ petition was admitted on December 23, 1960 and an interim injunction was issued restraining the opposite parties, their servants and agents from

interfering with the possession and working of the mines by the petitioners. The writ petition came up for hearing before a Division Bench of the High Court on November 28, 1961 after Shri Patnaik had become Chief Minister. The matter was then compromised, and the order of the High Court in this respect reads as under—

O. J. C. No. 287 OF 1960

B. Patnaik Mines Private Ltd. and another....*Petitioner*

Versus

State of Orissa and others.....*Opposite Parties*

Serial No. of order	Date of Order	Order with signature
1.	28-11-61	Heard both Parties

After the hearing the parties had arrived at certain agreement and accordingly three memos. were filed, one on behalf of the State of Orissa, one on behalf of Messrs. B. Patnaik Mines Private Limited, Petitioner No. 1 and the other on behalf of Mr. B. Patnaik petitioner No. 2.

2. The State of Orissa properly conceded that it was never their intention to refuse execution of the lease both in respect of Manganese for 3,900 acres and Iron ore in respect of 1,006 acres. The State of Orissa is prepared to execute the formal instruments of lease in respect of the areas mentioned above in terms of the approvals as received from the Central Government and such further approval as may be necessary provided the petitioner No. 1 undertakes to pay the royalty in respect of both the leases at the rates prevailing prior to notification No. XVII-MG-9/59-3716-MG., dated the 19th June 1959, provisionally. Petitioner No. 1 also undertakes to pay royalty at higher rates when it is determined in accordance with law and would pay whatever would be payable as arrears of royalty after adjustment of the provisional payment. The State Government also undertakes "not to interfere with the working of the Mines as aforesaid by the petitioner No. 1 till the execution of the formal instruments of lease.

3. Petitioner No. 1 filed a memo. stating that the lease can be granted in favour of petitioner No. 1 if he undertakes to continue to pay the royalty which is being paid at present and also undertakes to pay the royalty at a higher rate if and when it is so adjusted in accordance with law, and would be ready to pay the arrears, if any, in case it is determined that the royalty at a higher rate is lawfully payable for the entire period.

4. Petitioner No. 1 filed another memo. undertaking to pay the royalty in respect of both the leases at the rates prevailing prior to Notification No. XVII-MG.-9/59 MG., dated the 19-6-59 provisionally and also undertakes to pay royalty at a higher rate when determined in accordance with law and to pay whatever would be found payable as arrears of such royalty after adjustment of the provisional payment. We are happy that the State Government have taken the right attitude in this matter.

This agreement filed by the parties concerned completely disposes of the present application. The parties to bear their own costs. The memos. filed by the State Government and the petitioners 1 and 2 will form part of this order.

Sd. G. S. Das

Sd. S. Barman

On January 1, 1961, Shri S. Mohanty, Government Advocate, who had appeared in the High Court on behalf of the Government of Orissa, sent a note about the proceeding in the Court on November 28, 1961. Shri Mohanty in his note mentioned that on December 8, 1960, the petitioner-Company had intimated its acceptance of all the terms and conditions given in the Government's letter, dated the December 8/9, 1959. The Government instead of getting the lease-deed executed served a notice on December 14, 1960 asking the Company to quit and to pay all arrears up-to-date including arrears of royalty amounting to Rs. 6,18,946. Shri Mohanty further stated—

“After hearing both the sides and looking to the correspondence passed between the Government and Shri B. Patnaik and the Co. the Court came to the conclusion that the Government was bound to execute the mining lease after the terms and conditions were accepted by the Company. If the Government did not recognise the Company as a lessee it had no right to collect the royalty from the Company, and treat the unpaid

amount as arrears of royalty from the Company. In this event, I had to state that the Government never intended to refuse to execute the mining lease in favour of the Company but what they wanted is that the Company must pay the royalty at increased rate according to the latest notification of the Government and not according to the calculation of the Company. Thereupon, the Court asked Shri Randeb Choudhury who was appearing for the Company if the Company was willing to pay the royalty at the higher rate to which Shri Choudhury said that he had no objection to pay at higher rate if it is found to be legally payable in the pending writ cases by other mining lessees. In fact, the Court then indicated the forms on which a joint memo. may be filed by the parties but instead of filing a joint memo. I filed a memo., a copy of which is attached to this. Memos. were also filed by the counsel for the petitioners. On receipt of the memos. the Court passed an order and disposed of the case. A copy of the order is attached herewith".

The matter was thereafter considered by Shri D. Sahu, Advocate-General and in his note dated January 2, 1962 he stated that the concession by the Government Advocate was on the basis of unchallengeable documents.

In July, 1962, Messrs. B. Patnaik Private Limited paid the arrears of royalties of about Rs. 6 lakhs as per Government demands. The sanction of the Central Government was, thereafter, obtained by Shri Patnaik who was also Minister of Mines, and a lease-deed was executed on August 29, 1963. The condition of setting up a Ferro-Alloy Plant did not find a mention in the lease-deed. On March 26, 1963, Shri Biren Mitra stated in the Orissa Legislative Assembly that along with the Low Shaft Furnace the mines of Messrs. B. Patnaik Mines Private Limited would also be taken over by the Government. A letter was addressed on July 6, 1964, by Messrs. B. Patnaik Mines Private Limited to the Chief Secretary, Government of Orissa, which reads as under—

"We understand that the Chief Minister of Orissa gave an assurance on the Floor of the House that along with the Low Shaft Furnace of Kalinga Industries Limited the Mines of B. Patnaik Mines Private Limited would also be taken over by the Government of Orissa. I have been instructed to make an offer to the Government of Orissa by the Board of Directors of B. Patnaik Mines Private Limited that we have no objection if the Government would take over B. Patnaik Mines Private Limited as a going concern with all its assets and liabilities as on date.

We are enclosing herewith copy of our Balance-Sheet for the year ending 31st March, 1963 for your records.

The accounts of the Company for the year ending 31st March, 1964 are being audited and we hope the audited Balance-Sheet will be available by the 1st week of September, 1964. If you are interested, please let us know so that we can send for your reference and study a copy of our Balance-Sheet as on 31st March, 1964."

The Orissa Government then asked B. Patnaik Mines Private Limited to send balance-sheet for the year 1963-64. According to the State Government the said balance-sheet was not sent despite repeated reminders, while according to the affidavit of Shri N. Venkataraman, Secretary of B. Patnaik Mines Private Limited, the said balance-sheet was supplied and the reminders sent by the Government were not received. Messrs B. Patnaik Mines Private Limited have consequently continued to be the lessee of the mining area in question.

In respect of the second part of the allegation, three contentions have been advanced on behalf of the State Government and they relate to :

- (i) the propriety of the compromise in the High Court on November 28, 1961,
- (ii) the omission of the condition relating to the setting up of the Ferro Alloy Plant in the lease-deed executed on August 23, 1963, and
- (iii) the retention of the mining lease land by B. Patnaik Mines (P.) Limited, even though the Low Shaft Furnace had been transferred to the I.D.C.

I shall deal with these matters seriatim.

So far as the propriety of the compromise is concerned I find that the note of the Government Advocate, who appeared on behalf of the State Government in the High Court on November 28, 1961 shows that the Court came to the conclusion, after hearing both the parties and looking at the correspondence, that the Government was bound to execute the mining lease after the terms and conditions had been accepted by the Company. The Court also took the view that if the Government did not recognize the Company as a lessee it had no right to collect the royalty from the Company and treat the unpaid amount as arrears of royalty. It was, according to the Government Advocate, in these circumstances that he had to state that the Government never

intended to refuse to execute the mining lease in favour of the Company, but what the Government wanted was that the Company must pay the royalty at increased rate according to the latest notification of the Government. The Court thereafter asked the counsel for the Company if the Company was willing to pay the royalty at the higher rate. The counsel for the Company thereupon replied that he had no objection to pay the royalty at higher rate if it was found to be legally payable. The Court thereupon passed the order on the basis of the concessions made by the Government Advocate and the counsel for the Company. The note of the Advocate-General finds corroboration from the order of the High Court wherein the learned Judges of the Division Bench observed :

“The State of Orissa properly conceded that it was never their intention to refuse execution of the lease.”

It was further observed in that order :

“We are happy that the State Government have taken the right attitude in this matter.”

It would follow from the above that the learned Judges of the High Court put their stamp of approval on the compromise and considered its terms to be proper. The writ petition, in which there was a compromise, had been filed not during the time when Shri Patnaik was a Chief Minister but earlier. Its disposal in accordance with what was suggested by the Division Bench of the High Court would go to show that it was without any pressure of influence by Shri Patnaik. I may state that a compromise between the Chief Minister and the State Government in a case in a Court of Law would *Prima facie* be regarded as something suspicious to be looked upon with distrust and as such calling for close scrutiny. I have applied this test and given the matter my earnest consideration, and am of the opinion that in view of all the circumstances, especially the observations of the learned Judges of the High Court, the compromise cannot be held to be the result of any impropriety by Shri Patnaik.

So far as the second contention is concerned about the omission of the clause in the lease-deed relating to the setting up of a Ferro-Alloy Plant, Shri Patnaik has not disputed that the condition about the setting up of that Plant was accepted by him in 1952. According, however, to Shri Patnaik, the Low Shaft Furnace that was established at Barbil by Kalinga

Industries is capable of producing medium grade Ferro Manganese. Further, according to Shri Patnaik, the departmental notings show that between 1952 when the condition to establish Ferro-Alloy Plant was stipulated and the time when the draft lease-deed was prepared, major changes had occurred in the Government industrial policy. It is stated that a Ferro Manganese Plant at Joda—5 miles away from Barbil had already been licensed by the Government of India and duly established by Tatas. There was no scope for another Plant in the same region. Reliance on behalf of Shri Patnaik has been placed upon the letter, dated December 8/9, 1959, which was addressed by the Secretary, Mining and Geology Department, to B. Patnaik Mines Private Limited. In this letter all the conditions, subject to which the mining lease was being granted, were enumerated.

I have given the matter my consideration and am of the view that the contention advanced on behalf of Shri Patnaik that the Government of Orissa in December, 1959 was not insisting upon the condition for the setting up of a Ferro-Alloy Plant, is not bereft of force. The letter, dated December 8/9, 1959 referred to above gives the details of ten conditions in addition to the general conditions subject to which the mining lease was to be granted in favour of B. Patnaik Mines Private Limited. It was further mentioned that if the addressee Company accepted the conditions given in the letter and performed the other formalities like deposit of money and submission of plan, the draft mining lease deed would be issued for execution. No condition about the setting up of a Ferro-Alloy Plant was mentioned in the letter. The omission of such a condition in the above letter would necessarily go to show that in December, 1959 the Government of Orissa was not insisting upon the condition in the lease-deed regarding the establishment of a Ferro-Alloy Plant. The question as to what was the reason which weighed with the Government for not insisting upon the condition about the setting up of a Ferro-Alloy Plant, whether it was change of industrial policy or the setting up of the Ferro-Manganese Plant at Joda by Tatas or the installation of the Low Shaft Furnace Plant at Barbil, or whether it was due to sheer oversight or some other cause, need not be gone into because the fact all the same remains that the Government did not insist upon the insertion of the said condition in the lease-deed which was to be executed in pursuance of the above letter. The above letter had been sent to B. Patnaik Mines Private Limited long before

Shri Patnaik became the Chief Minister. In view of the fact that the above letter contained no condition regarding the setting up a Ferro-Alloy Plant, the omission of a clause embodying that condition in the lease-deed executed after the compromise in the High Court, would not go to show any impropriety on the part of Shri Patnaik.

I may state that though the letter dated December 8/9, 1959 related to 1006 acres of land, at the time of argument it has been taken that whatever be the decision in respect of that area of land would hold equally good in respect of the remaining land.

So far as the third contention about the retention of the mining area by B. Patnaik Mines Private Limited is concerned, I find that after the Low Shaft Furnace Plant had been taken over by the I.D.C., question arose as to whether B. Patnaik Mines Private Limited could retain the mining area. This question arose because the Low Shaft Furnace Plant and the lease of the mining area were taken to be linked together. The matter was agitated in the Orissa Legislative Assembly on March 20, 1963. Shri Biren Mitra, Deputy Chief Minister, in the absence of Shri Patnaik, who had gone abroad, stated in answer to a question relating to the mining area and the Low Shaft Furnace Plant as under :—

“The book value of the Plant is 70 lakhs, but the market value is 125 Lakhs, because we have calculated the depreciation. They have got some mines. Certainly it will go back to Government. There is no question of paying any compensation to the Company. It will be handed over as it is.”

The matter was again agitated in the Orissa Legislative Assembly on September 2, 1963. Shri Patnaik then stated that there was no clause that the mines would be taken over by the Government. In answer to a further question Shri Patnaik stated—

“It was originally a condition laid down in 1952 that the mines were granted on the basis of industries to come up. The industry has come up. The condition has been fulfilled. Whether the mines will be transferred or not, depends on the mining company. It is possible they might transfer it. It is between the Corporation and the Mining Company to come to an arrangement.”

It would follow from the above that Shri Patnaik accepted the position that the Low Shaft Furnace Plant was linked with the lease of mining area. On July 6, 1964 the letter reproduced

earlier was addressed by B. Patnaik Mines Private Limited to the Chief Secretary, Government of Orissa, making an offer of the mines for being taken over by the Government with all the assets and liabilities. The balance-sheet of the Company for the year ending March 31, 1963 was sent with that letter and it was stated that the balance-sheet for the year ending March 31, 1964 could be sent if required. The balance sheets for the years 1964 and 1965, according to the affidavit of Shri Venkataraman, were subsequently sent to the Government. According to the Government file, those balance-sheets were not sent in spite of repeated reminders. In this respect I am of the view that if the Government at that time was serious to take over the mines and the only difficulty was the absence of response to the Government's letters asking for the balance-sheets for two years, the Government could have sent a registered letter to B. Patnaik Mines Private Limited asking for those balance-sheets. In the alternative, the copies of those balance-sheets could have been obtained from the office of the Registrar of Companies. The fact that these obvious steps were not taken would go to show that no serious effort was made or earnest action taken for the transfer of the mining area to the Government. The further fact that B. Patnaik Mines Private Limited sent no reply to repeated Government letters, which should in normal course of events have been received by that Company, would lead to the inference that the Company was reluctant to part with the mining area. As a consequence of the above, the mining area has remained with B. Patnaik Mines Private Limited, and the I. D. C. would have to purchase the iron ore from the above Company for the production of pig iron. The whole thing, i. e., the letter dated July 6, 1964 and the subsequent correspondence, give the impression that the offer contained in the letter of July 6, 1964 was only a make-believe piece of evidence created in view of the statements of Shri Patnaik and Shri Mitra in the Assembly and there was no genuine intention to treat that offer seriously and act upon it.

The position, as it emerges in the final analysis, is that Shri Patnaik was able to get rid of and pass on to the I. D. C. the Low Shaft Furnace Plant, which in his own words was uneconomical, and retain for his Company the mining lease, for the retention of which he was so keen that he had to file a writ petition in the High Court, even though the mining lease and the Low Shaft Furnace Plant were admitted by him to be linked together,

The State Government in the particulars of allegations has stated:

"That the aforesaid two transactions would show that Shri Patnaik has put the State of Orissa to a huge loss of about Rs. 11 crores in the deal of Low Shaft Furnace and to the extent of another Rs. 10 crores by illegally exploiting the mines and appropriating his (sic) resources."

Although I am of the view that the above figures are highly exaggerated and inflated out of all proportion, on the material on record it is not possible to assess the extent of loss suffered by the State Government.

So far as Shri Biren Mitra is concerned, the only part attributed to him is that on March 16, 1963 he in the absence of Shri Patnaik who had gone abroad, gave approval to the purchase of Low Shaft Furnace Plant by the I. D. C. As pointed out earlier, this act of Shri Mitra was a mere formality, as Shri Patnaik as Chief Minister, had already committed himself in writing to the transfer of the Plant and the whole thing was being done at his instance.

As regards Shri Jagannath Rao, I find that there is not even the slightest evidence that he did anything improper in the impugned transactions. All that has been brought on the record is that he holds 0.25% shares of the paidup capital of Kalinga Industries and that he inherited the same from his father.

My findings in respect of the different matters relating to this allegation are as under—

- (1) Kalinga Industries had been started by Shri Patnaik. The members of his family had great interest in that Company. After Shri Patnaik became Chief Minister, his wife became the Chairman of the said Company.
- (2) Low Shaft Furnace Plant was installed by Shri Patnaik in 1959 as a wing of Kalinga Industries after he had accepted on August 22, 1952 the condition of setting up a Ferro Manganese Plant at Barbil, which had been stipulated by the State Government, when it

agreed to grant mining lease of 3,900 acres of land to him, subject to finalization of terms and conditions in consultation with the Central Government.

- (3) Although initially Shri Patnaik was shown to be the grantee of mining rights, subsequently in October or November 1956, he showed with the consent of the Government his private company, B. Patnaik Mines Private Limited to be the grantee of those rights.
- (4) Before the setting up of the Low Shaft Furnace Plant the Industrial Adviser of Orissa in his note dated November 3, 1954 and the Secretary of Industries Department in his note dated October 24, 1957 expressed doubts regarding the proposed Plant being commercially economical.
- (5) Within a few months of the installation of the Plant, Shri Patnaik in a letter dated February 13, 1960 to the Secretary, Ministry of Commerce and Industry, stated that unless more furnaces were put up and the overhead expenses distributed over a larger production, it would be uneconomical to run the Plant.
- (6) In representation dated June 30, 1960 to the Prime Minister, Shri Patnaik stated that the Plant could not be economical venture when compared to the cost of production in the bigger steel plants. He also pleaded for the expansion of the plant and requested that the plant might be taken over by the Central Government or be run by a Corporation with the Government having majority of shares. It was further mentioned that unless some such rational approach was made his effort, which was the first of its kind in India, to make iron by using nut coke will "remain economically unsound and become a national waste."
- (7) There was no favourable response to the request of Shri Patnaik to the Prime Minister for taking over the Plant by the Central Government.

- (8) The cost of expansion of the Plant in the form of having two additional furnaces was estimated by Shri Patnaik in his application dated February 13, 1960 to be Rs. 1 crore out of which Rs. 40 lakhs were to be spent on foreign imports.
- (9) Near about the time move was made to transfer the Plant to the IDC, Kalinga Industries revised the cost for setting up the two additional furnaces to Rs. 2, 17,06,000. The total cost of expansion which comprised two additional furnaces, a power house and cast iron spun pipes plant was mentioned to be about Rs. 5 crores out of which Rs. 2.18 crores were to be spent on imports.
- (10) Kalinga Industries was not in a position to meet the cost of expansion.
- (11) As regards the credit of Kalinga Industries in financial market, the material on record shows that in 1958 when the Company wanted to take loan of Rs. 25 lakhs from Indian Overseas Bank on security of its fixed assets, it could do so after the State Government had stood guarantee on its behalf, Kalinga Industries had to pay interest to the State Government for the guarantee in addition to interest to the creditor bank. Part of the loan amount was still due to the Bank when the Low Shaft Furnace Plant was transferred to the IDC.
- (12) Low Shaft Furnace Plant in 1963 needed repairs which were to cost more than Rs. 2 lakhs. The repairs would have also resulted in shuttingdown of the Plant for some months.
- (13) Faced with the above situation, Shri Patnaik, who occupied the office of the Chief Minister, Orissa, took the initiative in January and February, 1963 for the transfer of the Low Shaft Furnace Plant to the IDC.
- (14) IDC was owned by the Government of Orissa and its Directors were the employees of the State Government.

- (15) Two firms of auditors were appointed for finding the depreciated book value of the block assets and the value of raw materials, spare parts and finished products of the Low Shaft Furnace Plant.
- (16) The auditors selected were those who were previously associated with Kalinga Industries and its sister Company Kalinga Tubes. Both the above companies had been started by Shri Patnaik.
- (17) In finding depreciated book value of the fixed assets, the auditors accepted without further verification an amount of Rs. 10,60,033 which represented revenue expenditure and had been included in the value of fixed assets.
- (18) No technical evaluation of the Plant was made.
- (19) Although in the agreement of sale it was stated that the sale consideration would be paid out of the profits, the work 'profits' was not defined in spite of the note of Secretary, Planning & Co-ordination Department. Different interpretations were put on that word. The material on record is susceptible of the inference that the omission to define "profits" was deliberate so that there might be no difficulty to pay sale consideration at an early date to Kalinga Industries.
- (20) Orders for an amount of Rs. 2.18 crores were placed with four German firms by Kalinga Industries on March 1, 1963 for the expansion of the Plant without consulting the IDC, even though before that date it had been decided to transfer the Plant to the IDC. It was taken for granted that the IDC would act as a rubber stamp and sign on the dotted lines on what was done by Kalinga Industries.
- (21) Kalinga Otto (P) Limited, a Company in which the member of Shri Patnaik's family hold most of the shares, was under the terms of transfer appointed technical consultant for the expansion of the Low Shaft Furnace Plant on a remuneration of Rs. 15,50,000.

- (22) Shri Balan, General Secretary of Kalinga Industries, was taken on the Board of Directors of IDC and was made Director Incharge of the Low Shaft Furnace Plant.
- (23) The estimated cost went up to Rs. 911 lakhs, as against the original figure of Rs. 500 lakhs for expansion and Rs. 570 lakhs for total investment during the time Kalinga Otto (P) Limited was in charge of the expansion as technical consultant and Shri Balan was Director Incharge of the Plant.
- (24) The material on the record shows that the transfer of the Low Shaft Furnace Plant to the IDC has proved to the Corporation a pretty costly venture and not a gift as it was described by Shri Patnaik in his note dated March 6, 1963 to the Union Minister of Planning.
- (25) The IDC agreed under the terms of transfer to set apart 2½ per cent of ex-works cost of all products for setting up Kalinga Institute of Technology and Designs. Kalinga Industries was to appoint one of the three members of Board of Management of the Institute though subsequently Kalinga Industries gave up this right. The main emphasis of the scientific research in the Institute would be Low Shaft Furnace Plants. Shri Patnaik was interested in establishment of such plants as that secured him royalty in accordance with the agreement dated August 31, 1954 with KO-WE.
- (26) Although Shri Mitra stated in the Assembly that it would take 12 years to pay the full sale consideration to Kalinga Industries, Kalinga Industries within three years of the transfer started clamouring for payment of full consideration and in the alternative for interest on the balance amount. Apart from a small amount of about a lakh of rupees the whole of the balance of consideration was paid to Kalinga Industries in 1966.
- (27) The mines, on account of which the Plant was set up, have been retained by B. Patnaik Mines Private limited. The offer made on July 6, 1960 on behalf

of B. Patnaik Mines Private Limited to the Orissa Government to take back the mines was not intended to be taken and was in fact not taken seriously.

- (28) Likewise, the offer made by the Kalinga Industries on April 11, 1966 to take back the Low Shaft Furnace Plant cannot be taken seriously.
- (29) The compromise in the writ petition filed by Shri Patnaik in the High Court for retention of the Mining Area was not vitiated by any impropriety.
- (30) The omission of clause about setting up of a Ferro-Alloy Plant in the lease-deed executed subsequent to the compromise was also not vitiated by any impropriety.
- (31) The position, as it emerges in the final analysis, is that Shri Patnaik was able to get rid of and sell to the IDC the Low Shaft Furnace Plant, which in his own words was uneconomical, and retain for his Company the mining lease, for the retention of which he was so keen that he had to file a writ petition in the High Court, even though the Low Shaft Furnace Plant and the mining lease were admitted by him to be linked together.
- (32) It is not possible on record to estimate the loss suffered by the State Government in the impugned transactions, although it can be said that the figure of Rs. 21 crores given by the State Government is inflated out of all proportion.
- (33) The only part attributed to Shri Mitra is that he gave approval to the acquisition of the Plant by IDC in absence of Shri Patnaik who had gone abroad. This was a mere formality as Shri Patnaik was already committed as Chief Minister in writing to the transfer of the Plant to the IDC.
- (34) There is not even the remotest evidence suggesting an impropriety by Shri Jagannath Rao in the impugned transactions.

CHAPTER 21
ALLEGATION No. 2
re :

Purchase of Tubular Trusses from Kalinga Industries Ltd.

Allegation No. 2 relates to the purchase of tubular trusses from Kalinga Industries Ltd., The respondent named in this allegation is Shri Patnaik.

According to the case set up by the State Government in the particulars of allegations, iron pipes are manufactured by Kalinga Tubes Ltd., which is a concern established by Shri Patnaik. Subsequently, he wanted black iron pipes, a waste product of the factory, for the manufacture of tubular trusses so that they could be used in place of angular trusses. The utility of such tubular trusses is doubtful, since the steel with which the tubes are prepared, unless galvanised, does not last long like the steel angles which are generally used for trusses. As there was not much market demand for tubular trusses, Shri Patnaik wanted to push the same on to Orissa Government.

Shri Patnaik, it is further stated, was the Chairman of the Board of Directors of Kalinga Industries Ltd., which concern too had been started by him. In 1959 Shri Patnaik wanted to supply tubular trusses for construction of cattlesheds. Kalinga Industries Ltd., then quoted the price of Rs. 1,015 for a prefabricated tubular truss of 30 feet span. After the Orissa Government had made some further inquiry from other dealers, the Kalinga Industries Ltd., indicated a rate of Rs. 946.50 paise for a 30 feet span truss. The supplies in 1959 and 1960 of tubular trusses by Kalinga Industries Ltd., were small. In 1961 when Shri Patnaik became the Chief Minister and his wife became the Chairman of Kalinga Industries, it is stated, he planned misappropriation of the State funds by pushing on tubular trusses to all the departments of the Government at exorbitantly high prices without any necessity for the purchase and use of the same.

Although Kalinga Industries Ltd., was a large-scale industry selling articles worth millions of rupees in the market, it was declared a small-scale industry and was registered as such. The registration was renewed every year till 1964. In order to facilitate sale of the material of Kalinga Industries, it is stated on August 31, 1961 the Industries Department, which was then under Shri Patnaik, issued a

directive that small-scale industries established within the State should be given a price preference.

On November 8, 1961, Shri Patnaik observed on a file of the Finance Department that the departments of Government when making purchases should not try to save the sales tax as it upset the treasury calculations. This was followed by a circular stating that the purchases of vehicles, stores and other materials by the departments and other organizations in which the Government had financial interest should be made only through local dealers and no attempt should be made to avoid the State sales tax on any account. In case there were no local dealers or it was otherwise found absolutely necessary to place direct orders with firms outside the State, prior concurrence of the Finance Department should be taken. Any deviation from the instructions, it was added, would make the Officer liable for the loss of sales tax. The above circular was criticised by the Chief Secretary and some others on the ground that it completely negated the principle that the purchase should be made at the lowest price obtainable.

On November 28, 1963, it is stated, another circular was issued by the Finance Department that before receiving the goods, 90 per cent advance could be given to the person with whom the order was placed. It was also mentioned that firms outside the State to which advance might be given should be on the approved list of the Director-General of Supplies and Disposals but the firms inside the State might be given such advance if the administrative department was satisfied that the firm was reliable. It was further stated that necessary security be taken from the firm by way of Bank guarantee or otherwise for the purpose of the contract and an agreement should also be executed to safeguard the Government interest against loss. The above direction was given even though the Orissa Treasury Code provided that advance payments for supplies were not permissible unless stores had been received and surveyed. The previous rules also provided that no orders for supplies should be placed without a written agreement, due publicity should be given about the requirements, tenders should be invited and lowest tenders be accepted. The rules also enjoined upon the competent authorities to inspect and confirm the specifications.

After Shri Patnaik became the Chief Minister, it is stated, an attempt was made to practically cover the whole of the State with tubular trusses at Government cost. Tubular trusses of 20 feet span were supplied at a cost of Rs. 3,000 or

more even though their price, according to the earlier quotation of Rs. 946.50 Paise for tubular trusses of 30 feet span, should have been Rs. 650. Orders flowed for the trusses from all the departments of the Government without any tender or written agreement. 90 per cent advance was paid along with each order or shortly thereafter. The trusses were purchased from Kalinga Industries even when there was no necessity of the same. Some of the trusses are stated to be lying in heaps in the open air till today. The details of the purchase of those trusses are given in the allegation. Tubular trusses of the total value of Rs. 77,91,217.41 Paise were purchased. The break up of purchases by different departments was as under—

	Rs.	P.
1. Paradeep Port	..	19,03,120.20
2. L. S.-G. Department	..	18,86,000.00
3. Orissa Mining Corporation	..	16,05,250.00
4. Works Department (Roads & Buildings)	..	9,11,437.43
5. Expressway	..	4,09,385.30
6. Director of Agriculture	..	2,76,999.20
7. Engineer-in-Chief, Electrical Projects	..	2,15,000.00
8. Balimela Dam Project	..	1,31,507.40
9. Public Health Engineering Department	..	96,600.35
10. National Highway	..	75,241.00
11. Forest Department	..	62,706.75
12. Works Department (Irrigation)	..	73,510.80
13. Rural Engineering Organisation	..	62,300.00
14. Electricity Department	..	46,486.00
15. Industries Department	..	17,991.00
16. Board of Revenue	..	17,689.98
Total	..	77,91,217.41

Item No. 2 in the above statement related to trusses of the value of Rs. 18,86,000 which were purchased from Kalinga Industries Ltd., by the Local Self-Government Department for construction of tenements in rehabilitation colonies for Koraput and Sambalpur districts. The East Pakistan refugees were expected in these colonies in April, 1964, and for this

purpose about 4,000 tenements had to be constructed. Tender notices were issued for purchase of tubular structures on the March 21, 1964, and March 31, 1964 was fixed as the date for receiving quotations. Notices were issued to some individual concerns, and they were also got published in newspapers. Only ten days' time was given for publication even though the goods purchased were to be worth about Rs. 19 lakhs. The tender of Kalinga Industries Ltd., was accepted even though the quotations of another concern, namely, Hirakud Works was slightly cheaper. Orders were placed with Kalinga Industries Ltd., for supply of 500 units at a cost Rs. 3,200 per unit with directions to effect delivery within thirty days. Subsequently, the orders were modified and revised. On April 8, 1964 an order was issued for 563 units at a cost of Rs. 3,593 per units. An advance of Rs. 9,43,000 was paid to Kalinga Industries Ltd. after drawing the same out of the amount of Rs. 35 lakhs taken from the contingency fund of the State. No guarantee was obtained from the Kalinga Industries Ltd., before advance was paid and no penalty was imposed even though there was delay in delivery of the goods. Out of the 563 trusses, which were purchased, 65 were stated to be surplus.

According to the State Government, the price charged for the trusses by the Kalinga Industries Ltd., was exorbitant and a truss, the price of which was quoted as Rs. 946.50 Paise in 1959, was sold for Rs. 3,593 in 1964 even though the cost of iron during these years remained practically the same except for slight variation. The price charged for trusses supplied to the various departments, it is stated, was five times the proper price of those trusses.

In support of the above allegations, the State Government has filed the affidavit of Deputy Superintendent of Police, Hari Har Das (Vigilance), and Shri B. K. Panigrahi, Assistant Inspector-General of Police (Vigilance).

The case of Shri Patnaik, as it emerges out of his affidavit, may be briefly stated at this stage. According to him the Company, Kalinga Industries Ltd., has a paid-up capital of about Rs. 42 lakhs in which the State Government at the relevant period had much larger financial interest than that of the members of the family of Shri Patnaik. When Shri Patnaik assumed office he liquidated his shares, thus reducing the share holding of his family from 20 per cent to 5 per cent while the State Government continued to hold 7 per cent shares, apart from a guarantee given on behalf of the

Company for Rs. 25 lakhs. Shri Patnaik had ceased to be Chief Minister before November 28, 1968 when the circular of that date was issued. It is further stated that Kalinga Industries neither asked for nor received any advance from the Government after the issue of the said circular except in the case of the Health (L.S.-G.) Department order. In that case, an open tender had been called and the Company stipulated payment of advance as one of the condition of its offer. The policy of payment of advance to Kalinga Industries, it is added, was approved and implemented by the Government in 1959 and this was being followed whenever the Company stipulated payment of advance as one of its terms of supply. As regards the purchase of tubular structures from Kalinga Industries, it is stated, the matter had been thoroughly examined at all levels in the Government and the arrangement was concluded on merits alone. Supplies of tubular trusses to the State Government were made at the approved and accepted rates which were negotiated and settled by the Government in 1959 and the price was not altered in spite of the fact that the price of the raw material and labour cost had gone up considerably from year to year. Shri Patnaik adds that he never used his influence or authority for any purchase made by any Department of the Government from Kalinga Industries or any other concern that the cost of the State. The allegation that the Government suffered any loss as a result of the purchase of the trusses has been denied. On the contrary, it is stated that the Government benefited by making the purchases from the Company at 1959 prices, while the prices in fact had risen from 15 to 25 per cent, as would be evident from the offer received by the Government from the other major producer Stewarts and Lloyds, which is a Tata Combine. Affidavits of Shri Sahu and Shri V. S. S. Mani, Secretary of Kalinga Industries Ltd., have also been filed in respect of this allegation.

Supplementary affidavit of D. S. P. Harihar Das has been filed regarding this allegation on behalf of the State Government. On behalf of Shri Patnaik, supplementary affidavits have been filed by Shri Patnaik himself and Shri V. S. S. Mani.

Before dealing with the impugned transactions it would be pertinent to refer to the different Financial Rules and Circulars which laid down the purchase policy of the State Government.

The Orissa General Financial Rules came into force on April 1, 1959. Rule 18 of those Rules gives the general principles for guidance of the authorities entering into contracts or agreements involving expenditure from Consolidated fund and provides:

- (i) The terms of a contract must be precise and definite and there must be no room for ambiguity or misconstruction therein.
- (ii) As far as possible, legal and financial advice should be taken in the drafting of contracts and before they are finally entered into.
- (iii) Standard forms of contracts should be adopted, wherever possible, the terms to be subject to adequate prior scrutiny.
- (iv) The terms of a contract once entered into should not be materially varied without the previous consent of the authority competent to enter into the contract as so varied. No payments to contractors by way of compensation or otherwise, outside the strict terms of the contract or in excess of the contract rates may be authorised without the previous approval of the Finance Department.
- (v) No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the Finance Department.
- (vi) Whenever practical and advantageous, contracts should be placed only after tenders have been openly invited and, in cases where the lowest tender is not accepted reasons should be recorded. Nor such reason need be given for tenders below Rs. 500.
- (vii) In selecting the tender to be accepted, the financial status of the individuals and firms tendering must be taken into consideration in addition to all other relevant factors.
- (viii) Even in case where a formal written contract is not made, no order for supplies, etc. should be placed without at least a written agreement as to the place.

- (ix) Provision must be made in contracts for safeguarding Government property entrusted to a contractor.
- (x) When a contract is likely to endure for a period of more than 5 years, it should, whenever feasible, include a provision for an unconditional power of revocation or cancellation by Government at any time on the expiry of six months' notice to that effect."

Chapter 8 of the rules lays emphasis on the encouragement for the development of industries of the Indian Union to the greatest possible extent consistent with economy and efficiency. In order to give effect to this policy it was provided that preference in making purchases should be given in the following order :—

"Firstly, to articles which are produced in the Indian Union in the form of raw materials, or are manufactured in the Indian Union from raw materials produced in the said Union, provided that the quality is sufficiently good for the purpose.

Similarly and on the same condition preference will be given to articles produced or manufactured in Orissa over those produced in any other State of the Indian Union.

Secondly, to articles wholly or partly manufactured in the Indian Union from imported materials provided the quality is sufficiently good for the purpose.

Similarly, and on the same condition preference will be given to articles manufactured in Orissa from imported materials over those so manufactured in other States of the Indian Union.

Thirdly, to articles of foreign manufacture held in stock in the Indian Union provided they are of suitable type and requisite quality.

Fourthly, to articles manufactured abroad which need to be specially imported."

It was further stated :

"Purchasing Officers shall allow preference in respect of price to articles produced or manufactured in the Indian Union either wholly or in part. The degree of preference allowed shall generally extend up to 15 per cent of the price of the imported articles of similar quality. But in respect of classes of stores specified by the Government of India, Ministry of Commerce and Consumer Industries (Deve. Wing), price preference up to 25 per cent shall be allowed.

Notwithstanding anything stated in the aforementioned paragraphs cottage industry products and handicraft goods, particularly those made within the State of Orissa should be preferred in meeting all requirements of stores for the state service and price preference up to 15 per cent may be allowed in favour of cottage industry and handicraft goods over those of mill-made or factory-made goods."

Following further provisions were incorporated in the rules:—

- (a) Except in the case of articles manufactured abroad, which need to be specially imported and for which indents are placed on the Director-General of Supplies and Disposals, all articles purchased by the State service shall be purchased on the condition that delivery would be made in Orissa for payment in rupees.
- (b) Tenders should be invited in the Indian Union for the supply of all articles of a value not exceeding Rs. 1,000 unless there are sufficient reasons to be recorded which indicate that it is not in public interest to call for tenders.
- (c) All articles shall be subject to inspection before acceptance and articles for which specifications have been prescribed shall be required to conform to such specifications.
- (d) Important Plant machinery and iron & steel works shall ordinarily be obtained from the firms approved by the Director-General of Supplies & Disposals, New Delhi, and specified in the lists mentioned by him.
- (e) Purchase by one department from the other shall be permissible.
- (f) Indents or articles manufactured abroad, which need to be specially imported, should be placed on the Director-General of Supplies & Disposals, who shall transfer such indents to the Director-General, India Store Department, London, or India Supply Mission, Washington. Articles so purchased shall be subject to inspection or test or both by the purchasing agencies of the Government of India abroad.

- (g) Government may sanction departure from the Rules in particular cases, where it is shown that such departure is in the interest of the State. Applications for sanction in such cases should be made to the administrative departments concerned who will issue the order after taking the advice of the Commerce Department.

In case where the Public Works Department executes works administratively approved by other departments, applications for any departure from the Rules should be made to the Public Works Department who will issue the orders without any reference to the administrative department concerned with the concurrence of the Commerce Department.

- (h) Purchases must be made in the most economical manner in accordance with the definite requirements of the public service. Stores should not be purchased in small quantities. Periodical indents should be prepared and as many articles as possible obtained by means of such indents. At the same time, care should be taken not to purchase stores much in advance of actual requirements, if such purchase is likely to prove unprofitable to Government.
- (i) Where scales of consumption or limits of stores have been laid down by competent authority, the officer ordering a supply should certify on the purchase order that the prescribed scales or limits are not exceeded.
- (j) Purchase orders should not be split up in order to avoid the necessity for obtaining the sanction of higher authority required with reference to the total amount of the orders.

Some of the important instructions relating to the invitation of tenders, acceptance of contracts for purchase of stores, as contained in Orissa Public Works Department Code and Orissa Government Financial Rules, were as under—

- “(i) When the cost of tenders exceeds Rs. 10,000 advertisement should be inserted in the *Orissa Gazette* and should also be published in Newspapers through Public Relations Department. For works of an estimated amount of Rupees one lakh or more, advertisement should appear in the Calcutta Edition of ‘The Statesman’ The Hindu ‘Madras’.

- (ii) All the notices calling for tenders should be in the standard form and issued only after the authority competent to accept the tender has approved the tender documents.

The following time-limits between the date of issue of notice inviting tenders and receiving them should ordinarily be allowed (Subject to variation at the discretion of competent authority).

- “(a) 15 days in case of tender up to Rs. 5,000.
- (b) 30 days in case of works cost of which exceeds Rs. 5,000.
- (c) If for any reason, tenders cannot be opened on due date, the intending tenderers should be informed about the new date and time when the tenders will be opened.
- (iii) A complete comparative statement of all tenders should be drawn up in the office of the officer calling for the tenders, duly written up, checked by the Divisional Accountant and put up to the competent authority for order.
- (iv) The reasons for accepting the tender which is not the lowest or rejecting of tenders should be invariably recorded [Rule 18 (vi) O. G. F. R. S.].
- (v) There should be a written agreement and the tenders of the contract must be precise and definite [Rule 18 (vii) *ibid.*].
- (vi) In selecting the tenders, the financial status of the individuals and firms tendering must be taken into consideration in addition to other factors, if any [Rule 18(vii) O. G. F. R. S.]
- (vii) No officer should be deputed to take delivery of the articles from the firm at its own place. It should be the responsibility of the supplying firm to give proper delivery of the articles at the destination station [G. O. 8800 (56)-F., dated the 19th April 1954].”

According to State Government's order in the Works Department, dated August 5, 1959, no contract of Rs. 10 lakhs and above either for supply of stores or for works shall be entered into without the prior approval of the Government which would be accorded only after the relevant documents are submitted to a committee consisting of Secretaries, Finance, Law and Works Departments for their scrutiny. Subject to this basic principle, powers are given to the different categories of Officers of the Public Works Departments. Under para. 292 of the Orissa Public Works Department Code, an officer of the Public Works Department (including Public Health Engineering Branch) may accept a tender for a work up to the amount

of which he is authorised to accord technical sanction. The powers of the various Engineers for according technical sanction are as follows :—

(1) Chief Engineer	..	Full power
		Rs.
(2) Superintending Engineer	..	1,00,000
(3) Public Health Engineer	..	1,00,000
(4) Public Health Executive Engineer.		10,000
(5) Other Executive Engineers	..	30,000

These limits also govern thus the power of the purchase of stores by the Engineers.

Rule 9 of the Rules lays down that every officer in incurring or authorising expenditure from public money or stores shall be guided by high standards of financial propriety. Emphasis has been laid, *inter alia*, upon the following matters :—

- “(i) Every Public Officer is expected to exercise the same Vigilance in respect of expenditure incurred from public money as a person of ordinary prudence would exercise in respect of expenditure of his own money.
- (ii) The expenditure should not be *prima facie* more than the occasion demands.
- (iii) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- (iv) Public money should not be utilised for the benefit of a particular person or section of the community unless ;
 - (1) the amount of expenditure involved is insignificant,
 - or
 - (2) a claim for the amount could be enforced in a court of law,
 - or
 - (3) the expenditure is in pursuance of a recognised policy or custom.

- (v) The amount of allowances granted to meet expenditure of a particular type should be so regulated that the allowances are not on the whole a source of profit to the recipients."

Such was the position of Rules before Shri Patnaik assumed office on June 23, 1961.

On August 31, 1961, the Industries Department of the Government of Orissa published a resolution in respect of the grant of price preference to the products of small-scale industries established within the State. It was mentioned in the resolution that under Rule 16 of the Store Purchase Rules published on September 30, 1958, it had already been ordered that the price preference to the extent of 15 per cent should be given to the cottage industries established within the State, in making purchases for the Government. The Government according to the resolution, had decided that for the establishment of small-scale industries in the State, a price preference to the products of such industries should also be allowed in Government purchases. The salient features of the decision were :

- “(i) Price preference to certain specified goods including cast iron wares ranging from 10 to 15 per cent.
- (ii) The price preference be confined to Small-Scale Industries Units registered with the Director of Industries, Orissa.
- (iii) Price preference will be admissible not only when manufacturing units tender for supply of goods to the Government, but also when authorised agents of the manufacturing units or their distributors tender for such supplies.”

The maximum price preference for cast iron wares, where machinery, etc., were not necessary, was specified to be 10 per cent. A further clarification was issued in a memorandum by the Industries Department on September 4, 1961, to all heads of departments. In that memorandum the order of preference, when the same article was produced in the Cottage and Village Industries, Small-Scale Industries and Large-Scale Industries, was mentioned to be as under—

- “(a) First preference shall be given to the products of Cottage and Village Industries and where necessary a relaxation in specifications may be allowed, with the approval of Government.
- (b) The second preference shall be in favour of the products of Small-Scale Industries established in the State.

- (c) The third preference shall be in favour of the products of the medium and large-scale Industries established within the State.
- (d) The instructions laid down in the Industries Department Circular No. 908 (10)-C.F., dated the 19th January 1957, should be followed whenever handloom and Khadi cloth is required for use in Government offices and for preparing uniform for the employees.
- (e) Products of small, medium and large-scale industries situated in other States may be purchased only when the manufacturers of the required articles within the State are not in a position to supply the same according to specifications at competitive prices.
- (f) When several firms, companies, individuals, institutions or co-operatives have tendered for articles required for the State services, preference in placing orders should be in favour of co-operative organizations of producers over those of others, provided that other conditions relating to quality, specifications, etc., are fulfilled."

It was further stated in the memorandum—

- "(a) In case of Cottage and Village Industries as well as handicraft products, a price preference to the extent of 15 per cent shall be allowed and this will be inclusive of sales tax where such tax is payable.
- (b) In case of products of small-scale industries, sales tax should be excluded while determining the price of articles tendered for sale till Government decide the question of grant of price preference for small-scale industries products, which is at present under their consideration."

The facilities mentioned above in sub-paras. (a) and (b) were stated to be not available to medium and large-scale industries. A small-scale industry, it was stated in the memorandum, was an industry in which the fixed capital investment was less than Rs. 5 lakhs and which did not come under the definition of either Cottage or Village Industries. It was further stated—

- *Steps have been taken by the Director of Industries, Orissa, to register all the Small-Scale Industries within the State and assign them registration number. The Director of Industries is being advised to issue a Press Note informing the Small-Scale Industries to quote their registration number while

tendering for supply of orders to a department or an officer of Government and the above policy of preference should only be given to such small-scale industrial units as have registered themselves with the Director of Industries, Orissa and in token of having so done, quoted their registration number in the tender documents. In future, therefore while calling for tenders or quotations, the indenting officers should clearly specify that only those small-scale industries which have registered themselves with the Director of Industries, Orissa will be given preference in accordance with the above stated policy of the State Government and should, therefore, quote their registration numbers.

In case of doubt as to whether a manufacturing concern will come under the definition of cottage, village, handicrafts or small-scale industry reference should be made to the Director of Industries for clarification."

On October 27, 1961, the Finance Secretary of Orissa Government put up a note before the Chief Minister, Shri Patnaik, about the purchase of Tata Mercedes Benz buses by the Transport Department and the Orissa Road Corporation directly from the manufacturers. It was pointed out that the contracts were not placed through the local dealers mainly to avoid the payment of sales-tax. This, according to the Finance Secretary, was not a satisfactory position. He, therefore, suggested that in view of the persistent attempts by different departments to evade sales-tax it was necessary to issue a strict circular to all concerned to the following effect:—

- “(i) Purchase of vehicles, stores and other materials by the different departments of Government and other organizations under Government, where Government have financial interest, should only be made through local dealers and no attempt should be made to evade sales-tax on any account.
- (ii) If in any case there are no local dealers or otherwise it is found absolutely necessary to place direct orders with outside firms, prior concurrence of Finance Department should invariably be taken fully explaining the situation in which it becomes necessary to place orders with outside firms.
- (iii) Any deviation from (i) and (ii) will make the officer concerned personally liable for loss of sales-tax revenue to the State Government.”

The matter was then referred to the Minister, Transport and he stated that the manufacturers had been asked to deliver

the vehicles to the local dealers at Berhampur and, therefore, full sales-tax would be paid. Shri Patnaik then made an order on November 8, 1961, as under:—

“The Transport Department as a commercial Department was naturally trying to save money on taxes. But this is not necessary.

Sales-tax should not be by-passed. O. R. T. Co., or the State Transport or any other Department of Government when making purchases should not try to save the sales-tax as it upsets treasury calculations.

The Departments may be suitably informed and appropriate circular issued by Finance Department.

Sd. B. Patnaik

8-11-1961.”

Following circular was thereafter issued on November 17, 1961 by the Finance Secretary to all Departments of Government:—

“Although in the past Government have issued instructions to the effect that all purchases by the Departments of Government, Heads of Departments and other Organisations under the State Government should be made through local dealers so that Government may not lose in the shape of Sales-Tax, it is noticed that some of the Departments are placing direct orders with dealers outside the State instead of placing orders through the local dealers, as a result of which Government are heavily losing in Orissa Sales-Tax. It is incorrect in principle for any Government or Government controlled organization to try to save payment of Orissa Sales-Tax by making direct purchases from outside the State as this upsets the calculations of the receipt from Orissa Sales-Tax. Government, therefore, desire that the following instructions should strictly be followed by all concerned in making purchases of vehicles, stores and other materials.

- (i) Purchase of vehicles, stores and other materials by the different departments of Government and other organizations in which Government have financial interest, should only be made through local dealers and no attempt should be made to avoid sales-tax on any account.

- (ii) If in any case there are no local dealers or it is otherwise found absolutely necessary to place direct orders with firms outside the State prior concurrence of Finance Department should invariably be taken fully explaining the circumstances in which it becomes necessary to place direct orders with firms outside the State.
- (iii) Any deviation from the instruction contained in paragraphs (i) and (ii) above will make the officer concerned personally liable for loss of sales-tax Revenue to the State Government.

The receipt of the letter may kindly be acknowledged and all the subordinate officers and offices under you should be instructed to follow these instructions strictly with immediate effect."

The above circular dated November 17, 1961 was criticised by the Chief Secretary in a note dated December 11, 1961 addressed to the Chief Minister. The Chief Secretary observed :—

"All that Chief Minister said was that sales-tax should not be by-passed. But this does not in any way depart from the general principle that purchases should be made at the lowest price obtainable. The circular issued by Finance Department completely negatives this salutary principle. I do not think it was the intention of Government that if the local dealers charged 20 per cent more than the suppliers outside or the price had no relation to the D. G. S. D. rates, the departments were competent to buy the same. I am afraid Chief Minister's orders have been misunderstood to go against established financial principles."

After referring to the possibility of difficulty in concrete case by the circular the Chief Secretary stated that the Finance Department should keep in view that Rs. 4 crores was made up of collection of taxes avoided by corruption, negligence and other such methods and had no reference to legitimate avoidance of sales-tax on inter-state purchases. The Finance Department, according to the Chief Secretary, must have proper sense of proportion in this matter as otherwise they would not be able to check the vagaries of the Sales-tax Department. In the concluding paragraphs of his note the Chief Secretary stated :—

"I am prepared to agree that where the price is the same, we may not avoid purchasing through local dealer on the ground that sales-tax has to be paid. But I would submit that in agreeing to this, we are going against the healthy principle set down by Chief Minister that accounts adjustments which ultimately mean nothing, should be avoided in our finances.

If it is a mere transfer from one hand to another, there is not much point in only wasting time and energy. But if local purchases give some benefit to the local man, certainly it is a matter worth considering. But how many of the local dealers really represent the local men. I would humbly submit that the matter requires reconsideration.

As the circular has caused a lot of confusion and is liable to create problems, which Finance have not foreseen as I have pointed out, it is desirable that the Circular is withdrawn. A revised circular may be put up to Chief Minister through the Chief Secretary."

On the above note of the Chief Secretary, Shri Patnaik made the following note on December 12, 1961 :—

"I have discussed this with F. S. and he also generally agrees to review the matter. C. S. may discuss it with F. S. and make suitable amendment."

The Finance Secretary thereafter made the following note on December 17, 1961 :—

"The matter was discussed at great length in the meeting held in C. M.'s room on December 12, 1961, where the Accountant-General and the two Additional Secretaries of Finance Department were present. C. M. was definitely of the view that the circular should not be cancelled, but powers should be delegated to the Departments of Government to be exercised with the concurrence of the F. A. attached to the Department. In case of difference of opinion between the F. A. and the Secretary of the Department the matter should be referred to the Minister in charge of the Department and action should be taken according to his directions. Copies of all such orders should, however, come to Finance Department. I have separately indicated this in a note sent to office regarding delegation of more financial powers to the Departments of Government under the F. A. scheme. Action should be taken as suggested therein so that this power could as well be delegated to the Departments of Government. Please take immediate action."

The Bharat Chamber of Commerce, Cuttack, and the Bengal Chamber of Commerce and Industry, Calcutta, made representations dated January 30, 1962 and February 6, 1962 respectively against the purchase policy enunciated in circular dated November 17, 1961. When those representations were put up before Shri Patnaik he passed the following order on February 20, 1962 :—

"File. No consideration necessary."

The circular of November 17, 1961 was the subject of further notings by the Finance Secretary and the Chief Secretary. Ultimately, in supersession of the circular, dated November 17, 1961 a new circular was issued on May 4, 1962 after the same had been approved by Shri Patnaik on May 3, 1962. Before giving the contents of circular, dated May 4, 1962 it would be convenient to reproduce the material part of the reply of the Chief Secretary to the query of Shri K. S. Bhatnagar regarding the circumstances under which the circular of November 17, 1961 was issued.

The Chief Secretary stated :

"The main intention that prompted Government to issue the above circular, was to check evasions of tax and thereby to raise sales tax revenue. It came to the notice of Government that some Departments and Government offices used to purchase their requirements such as vehicles, stores and other materials from firms outside the State with a view to avoid State Sales Tax and to save money on that account. Government, therefore, considered that Sales Tax, due to State Government should not be by-passed and the Departments of Government while making purchases should not try to save money on that account as this upsets treasury calculations. Further, it was considered necessary that the products of small-scale industries manufactured within the State should be encouraged. With a view to tackle the problem the above circular was issued.

Complaints were received from different quarters that the provisions of the Circular were too restrictive in scope tending to many practical difficulties. It was also felt that the Circular negated the salutary principle that purchases should be made at the lowest price obtainable. Therefore, on reconsideration of the issue, the Circular of 17th November, 1961 was withdrawn and another circular clarifying the entire position and drawing attention to the exact price preference to be given was issued in Finance Department Memo. No. CTA-124/62-19716 (84)-F., dated 4th May 1962, (Copy enclosed)."

In a further communication, dated March 2, 1964 the Chief Secretary stated to Shri Bhatnagar :

"A reference is invited to item (ii) of the F. D. Circular Memo., dated the 17th November, 1961 referred to above, from which it would appear that the purchasing departments of the Government though not precluded altogether from dealing with outside firms irrespective of the price factor, were nevertheless precluded in practice since reference to the Finance Department would have meant delay in placing orders for materials which were urgently required for various works.

As regards purchase of iron and steel materials, Government did not consider the specific issue at the time of issuing the Circular, but since the wording of the Circular was general in nature, there was every chance for the departments to presume that the circular covered all purchases.

Lastly, it may be pointed out that the Audit at no time objected to the provision of the Circular and it was the Government who 'suo moto' issued necessary amendments to the Circular when it was realised that the provisions of the Circular were creating practical difficulties."

On May 4, 1962 the following circular was addressed to all departments of Orissa by the Finance Secretary:—

"The undersigned is directed to invite a reference to this Department Memo. No. CTA.-102/61/39455 (85), dated the 17th November, 1961 on the subject mentioned above. As certain difficulties in implementing the instruction have come to the notice of Government, the following instructions in supersession of the Memo. mentioned above are issued :—

1. It is a basic financial principle that all purchases should be made at the most economical rates consistent with quality. To obtain maximum competition, the requirements must be given wide publicity both within and outside the State. For the purpose of determining the lowest rates, the following items besides the price of the article should be taken into account while making purchases:—
 - (i) Cost of transport from the place of delivery to the site
 - (ii) Local or Inter-State Sales Tax
 - (iii) Other incidental charges
2. With a view to encourage the Small-Scale Industries in Orissa first preference should be given to locally manufactured goods subject to the price preference laid down in the Industries Department Letter No. 13807-II-SSI-108/61-I, dated the 31st August 1961 enclosed as Appendix-I. It is clarified that the percentage of price preference mentioned in the Industries Department Letter is inclusive of sale tax.
3. Next preference will be given to local manufacturers or outside firms which have established agencies or offices in Orissa, such preference shall, however, be limited to the monetary value of the items mentioned in paragraph I, above.
4. In all other cases, i. e., where no quotations have been received from the Small-Scale Industries in Orissa or where prices quoted by such industries, after taking into account transport charges, price preference, etc., exceed the prices quoted by outside firms or where no quotations are given by local dealers in Orissa, orders for supply may be placed on outside firms,

3. The general rules prescribed for purchases (list given at Appendix II) and the procedure laid down in Departmental Codes and Rules should continue to be followed.

6. Receipt of this letter may kindly be acknowledged."

On July 2, 1964, a circular containing new instructions was issued by the Finance Department in supersession of the relevant instructions contained in the circular, dated May 4, 1962. The material part of the new circular reads as under—

"Purchases should be made at the most economical rate consistent with quality, after giving due publicity both within and outside the State. In comparing the cost of an article if purchased from within the State, with the cost of similar article if purchased from outside, the amount of Orissa Sales Tax payable in case of local purchase should be deducted from the total cost since the tax-amount is Government Revenue. If after such deduction, the cost of an article within the State is not more than the over-all cost (including the basic price, Inter-State Sales Tax transportation and other charges) of similar article outside the State, it would be economical to purchase the article from within the State."

We may now advert to the procurement of stores through the Director-General of Supplies and Disposals. This matter was the subject of a letter, dated November 18, 1960, addressed by the Commerce Department of the Government of Orissa to all departments. In that letter it was pointed out that the Directorate-General, Supplies and Disposals in the Ministry of Works, Housing and Supply, was the Central Purchasing Organization of the Government of India for buying the major requirements of all the Ministries and Departments for the Central Government and its services were utilized by State Governments, River Valley Projects and Quasi Government Institutions. It was suggested in the letter that the Departments of Government should procure their articles (Other than those mentioned in the enclosed list) through the agency of the Director-General of Supplies and Disposals. Direct purchases were only permissible where value of the stores required was not substantial and also when demands were to be met urgently.

On July 18, 1961 another letter was addressed by the Commerce Department to all the Departments of Orissa stating that the Government had not taken final decision to entrust the Central Purchase of the State Government to Director-General of Supplies and Disposals except in respect of some articles. The instructions in letter, dated

November 18, 1960 were accordingly cancelled. It was mentioned that further instructions would be issued in due course. On April 20, 1962, a memorandum was issued by the Commerce Department to all Departments of Government of Orissa laying down the following principles for procurement of stores through the Director-General of Supplies and Disposals:—

- "1. The role of Director-General of Supplies and Disposals is mainly to arrange purchase of stores for the Central Government Department but at the same time his services are available to the State Government Department for which he charges a nominal commission of 1 per cent for purchase and inspection.
2. The function of the Director-General of Supplies and Disposals is also to see that economical prices are paid for the articles produced in India. As an expert Purchase Organisation, the Director-General of Supplies and Disposals generally negotiates prices with firms whenever they quote very high rates. So it is always economical to purchase stores through the Director-General and thereby effect considerable saving.
3. It is convenient to place orders with the Director-General of Supplies and Disposals only in case of imported materials and in other cases it will be proper to purchase articles by inviting open tenders from the Firms as per the approved list maintained by the Director-General of Supplies and Disposals.
4. Although direct purchase from firms will reduce delay to some extent the indenting departments will have to pay inflated prices for those goods. Moreover, the difficulty about release of foreign exchange cannot be altogether avoided thereby. It is better to procure the stores through the Director-General of Supplies and Disposals at lower rates.
5. The manufacturers are bound to supply stores at the rate contract price and it is their duty to ask their dealers to abide by the rate contract price provided that they do not render any extra service to the local indenting departments. In case the local dealers take extra money from the indenting department as handling charge the matter should be referred to the Director-General of Supplies and Disposals for suitable action against the firms concerned.
6. For success of the different schemes, proper advance planning is absolutely necessary. With regard to procurement of certain important equipments these must be planned two years ahead. In respect of all such cases where funds are not available at the moment general concurrence of the Finance Department should be obtained to facilitate placing indents."

At this stage it would be useful to refer to the relevant provisions, orders and communications which were issued in connection with the payment of advance. S. R. 325 of the Orissa Treasury Code provides ;

"As a general rule, payment for supplies is not permissible unless the stores have been received and surveyed as to the quality and quantity; payments prior to the verification of the quality and quantity of the materials may be permitted in exceptional cases provided that adequate safeguards exist to secure the Government against all losses in the event of the materials being found short or defective. In all such cases, a bill based on actual measurements must be obtained as soon as possible after payment has been made for submission to the Accountant-General."

S. R. 343 of the Orissa Treasury Code states;

"As a general rule and subject to such exceptions as may be authorised by Government no payment can be made to a contractor except for work actually done or supplies actually received. Subject to such general or special orders as are or may be issued by Government in this behalf, advances, if any, made to contractors during the execution of work, shall invariably be recovered from their bills for the value of work done or supplies made before final payment is made."

According to Para. 150 of the Orissa P. W. D. Code (incorporated in Appendix 9 A of Orissa General Financial Rules), advances to contractors are as a rule prohibited and every endeavour should be made to maintain a system under which no payments are made except for work actually done. Exception is, however, permitted for payment of advance up to 75 per cent of the value of materials brought to site subject to necessary safeguards.

Kalinga Industries while giving quotations for tubular trusses in letter dated December 6, 1958 to the Deputy Development Commissioner, Orissa, asked for payment of 25 per cent with order and balance on despatch. There was some further correspondence between Kalinga Industries and the Government of Orissa. Ultimately, on March 21, 1959 an order for supply of trusses was placed on behalf of Government of Orissa on Kalinga Industries and it was specified that payment would be made on receipt of certificate from Collectors that the goods had been received in proper condition at the destination. On March 23, 1959 Shri Patnaik on behalf of Kalinga Industries addressed a letter to the

Development Commissioner. In that letter after referring to the order for supply of tubular structures, Shri Patnaik stated that in view of the heavy working capital outlay involved, the Development Commissioner might consider the proposal to pay 90 per cent of the value of the structurals to Kalinga Industries on its producing a certificate from the Bankers that the goods were ready for despatch. The matter was thereafter examined, and on March 26, 1959 the Additional Development Commissioner wrote to the Secretary, Tribal & Rural Welfare Department, that payment of 90 per cent was considered reasonable. On April 18, 1959 the Under-Secretary to Government of Orissa, Political & Services Department, addressed a letter to the Kalinga Industries :

" Out of the cost of Rs. 946.50 P. for each complete set of the tubular structures together with all other accessories for each set as mentioned in this Department No. 2922—G. P., XII-28/59, dated the 17th March 1959 for which orders have been placed with you, it has been decided to pay 90 per cent of the cost of the sets indented for each district, that is in all for 181 sets as soon as you produce a certificate from your bankers that the goods are ready for despatch. The remaining 10 per cent of the cost together with sales-tax on the price of each set and transport charges at a flat rate of Rs. 50 per each set will be paid to you by the District Magistrates concerned after receipt of the sets at the Block or Sub-divisional Headquarters which are to be intimated to you by the District Magistrates concerned."

The payment of 90 per cent advance to the Kalinga Industries became also the subject of notings on the file. In a note dated December 9, 1959 it was observed :

" As has been pointed out in the foregoing notes of Under-Secretary, the payment of advance before receipt of supplies is not normally permissible according to the rules. However, the rules themselves provide for discretion being exercised in cases where the circumstances warrant such departure and with the provision that adequate safeguards have been made to secure the Government against the loss in the event of the materials being found short or defective. In this particular case, it does not appear that the advance has been paid only on Messrs. Kalinga Industries Limited producing a certificate to the effect that the goods are ready for despatch. Further, the Development Commissioner himself has recommended the payment on the ground that the proposal appeared reasonable. In this connection, the letter from Messrs. Kalinga Industries Ltd., may kindly be seen at Flag A (Page 102-C).

In view of this, Finance Department might agree to accord *ex post facto* concurrence to the payment already made by the Additional Development Commissioner in his letter at page 104 C at Flag B.

It may, however, be brought home to the Planning & Co-ordination Department and that all such cases where advance is proposed to be paid, prior concurrence of Finance Department has to be obtained. The concurrence of Finance Department should not be taken for granted as has been done in this case."

The Finance Department thereafter gave *ex post facto* approval. The file was then put up before the Chief Minister, Dr. Mahtab, for approval of the procedure and he made the following note on December 13, 1959 :

"This is agreed. But in future concurrence of the Finance Department should be secured before actual payment unless of course the matter is very very urgent."

On December 15, 1959 the following letter was addressed by the Planning & Co-ordination Department of the Government of Orissa to all Departments of Government :—

"Government have decided to use tubular trusses for construction of Graingolas, Agricultural Godowns, etc. These have been purchased from M/s. Kalinga Industries Ltd., Cuttack.

A form of agreement regarding the supply of the tubular trusses for the above buildings as mentioned in Para. 2 of this Department Memo. No. 7535(72) CO., dated 5-12-1959, is enclosed. Regarding the purchase of the tubular trusses from the Kalinga Industries Ltd., for the above constructions, Government, in consultation with Finance Department, have decided the procedure of paying an advance of 90 per cent of the cost of trusses against production of a certificate from their Bankers about the readiness of the goods for despatch and the balance of 10 per cent of the cost together with the sales tax and other charges to be paid after receipt of goods at their respective destinations.

Departments desirous of using the tubular trusses may obtain necessary Government orders in their Departments and they are advised to obtain prior concurrence of the Finance Department for adopting the procedure of making advance payment.

While making purchase of such tubular trusses their attention is invited to this Department Memo. No. 7288 (52)-CO., dated 16-11-1959 regarding the deed of warranty which has to be obtained from the firm."

On July 2, 1960, the Planning & Co-ordination Department in a letter to Kalinga Industries pointed out that its representative had given up the condition of advance payment altogether. On November 16, 1960, a communication was addressed by the Government of Orissa to all Departments that the Kalinga Industries had agreed to waive the condition of 90 per cent advance. It was also stated that this had been done on the understanding that payment would be made as soon as materials were received at their destinations. The departments were, accordingly, told not to make the advance payment of 90 per cent as had been the practice before that.

On November 28, 1963, the Finance Department sent a circular letter to all the Departments. After referring to the provisions of S. R. 325 of Orissa Treasury Code, and the demand of suppliers for payment of advance, the circular stated—

“Government have been pleased to decide that the Administrative Department shall be competent to sanction payment of advances up to 90 per cent of the value of the materials on receipt of proof of despatch subject to the following conditions :—

- (a) The firms outside the State to which the advance will be paid should be in the approved list of Director-General of Stores and Disposals.
 - (b) The firms, inside the State, will be given such advances if the Administrative Department is satisfied that the firms are thoroughly reliable.
 - (c) The articles should be tested before despatch as to the quality and specifications.
 - (d) Necessary security should be taken from the firm by way of Bank guarantee or otherwise for due performance of the contract.
 - (e) An agreement should be executed so as to secure Government against loss.
 - (f) Subject to the conditions mentioned above, the firms established within the State should be given preference provided they agree to the time schedule and the rates are acceptable to the Department.
2. All such orders sanctioning advances shall be issued with the concurrence of Financial Advisers and copies of such orders should be furnished to Finance Department for information.

3. This deligation is on an experimental basis for a period of two years for the present. The period will be extended if the system is found to work satisfactorily."

On August 8, 1966 the Secretary to the Finance Department addressed a circular, the material part of which reads as under :—

"It has been the experience that most of the suppliers, in spite of their best intention to help the State Government in making investment in the Loan Bonds fail to do so for want of liquid cash with them. Often they ask for advances against orders so that they may be able to invest the money in State Government Loan Bonds. It has, therefore, been decided that advance up to 90 per cent of the value against orders for investment in Government Loan Bonds may be made in relaxation of S. R. 325 of Orissa Treasury Code, Volume I and Para. 150 of Orissa PWD Code. It has further been decided that the officer making advances should obtain an application in the enclosed form from the suppliers for investment in the Government Loan and should deposit the entire amount advanced in the Bank or the Treasury along with the loan application forms duly signed by the supplier concerned besides the general agreement entered into for supplies to be made. The loan bonds thus purchased should be kept in the custody of the officers placing the orders and it is to be released proportionately as and when supplies are made. For making proportionate release, Loan Bonds of lower denominations may be purchased to avoid difficulties."

Objection to the above circular was raised by the Accountant-General. Shri Sadasiba Tripathy, Chief Minister, on September 15, 1966, passed an order, the material part of which reads as under :—

".....I asked the Secretary, Works and Transport Department to stop giving advances for raising Government Loan forthwith and take immediate steps to recover the advances. The advance should not be interest-free nor it should be a guarantee to enable him to get more and more contracts or supplies from Government for a future period and that too for long periods. This will be more or less a kind of monopoly to some selected suppliers. Send this to Finance Department soon."

On August 21, 1967 after the coming in to power of the present Government the following circular letter was issued by the Finance Department to other departments in supersession of the earlier letter dated August 8, 1966 :—

"Every year, the State Government make large purchases of materials from different firms and suppliers. It has been experienced that most of the suppliers, in spite of their intention

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 - (c) The articles should be tested before despatch as to the quality and specifications.
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On August 21, 1967 after the coming in to power of the present Government the following circular letter was issued by the Finance Department to other departments in supersession of the earlier letter dated August 8, 1966 :—

"Every year, the State Government make large purchases of materials from different firms and suppliers. It has been experienced that most of the suppliers, in spite of their intention

to make investments in the Government of Orissa Loan Bonds, fail to do so far lack of liquid cash. It has, therefore, been decided that advances against orders may be made to the suppliers for investment in Government of Orissa Loan Bonds in relaxation of Supplementary Rule 325 of Orissa Treasury Code, Volume I and Para. 150 of the Orissa Public Works Department Code subject to the following conditions :—

- (1) The orders for supplies are to be made in accordance with usual rules specified for placing orders for purchases.
 - (2) The total amount of advance must not exceed 80 per cent of the value of the order.
 - (3) The advance must be adjusted by delivery of goods or in cash before the next 31st March. In case, any advance remains outstanding on 31st March next, it shall carry interest at the same rate as the rate of interest on the concerned Government of Orissa Loan Bond from 1st April next.
2. The officer making the advance should obtain the following from the supplier:—
- (i) An application for advance in the enclosed form
 - (ii) Another copy of the application for advance duly endorsed in favour of the State Bank of India.
 - (iii) An application for purchase of loan bonds in the prescribed form.
3. The officer should then send the following to the State Bank of India:—
- (1) The application for purchase of Loan Bonds signed by the supplier.
 - (2) The copy of the application for advance endorsed in favour of the State Bank of India by the supplier.
 - (3) A cheque for the amount of advance drawn in favour of the State Bank of India.
 - (4) A letter addressed to the State Bank of India that the Loan Bond on issue may be delivered to the officer concerned and not the supplier.
4. The loan bonds thus purchased should be kept in the custody of the officer placing the order and should be released proportionately as and when supplies are made. For making proportionate release, loan bonds of lower denominations may be purchased to avoid difficulties.
5. These orders are issued in supersession of the orders contained in Finance Department Memo. No. 26957 (115)-F., dated the 8th August 1966."

Kalinga Industries was a Company which had been started by Shri Patnaik and its history has been given in the discussion relating to allegation No. 1. Towards the end of 1958 the manufacture of tubular trusses by Kalinga Industries was in contemplation. The actual production of the trusses in the tubular structure section of Kalinga Industries commenced in March, 1959. Black iron pipes for the manufacture of those trusses were obtained by the Kalinga Industries from Kalinga Tubes Ltd. Kalinga Industries and Kalinga Tubes were sister companies, both of which had been started by Shri Patnaik. Kalinga Industries under the name of Kalinga Refrigerators Corporation Ltd., as stated earlier while dealing with allegation No. 1, came into existence in 1948, while Kalinga Tubes was started in 1953. The principal business of Kalinga Tubes was the manufacture of iron pipes.

It would be apt at this stage to give the description of tubular trusses sold by Kalinga Industries. A truss is a triangular mild steel fabricated tubular structure which is intended to be used as a frame for the roof. The length of the base of the triangle is the span of the truss and constitutes the width of the building or shed for which the truss is used. The two ends of the truss can be placed on a brick wall or supported on tubular columns. The number of trusses required for a shed or building depends upon its length. The space between the two trusses in a shed or building is called bay. The two sides of the triangle of the truss are connected with the two sides of the triangle of the adjoining truss by tubes with welded plates on their ends and such tubes are called purlins. Likewise, the base of the triangle of the truss is connected with the base of the triangle of the adjoining truss by tubes with welded plates on their end and such tubes are called ties. For the roof asbestos corrugated sheets or galvanized corrugated iron (GCI) sheets have to be used. Such sheets have to be purchased separately and are not part of the truss. Walls for the building or the shed have to be separately constructed with bricks or can be made of asbestos plain sheets or galvanized plain sheets. Trusses supplied by Kalinga Industries to the various Department of Government of Orissa were normally of 20' span, 30' span and 40' span. For one unit of truss 20' span there are normally 6 purlins, 2 ties and 2 columns. For one unit of truss of 30' span there are normally 8 purlins, 2 ties and 2 columns. For one unit of truss of 40' span there are normally 10 purlins, 4 ties and 2 columns. The number of purlins and ties for a unit can also be changed in accordance

with requirement. Besides, that, bolts, nuts and other fixing material are required for the truss. The need for columns depends upon the fact whether the truss is to be supported on those columns or upon brick walls. The columns are generally of three sizes, namely, 9'-6", 12' and 14'-6". The normal spacing is of the width of 10' or 12' -6" or 13'-4", though other widths are also sometimes resorted to. The purlins and ties are in the very nature of things to be of the same length as the distance between the two trusses. In the case of some buildings, walls are used up to the roof on both gable ends, while in other cases trusses are used at those ends. To take a concrete case in the case of a building or shed of the size of 60' x 20' with 10' bay the number of 20' span trusses would be five if walls are used at gable ends. If, however, trusses are used at gable ends, the number of trusses of the building would be seven. In case walls are constructed at gable ends, the purlins and ties are fixed on one end in those walls and on the other end are attached to the truss. Sometimes in case of brick walls at gable ends, ties for connecting the truss to the brick walls are dispensed with.

On December 6, 1958 a letter was addressed by Kalinga Industries to Shri L. K. Mohanty, Deputy Development Commissioner, Orissa about tubular trusses. There was reference in the letter to the discussion between Shri Patnaik and Shri Mohanty. Quotations for the trusses were given in this letter. It was stated that a tubular structure of 20' span with 3 bays of 10' each would cost Rs. 2,437, while a tubular structure of 30' span with 3 bays of 12'-6" each would cost Rs. 3,300. After the receipt of the above letter, the Political & Services Department made some queries from Kalinga Industries. Replies to those queries were sent on December 23, 1958. The following note was then made on the file:—

"The Kalinga Industries were asked to give us detailed costing regarding their tubular structures. Their replies are at P. 11/C. I had asked the Executive Engineer to work out the detailed costing. The 'L' type Grain Golla, where the estimate has been limited to Rs. 7,550 will come to Rs. 11,830 if we use tubular structures. The cost will be a little over Rs. 4,000 more than our estimated amount.

The smaller type of Grain Golla which was estimated for Rs. 4,900 will come up to Rs. 7,630. Thus, there will be an extra expenditure of Rs. 2,730 over the estimated amount by

using the tubular structures. Thus, it will be seen that the use of pre-fabricated tubular structures will not prove economical for any of our buildings like Primary Health Centres, Primary Schools and Grain Gollas, etc. These structures may have more use for temporary buildings which are to be shifted from place to place according to need and may prove less costly where the walls and partitions are to be of mud and brush wood. For the present the matter may be closed."

The note was approved on December 24, 1958, by the Development Commissioner, who was also the Chief Secretary of Orissa Government. The matter, it would seem, was further pursued and on January 6, 1959 the Deputy Development Commissioner made a note that it had been represented to him that when tubular structures were used the cost of the entire structure including floor, walls, doors, windows and roof would be within Rs. 6 or Rs. 6-8-0 per S. ft. The Deputy Development Commissioner wanted calculations to be made. On January 14, 1959 Shri Patnaik addressed a letter on behalf of Kalinga Industries to the Development Commissioner wherein he referred to the difficulty of the factory to take small order from various District Authorities and to make supplies to them as well as obtain payments from them. Shri Patnaik requested that a Central Authority be created to make purchases from Kalinga Industries and to make payments. On January 24, 1959 the Under-Secretary in the Development Commissioner's Branch informed the Director of Agriculture that the Development Commissioner considered that pre-fabricated tubular structures manufactured by Kalinga Industries might be of use "for constructions like cattle-shed, etc., (open on all sides) in the Agricultural Farms. Please examine the possibility of using these pre-fabricated structures and indicate your requirement". On June 30, 1959 a letter was addressed by the Development Commissioner's Office to Kalinga Industries asking the Company to depute its Engineer for discussion with the Deputy Development Commissioner on February 2, 1959. On February 7, 1959 a letter was addressed by Shri Patnaik as Chairman of Kalinga Industries to Deputy Development Commissioner. Reference in this letter was made to the discussion with the Deputy Development Commissioner on February 2 and 6, 1959. The rates for tubular structures were quoted. The cost of a tubular structure for 20' span $\times$ 30' long building with 10' bay consisting of 2 trusses, 18 purlins, and 2 ties with connecting bolts and nuts was mentioned to be Rs. 1,100. The cost of structure for 20' span $\times$ 40' long building with 10' bay consisting of 3

trusses, 24 purlins, 4 ties and connecting bolts and nuts was stated to be Rs. 1,466. The cost of structure for 20' span $\times$ 60' long building with 10' bay consisting of 5 trusses, 36 purlins, 8 ties and connecting bolts and nuts was mentioned to be Rs. 2,260. On February 17, 1959 Shri Patnaik in a letter to the Development Commissioner referred to his discussion and previous correspondence, and stated that the cost of one truss of 20' span with 10' spacing consisting of one truss, 6 purlins and 2 ties with connecting bolts would be Rs. 485 per truss, while for a truss of 30' with 12'-6" spacing consisting of one truss, 8 purlins, 2 ties and the connecting bolts and nuts would be Rs. 745. On February 19, 1959 Shri Patnaik addressed another letter to the Development Commissioner wherein he gave the cost of extra set of 8 purlins for the size of 12'-6" complete with bolts and nuts as Rs. 3 60. It was stated that the total cost of one truss of 30' span with 16 Nos. of 12'-6" purlins with all necessary fitting could come to Rs. 1,015 on which Kalinga Industries would give a special discount of Rs. 100 for bulk order for Agricultural Department. It was further mentioned that in case of floor space of 30' $\times$ 25' the cost of tubular structure and fittings would come to Rs. 1,015, i. e., Rs. 133 per S.ft. and for a floor space of 20' $\times$ 30' the cost would come to Rs. 183 per S. ft. The Development Commissioner was informed that the then rated production capacity of Kalinga Industries was 250 tons a month. i. e., 600 complete structures of 30' trusses with 16 purlins. etc. On February 26, 1959 Shri Patnaik in a letter to the Development Commissioner gave the break-up of the cost of production of tubular structures. It was mentioned that the margin of profit being 5 per cent was very limited and could go up to 7 or 8 per cent in case there was mass production resulting in reduction of over-head charges from 5 per cent to 2½ per cent.

Quotations for tubular structures, it would appear, were also invited from Stewarts & Lloyds, Calcutta, Sales, Norton Buildings, Calcutta, and some other concerns. So far as the concern "Sales" was concerned, it would appear from the note dated February 23, 1959 that it was ruled out of consideration *inter alia* on the ground that "they sell pipes from Kalinga Tubes. No reference was necessary to them. Could not be contacted". Stewarts & Lloyds is a leading British Company of tube makers and it has set up factories in a number of countries. In India, Stewarts & Lloy

Limited, and Tata Iron & Steel Company are working in collaboration and for production of tubes they have set up a factory under the name of Indian Tube Company. Metpa Corporation was the agent of Stewarts & Lloyds, but it ceased to be agent in the beginning of 1960. On February 25, 1959 a letter was received from the concern "Sales", Norton Buildings, Calcutta quoting a price of Rs. 1,250 each for tubular trusses with all fittings including columns for an area of 60' x 20', and Rs. 1,500 each for an area of 80' x 30'. Metpa Corporation in a telegram dated February 28, 1959 quoted Rs. 1,637 for a 20' span six bays ten feet bay structure. The telegram reads as under.

" Ref. telephone talk with sand (sic) 20 feet span structure six bays ten feet bay without columns but provided with truss shoes excluding gable end trusses hook bolts suitable for G. G. I. sheet rupees 1,637 for Calcutta.

Metpacok".

On March 3, 1959 Shri Patnaik addressed a letter to the Development Commissioner stating that the cost had been worked out by Kalinga Industries after taking into account the quotations of Stewarts & Lloyds. The cost of one extra set of 8 purlins was mentioned to be Rs. 310 per set. The revised cost of one set of 30' span truss including 2 sets of purlins along with all accessories was mentioned to be Rs. 946.50 (ex-works). This amount consisted of a sum of Rs. 614 for a 30' span truss with one set of purlins, Rs. 22.50 for hook-bolts and truss-shoe bolts, and Rs. 310 for an extra set of purlins. The same day, i.e., on March 3, 1959, the Deputy Development Commissioner addressed a note to the Executive Engineer stating that Shri Patnaik had called upon him and discussed the price of Rs. 614 quoted by Metpa Corporation with Rs. 745 quoted by Kalinga Tubes for 30' span and tubular structure. Reference was also made to the fact that a concerned named Modern Traders had sent quotation of Rs. 890 but the same was not of tubular structures but of mild steel angles welded design. The Executive Engineer was asked to put up a comparative statement. The comparative rates of the different concerns, namely, Modern Traders, Cuttack, Kalinga Industries, Ltd., and Metpa Corporation were examined by the Executive Engineer, and it was noted that the rates quoted by the Kalinga Industries were the cheapest. It was also mentioned that there would be an additional advantage in having tubular

structures from Kalinga Industries inasmuch as the cost of transport to different centres would be less and the transport could be effected from there more quickly than having things from Calcutta. Spare parts were also stated to be easily obtainable locally than from outside. On March 5, 1959 the Development Commissioner recorded a note for being put up before the Deputy Minister, Agriculture. In this note it was stated that a number of godowns had to be constructed for seed and paddy storage and under the Tribal & Rural Welfare Grants. Storage and office accommodation as well as cattle sheds were also to be constructed under the Second Plan. The disadvantage of timber structures was pointed out and it was stated that Kalinga Industries had made a proposal for supply of tubular trusses and purlins with tubular columns for quick and efficient work. The proposal had been examined and quotations were called from Stewarts & Lloyds. The Development Commissioner further stated ;

"Kalinga Industries Ltd., have offered to give the material for one godown at a cost of Rs. 946.50 (ex-works) at Chowdwar—pages 80-81/C. may be seen. The sales tax is extra. The price of Metpa Corporation appears to compare with this though it is for a 13'4" span. On the other hand, we tried to get information about the weight of the material in the truss of Metpa Corporation, but were unable to get the same as it is supposed to be a trade secret. The design also, according to the pamphlet at page 77/C., is slightly different from that of Kalinga Industries Ltd. Kalinga Industries are fixing each purlin separately on the truss while joining to base plates on the truss. The design of Metpa Corporation seems to be different. Taking these difference into consideration and also the fact that from Calcutta we have to transport to a long distance and thirdly the consideration that the Kalinga Industries Ltd., has got Government money invested in the business, I think it desirable that the offer of Kalinga Industries Ltd., is approved. As this will be an acceptance without tender, Finance Department will have to be consulted."

The proposal of the Development Commissioner for purchase of trusses from Kalinga Industries was approved by the Deputy Minister, Agriculture as well as by the Deputy Minister, Tribal & Rural Welfare, on March 6, 1959. The proposal for purchase from Kalinga Industries and for concurrence to the limited tender system was thereafter put up before the Chief Minister, Dr. Mahatab, and he approved the same on March 6, 1959.

The Audit Report of 1965 shows that:

“ Kalinga Industries quoted on the 6th March 1959, a rate of Rs. 7,100 for a structure covering a floor area of 3,000 Sq. ft. for the Agriculture Department with the following analysis:

	Rs. P.
(a) 7 Trusses with all accessories at the rate of Rs. 314.50 P. each.	2,201.50
(b) 8 sets of Purlins at the rate of Rs. 310 each.	2,480.00
(c) 14 Nos. columns with base plates, Truss plates, etc., at the rate of Rs. 117	1,638.00
(d) 6 sets of Ties at the rate Rs. 70 each ..	420.00
(e) 28 sets of Foundation and Truss bolts @ Rs. 12 per set.	336.00
	7,075.50
Say ..	7 100.00

Order for 40 such structures costing Rs. 2.84 lakhs (exclusive sales tax) were placed on Kalinga Industries during the period April-May 1959”.

On March 21, 1959 an order for supply of 347 Nos. of 30 span truss with shoes, and 5552 purlins of 12'—6" length with all necessary hook-bolts was placed by the Secretary, Tribal & Rural Welfare Department with Kalinga Industries. The number of sets, which were required to be supplied to each District Magistrate, was also specified and it was stated that payment would be made on receipt of certificates from the Collectors that the goods had been received in proper conditions at their destination.

On September 9, 1959 the following opinion of the Chief Engineer of Roads & Buildings regarding the adoption of Tubular structures for constructions of Hostel building was put up:

“ I inspected the Tubular Structures manufactured by M/s. Kalinga Tubes. They have manufactured Tubular Trusses for spans of 20' and 30'. I could not find any arrangement for testing welded joints for strength. On asking for details regarding the design of the tubular structures they have forwarded certain calculations with stress diagrams. I had this examined in my office. On a general study it is found that the structure is not safe against wind loads in the coastal areas of Orissa. Indian Standard Institute has specified a wind load of 40 lbs. per sq. ft. both under

compression and suction for the coastal areas which are subject to cyclones. The information so far furnished by M/s. Kalinga Tubes is not complete. On the basis of information given by them and information available in books I am having the calculations again tested. I feel that tubular strusses have to be further strengthened using heavier sections of the tubes at least in some of the structural members. A report recommending the use of this can be given only after further studies".

The Secretary Development then made a note that the Chief Engineer should urgently examine the matter and give his categorical opinion one way or the other. The Development Commissioner as well as the Development Minister and the Chief Minister agreed with the suggestion of the Secretary, and Directed that the matter should be examined quickly. On September 25, 1959 the Minister Works made the following note:—

"Tubular structures are meant for temporary buildings. The hostel for the Agricultural College in the Capital is a permanent structure. I do not think it would be proper to go in for the tubular structures for the permanent buildings in the Capital. The question of providing tubular structures for the hostel buildings may be dropped. Moreover, the roof of these tubular structures will be of G. I. sheets. These are not suitable for permanent hostel buildings as they will become very hot. The Technical Advisers' view in this matter may also be seen. Adequate funds may be provided and if early decision is taken in the matter the Works Department will be able to provide the hostel buildings before the next session commences. C. M. may see".

Dr. Mahatab, Chief Minister, thereupon made a note on September 29, 1959 as under—

"Minister (Dev).

Will please see this. Unless it is certified by the Technical Adviser, we cannot go in for them".

The Development Minister then noted:

"Secretary Development to please take up this with C.E. and revise the plans and proposals as per orders of C.M. I am afraid other tubular structures of graingollas and its farms sheds should also be constructed on the advice of the C.E. (R. & B.). Please make haste as the structures may be taken up without reference to development department".

On November 16, 1959 the following letter was addressed by the Development Commissioner to all the departments of the Government:—

"Recently some Departments of Government are constructing their structures with tubular trusses. The matter had been referred to the Chief Engineer (Roads & Building). It is

advised that the Departments placing orders may please note that Company's present specification should include one extra strut having 1.1/18" out diameter welded flush to 2/3 and 7/8 members of the truss, for areas situated within the 50 miles coastal belt. The firm (M/s. Kalinga Industries Ltd.), have agreed to carry out the necessary modification. As for constructions outside the areas their present specification of 30 Ft. span has been approved by the Chief Engineer. The Departments are advised to obtain a warranty from the firm regarding the soundness of the trusses. Form of warranty as approved by the Law Department is enclosed. The deed of warrants may be got executed on non-judicial stamp paper worth Rs. 1.15 Np.

As and when the Chief Engineer prescribed a procedure for the mechanical test of the welding in the trusses, the Departments may please get these welding tested".

On December 11, 1959 the Director of Community Projects addressed a letter to all the Collectors in connection with the construction of graingollas. The material part of that letter was as under—

" Government have decided that the tubular trusses to be used in the construction of these graingollas will be obtained from M/s. Kalinga Industries Ltd., Jobra, Cuttack, who have duly executed a deed of warranty, guaranteeing the perfectness of the structures and the adequacy of their strength. The firm has also undertaken to make good the loss and replace the damaged portions if the welds give way due to imperfectness of welding. The cost of the tubular structure for each Graingolla will be Rs. 946.50 Np. and in addition to this, the Block will bear the Orissa Sales Tax and road transport charges at flat rate of Rs. 50 per unit, delivered at Block Headquarters".

Copy of the above was addressed to the Kalinga Industries and the Company as requested to issue a deed of warranty in the prescribed form. On December 15, 1959, letter reproduced earlier in the context of payment of 90 per cent advance, was addressed by the Planning & Co-ordination Department to all Departments of the Government.

The Utkal Mining and Industrial Association, Calcutta, made some representations to the President, All-India Congress Committee that the Orissa Government had placed order on a monopoly basis for tubular godowns with Kalinga Industries. When the matter was brought to the notice of Dr. Mahatab, Chief Minister, he passed an order on March 17, 1960 to find out whether the fixation of price of the tubular structures had been correctly made. He also observed that the demand of 90 per cent advance appeared to be too

high and that these matters should be looked into. Detailed notes were thereafter recorded by the Officers of the Department and they stated that Government orders had been obtained about fixation of price. The payment of 90 per cent advance, it was added, and considered reasonable and approved by the Government with the concurrence of finance Department. Both the Deputy Development Commissioner as well as Secretary, Planning & Co-ordination Department stated that the quotation of Kalinga Industries had been found to be the lowest before orders were placed with that Company. The Secretary described the charge made in the representation of Utkal Mining and Industrial Association, Calcutta, to be baseless and observed—

“All that has been done is to advise the departments of Government that the tubular trusses of Kalinga Industries have been found to be suitable for adoption at the prices quoted and that the use of the pre-fabricated tubular trusses would help in speeding up the work of construction. The departments concerned were asked to take orders of Government before placing formal orders. The abovesaid advice has been tendered by the Development Commissioner in the Political & Services Department after obtaining the orders of the Chief Minister. This advice has been followed by the Education Department in respect of primary school buildings and the T. & R. W. Department in respect of grain godowns buildings. The Development Department had some doubts in respect of the hostel of the Agriculture College and some farm buildings and so no orders were placed for the tubular structures by these Departments in the first instance, and the matter was referred to the Chief Engineer and Consulting Engineer for further examination. The Chief Engineer has since cleared the objections and advised that the structures may be strengthened further, weldings may be got tested and a guarantee may be obtained. These steps have since been taken. To sum up, the main allegation that a monopoly has been granted to one firm is not true.

Secondly, nobody can take exception to the procedure followed in recommending to the Departments the trusses of Kalinga Industries. Tenders were called from three firms including Kalinga Industries. The other two are Modern Traders of Cuttack, Metpa Corporation of Calcutta who are representatives of the Stewarts and Lloyds. This method of collecting tenders is known as limited tender system. It is not always necessary to follow the open tender system. When the number of suppliers of a particular article is known to be small, it is not unusual to follow a limited tender system. The quotations received from the three tenderers were compared and the quotation of Messrs. Kalinga Industries was declared to be cheapest. The detailed calculations are in

the file at flag 'W'. For ready reference, the comparative quotations are as follows :—

	Rs.
Modern Traders ..	1,113
Metpa Corporation ...	1,020
Kalinga Industries ...	994

Apart from the comparative cheapness of the offer of the Kalinga Industries, three other advantages were noted to be in their favour, viz.—

- (a) Costs of transport from Calcutta to centres in Orissa will have to be incurred over and above the abovesaid cost if the offer of the Metpa Corporation is accepted. This may roughly work out to more than Rs. 100 in respect of each graingolla.
- (b) Modern Traders has admittedly no capacity to deliver the goods at the speed and in the quality required.
- (c) Kalinga Industries is a State-aided concern and on broader policy considerations it was considered necessary and desirable to help in the maximum utilisation of the installed capacity of this firm.

Thirdly, there is not much substance in the criticism that unduly favourable terms have been sanctioned for Kalinga Industries in as much as 90 per cent of the value to be paid as soon as their Bankers certify that structures are ready for despatch. *Prima facie*, 90 per cent advance appears to be high but there are many instances in which Government have paid similar percentage in the case of orders for trusses placed by the Electricity Department. The general idea is that when a firm produces structures involving large quantities of steel inasmuch as the cost of steel as possible should be paid as soon as possible. In fact, some of the tenderers for electricity contracts have been stipulating supply of steel or payment of the value of steel even before fabrication. In the case of Kalinga Industries, 90 per cent payment is being made only on the point of despatch, i. e., after the process of fabrications is over. Considering that the deliveries are to be made inside Orissa by trucks, the time-lag between the declaration of readiness to despatch and the actual delivery cannot be expected to be very great."

The above note was signed by Dr. Mahatab on May 17, 1960.

On May 13, 1960 Shri S. K. Palit, Chief Engineer, Irrigation, in pursuance of some verbal talk sent the following comparative Statement of the different types of trusses to the Development Commissioner—

“ Comparative Cost of different types of trusses

Span in feet	Wooden truss with roof members	Conventional steel truss with roof members	Tubular truss with roof members
(1)	(2)	(3)	(4)
	Rs.	Rs.	Rs.
20'	150	345	361
30'		518	626
40'		675	1,074

The above rates do not provide for carriage, hoisting and fitting and fixing charges.”

Details, which formed the basis of the comparative statement, were also enclosed. On coming to know of the comparative statement, the management of Kalinga Industries sent letter dated June 24, 1960 to the Chief Engineer. According to that letter, the calculations of the Chief Engineer were not correct and the cost of tubular trusses was comparatively less than conventional steel trusses. Details forming the basis of the conclusions of Kalinga Industries were also given. The Additional Chief Engineer, Irrigation thereafter placed an order on February 25, 1961 for supply of tubular structures manufactured by Kalinga Industries.

On January 30, 1961 Shri R. B. Misra, Minister, Tribal & Rural Welfare Department, passed an order that telegrams be sent to all Collectors informing them that they should not place further orders for tubular trusses with Kalinga Industries. The Minister also expressed the view that the possibility of reverting to graingollas made of seasoned wood materials might be considered as they were cheaper. Dr. Mahatab thereafter passed an order on February 2, 1961 that it would be better if each Department proceeded independently in the matter and that the Tribal & Rural Welfare Department might consider the note of the Minister

and decide to stop purchase of tubular trusses. There was a sharp reaction in the Planning & Co-ordination Department to the telegrams which had been sent by Tribal & Rural Welfare Department to the Collectors.

The Deputy Secretary, Planning & Co-ordination, in his note dated February 22, 1961 observed:

“What is unfortunate about the whole matter is that T. & R. W. Department have taken a completely unilateral decision and have very hastily issued a telegram to all Collectors that tubular trusses should not be used. Had they confined their directive only to their departmental buildings, there could, at least, have been some justification; instead they have given a general direction that tubular trusses should not be used which the Collectors may very well take to mean that tubular trusses should not be used for any type of Government building. This will only create unnecessary confusion inasmuch as the other Departments of Government who are also using tubular trusses have not taken similar decision.”

The Deputy Secretary further stated:

“Such being the case, we cannot persuade ourselves to believe in the reasoning of the T. & R. W. Department as regards the fictitious economy they want to effect by adopting the wooden trusses. One thing is very clear that we will not advise other Departments to follow in the foot-steps of the T. & R. W. Department. The other question whether T. & R. W. Department should be advised to trace back their steps is a question needing a decision. The unfortunate controversy can be put to an end to if T. & R. W. Department withdraw the telegram they have so hastily issued and with so little examination of the matter. Chief Minister may possibly take the final decision which we may require the T. & R. W. Department to implement.”

The Secretary, Planning & Co-ordination Department, thereafter observed:

7. “Orders at p. 311/C.—The above note explains the position. It is not known if T. & R. W. Department have taken the orders of the Chief Minister separately before issuing the telegram referred to. As instruction on this subject were originally issued with the order of the Chief Minister, they should have taken his orders for countermanding them. If departments act in the manner indicated without consulting the Co-ordination Department, it will be difficult to co-ordinate. In my humble opinion, it is not correct to go back to the wooden trusses without ensuring that quality will not be affected. For orders whether T. & R. W. Department would be advised to withdraw the telegram.

With a view to ensure that the lowest possible price is being paid for the tubular trusses I have taken steps to collect quotations periodically from other manufactures and compare them. Orders will be placed on the supplier with the more competitive terms".

On February 24, 1961 Dr. Mahatab directed that the Tribal and Rural Welfare Department should not stop the work at the fag end of the year, but Development Commissioner should examine the matter in consultation with Chief Engineer on the point of durability and cost of the building and the prices charged by the Kalinga Industries as compared with others.

The above was the position till February 25, 1961 when Orissa was placed under the President's Rule. The President's Rule came to an end on June 23, 1961 and on that day the Ministry headed by Shri Patnaik assumed charge of Office. Tubular trusses with accessories thereafter, according to the affidavit filed on behalf of the State Government, were purchased by the different departments of the Government of Orissa from Kalinga Industries of the value of Rs. 77,91,217-41 Ps. as detailed earlier. Instead of going into the details of each of the orders, it would be convenient, as has been done by the learned counsel for the parties, to confine ourselves to the three main supplies, namely, those made to Paradeep Port, Local Self-Government Department and Orissa Mining Corporation.

On July 12, 1962 two letters were addressed by Kalinga Industries Ltd., one to the Secretary, Commerce Department (Paradeep Project), Government of Orissa, and the other to the General Manager, Orissa Mining Corporation Ltd. The letter to the Secretary, Commerce Department (Paradeep Project) was as under :—

"We learnt with interest that you require about 2500 units of 20'-0" span Tubular Roofing Structures for use in various constructions in connection with the Paradeep Project. We take pleasure in informing you that we are in a position to supply your entire requirements and submit below our quotation for favour of your consideration :—

2500 units of Tubular Structures consisting of

2500 Nos. of 20' span Trusses	..	@ Rs. 145	each Rs. 3,62,500
16500 Nos. of 10' Purlins	..	@ Rs. 33	each Rs. 5,44,500

5000 Nos. of 10' Ties	.. @ Rs. 28	each Rs. 1,40,000
3000 Nos. of End Purlins	.. @ Rs. 9	each Rs. 27,000
5000 Nos. of 14'-6" Single-Tube.. columns.	@ Rs. 97	each Rs. 4,85,000
5000 Nos. of sets of connecting .. bolts and fixtures.	@ Rs. 6	per set Rs. 30,000
Extra J-Hooks and Bolts required for G. C. I. Sheet roofing.	..	Rs. 16,250

Rs. 16,05,250

Delivered ex-Works, Choudwar/Cuttack

Total weight of the structures

including connecting fixtures :—Approximately 645

Sales Tax will be charged extra @ 5 per cent

Please note that the above prices are the same at which we have been supplying structures to Orissa Government for the past three years, and we have not increased the prices although recently there has been an increase in the price of pipes to the tunes of Rs. 350 per ton due to the imposition of excise duty as well as increase in the price of skelp which in turn affects the price of finished structures by more than 15 per cent. We are prepared to absorb this in the existing prices as mentioned above, provided the entire quantity of 2500 units of structures, are ordered in one lot immediately and 90 per cent of the total cost of the structures is given to us as advance along with the order.

Delivery :—To be completed before end of February 1963. The structures will be given one coat of redoxide primer.

We trust our above quotation will be acceptable to you and look forward to receiving your valued orders which will have our very best attention".

In the letter to the General Manager, Orissa Mining Corporation, it was stated that the management of Kalinga Industries understood that the Orissa Mining Corporation was in need of 2500 units of 20' span tubular roofing structures and, therefore, the Kalinga Industries were giving quotation of similar structures. The remaining part of the letter to the General Manager, Orissa Mining Corporation was substantially the same as that addressed to the Secretary, Commerce

Department (Paradeep Project). On receipt of the above letter dated the July 12, 1962 from Kalinga Industries, Joint Secretary Commerce (Ports) addressed a note to the Chief Engineer-cum-Administrator of Paradeep Port on July 20, 1962 asking the latter's comments regarding the placing of orders of 2500 units of tubular structures offered by Kalinga Industries. Shri Shrinivasan, it may be stated, had taken over as Chief Engineer-cum-Administrator of Paradeep Port on July 16 1962. On July 21, 1962 Shri Srinivasan recorded the following note:—

“2500 units of tubular structures offered must be grabbed at. These will facilitate quick organisation of the Project work. On rough calculations, I find that Purlins, ties, etc., offered will meet the needs of sheds which can be erected with 2500 Nos. Trusses.

A blue print showing the Purlins, ties and columns to be used within the trusses may have to be obtained to check whether the accessories offered with the structures are complete.

The offer is very attractive. These tubular structures are not easily obtained and they take considerable time to manufacture and supply. Even so, the purchase amount is over Rs. 16 lakhs. Audit may be questioning why a tender call has not been made. If the purchase is to be made without tender call, orders approving the purchase from competent authority may have to be obtained and recorded to avoid audit objection later.

I presume that if the terms of payment be accepted, if we agree to pay 90 per cent advance (these terms are now in vogue with all large firms) the supplier will give us bank guarantee to cover the advance payment. A performance guarantee from the firm for proper performance of the contract including adherence to delivery time may have to be taken. The bank guarantee for the 90 per cent advance can be allowed to be proportionately reduced with receipt of each consignment of supplies received.

Liquidated damages clause may have to be agreed to by the supplying firm, if the entire supplies be not delivered fully and to the satisfaction of concerned authorities by February 1963. For every month of delay 2 per cent of the cost of the structures pending, delivery, must be paid by the firm to the Government.

It may appear equitable to charge interest at the ruling rate say 6 per cent per annum, on the advance payment, outstanding the advance being adjusted every time part supply is received.

In any event these sheds are necessary. We may need a lot more, but then the additional requirement should be of ‘Spans 50’ or more. If they be not available readily, we may have to undertake manufacture departmentally or prefabricated concrete structures.”

The matter was thereafter subject of further notings and it was suggested that in view of the tremendous advantages in the

price, 90 per cent advance might be given on the strength of the Company itself but delivery should be guaranteed by the end of February 1963, and if delivery was delayed a penalty of 2 per cent of the cost of structure pending delivery might be levied. The proposal about the purchase of 2,500 trusses for Paradip Port and the giving of 90 per cent advance was approved by the Chief Minister, Shri Patnaik on August 10th 1962. An order for the supply of 2,500 trusses at a cost of Rs. 16,05,250 excluding sales tax was placed on August 17th 1962 by the Joint Secretary, Commerce (Ports). It was indicated in the order that 90 per cent of the cost of the structure would be paid on production of an on-account bill. Rs. 14,44,725 were thereafter paid as advance to Kalinga Industries on August 23rd 1962.

So far as Orissa Mining Corporation is concerned, its Managing Director on receipt of letter dated July 12th 1962 from Kalinga Industries wrote back that there was some misconception somewhere and that the Orissa Mining Corporation did not require 2,500 units of tubular structures to be delivered before February 1963. The matter was thereafter considered in a meeting of the Board of Directors of Orissa Mining Corporation on August 8th 1962. It was then pointed out that since most of the areas to be exploited for minerals were sparsely populated areas, housing became a primary necessity. Tubular structures were stated to have the advantage of quick erection. It was then decided to obtain immediately quotations from Indian Tube Company and to compare them with those of Kalinga Industries. Telegraphic quotation was invited from Stewarts & Lloyds of Indian Tube Company. Their telegraphic address is "Tube Makers". The following comparative statement was then prepared:—

"As per telegram from Messrs.
Tube Makers", Calcutta

As per quotations of M/s. Kalinga
Industries, Ltd., Choudwar

Specification	Amount
One-twenty feet span tubular structure, six Bays, at ten feet bay, fourteen feet clear height from the floor to truss tie level, with R. S. C. (Rolled Steel Joists) columns, extended suitably for embedding into concrete foundations, hook-bolts for use with asbestos-cement sheet for roof including trusses & Columns and Gable Extensions, Short Purlins at both Gable ends, F.O.R., Calcutta—	Rs. 4,182
per Unit.	Rs. 3,332.

It was thereafter decided to place order with Kalinga Industries, and on the 28th August 1962, a letter containing an order for 2,500 tubular structures was addressed to Kalinga Industries. It was stated that the Orissa Mining Corporation would keep in deposit Rs. 10 lakhs with the Indian Overseas Bank, Cuttack and the Kalinga Industries would be authorised to draw the requirements of money from the account from time to time for the specific purposes of buying materials for the manufacture of those structures and/or expenditure incurred for manufacturing the structures. The Kalinga Industries were to give to the Orissa Mining Corporation an advance intimation of the funds to be withdrawn from the bank stating the details of the purposes for which money was required. The Corporation was to authorize payments thereafter. The Kalinga Industries, according further to the letter, would have to furnish usual warranty and execute an agreement covering the following matters :—

“(a) The Kalinga Industries will pay penalty amounting to 2 per cent of the value of the structures remaining undelivered on the 28th February 1963 per month thereafter.

(b) That the Kalinga Industries will pay an interest at the rate of 6 per cent per annum on the value of the structures remaining undelivered on the 28th February 1963 for the period starting from the date of receipt of advance up to the 28th February 1963.”

On the 21st March 1964 tender notice was ordered to be published by Health (Local Self-Government) Department for supply of tubular structures of 20' × 60' with 10 feet spacing for accommodation of displaced persons from East Pakistan. Copies of tender notice were sent to Stewarts and Lloyds, Kalinga Industries, Rourkela Fabricators and Hirakud Works. It was thereafter decided to place order with Kalinga Industries. Order on behalf of Health (Local Self-Government) Department for purchase of tubular structures was placed as per letter, dated April 1, 1964 from that Department to Kalinga Industries. In this letter there was a reference to the tender, dated March 31, 1964 of Kalinga Industries. The Kalinga Industries was asked to arrange for the supply of 500 units of tubular structures of 20' span excluding columns at its quoted rate of Rs. 3,200 per unit. It was specified that each unit would consist of seven number of trusses, 36 purlins, 12 Ties and 14 sets of truss anchor bolts, and bearing plates. The price

was stated to be inclusive of loading, unloading, and transport charges for any destination within Orissa but not of Orissa Sales Tax. The places of destination were mentioned to be in Koraput district. The above order was revised and on April 8, 1964 an order was placed by the Health (Local Self-Government) Department with Kalinga Industries for supply of 563 units of tubular structures of 20' span at a cost of Rs. 3,593 per unit. Each unit was stated to consist of 7 trusses, 48 purlins, 12 ties and 14 sets of trusses anchor bolts and bearing plates. The price was stated to be inclusive of loading, unloading and transport charges for any destination within Orissa but not inclusive of Orissa Sales Tax. 500 units were required to be delivered in Koraput district, and 63 units in Sambalpur district. A formal agreement for supply of the above units of tubular structures was executed on April 9, 1964. The Accountant-General was informed on April 10, 1964 that as there was no provision in the budget, the expenditure was to be met from the advance of Rs. 35 lakhs sanctioned from Orissa Contingency Fund.

In a letter, dated August 10, 1963 to Executive Engineer, Civil Works Division, Bhubaneswar, Kalinga Industries quoted the following rates of the different component of the tubular structures as under and added that those were the rates on which the Company had been supplying to Government of Orissa since 1959 :—

“ 20'-0" Tubular Truss	..	Rs. 314.50 nP. per each
12'-6" Tubular Purlins	..	Rs. 310.00 nP. per set 8 Nos.
12'-6" Tubular Ties	..	Rs. 70.00 nP. per set of 2 Nos.
End Purlins	..	Rs. 9.00 nP. per each
14'-6" Tubular columns for 20'/30'.		Rs. 117.00 nP. per each
20'-0" Tubular Truss	..	Rs. 145.00 nP. per each
10'-10" Purlin 2" dia.	..	Rs. 198.00 nP. per set of 6 Nos.

10'-0" Tubular Ties	..	Rs. 56.00 nP. per set of 2 Nos.
40'-0" Tubular Truss	..	Rs. 450.00 nP. per each
13'-4" Tubular Purlins	..	Rs. 60.00 nP. per each.
13'-4" Ties	..	Rs. 37.50 nP. per each
14'-6" Columns for 40' structures		Rs. 170.00 nP. per each
Rod Rafter-Bracings	..	Rs. 20.000 nP. per set
Foundation Bolts	..	Rs. 12.00 nP. per set of 4 Nos.
Truss sheo Anchor Bolts	..	Rs. 12.00 nP. per set of 4 Nos.
11'-6" S. T. Columns extended to 14'-03" NB.		Rs. 97.00 nP. per each.
Extra J-Hooks for GCI sheets 20'/30' structures.		Rs. 10.50 nP. per bay
Extra J-Hooks for GCI sheets for 40'.		Rs. 20.00 nP. per bay"

On March 10, 1964 Kalinga Industries in a letter to the Director-General of Supplies and Disposals referred to the previous discussion between the representatives of the Company and the Government and confirmed the following rates for supply of structures for Dandakaranya Project :—

- " 1. One unit of 20'-0" (centres of columns) upon structure X 50' long in 10' spacing, with 1 29/32" O. D. Purlins and 9'-8" embeded type 3" O. D. Single tube column (overall length 12'). Price for one such unit Rs. 2,540 ex-Works. Railway siding.
2. Same as above but with 9'-6" embeded type column of 125 X 75 mm RSJ, instead of Tubular columns. (Overall length 12'-0"). Price for one such Unit Rs. 2,600 ex-Works. Railway siding."

It was added that the Company would be able to supply structures of 300 such units on receipt of firm order and complete the delivery within four to six weeks. The 20' span structure was stated to be according to specified drawing. Regarding payment it was stated that advance of 95 per cent be allowed on proff of delivery from the Works and the balance of 5 per cent on final receipt and acceptance of goods at the destination. On March 21, 1964 an order was placed by the DGSD with Kalinga Industries the details of which are as under:—

Item No.	Description of stores	Acctt : Unit	Quantity	Rate per Unit	Total cost
(1)	(2)	(3)	(4)	(5)	(6)
				Rs.	Rs.
1	Five bay 10' bay 20 (Span tubular structures with RSJ columns 125×75 MM×9'-6" embedded type, Purlins 1-29/32" O. D. complete, with accessories for CGI sheeting including necessary seem bolts excluding sheets. Trusses to your dgg. KIL/C/300.	EACH SHED	200 Sheds	2,600	5,20,000

On April, 1965 the following letter was addressed by the Kalinga Industries to the Chief Secretary, Government of Orissa :—

"It is regretted that in spite of our transferring the most profitable Plant of the Company to the State Government Corporation without any direct investment by them and from which the State Corporation is making enormous profits, the name of our Company is being dragged in for uncharitable comments.

Consequently, the Company has decided not to sell any of its products to the State Government commencing from the current financial year. We would be grateful if Government would clear the heavy amounts due to us against orders and supplies which are pending with various Government Departments for over a year.

We also note with deep concern that our sale of Tubular Structures to Paradeep Port at concessional prices is being adversely commented upon. We would like to inform the Government that we are prepared to buy these structures back at our original ex-works prices even after their use for the last two years. This offer would remain open for six months.

We would request you to kindly acknowledge receipt of this letter."

The first question, which arises for determination, is whether Shri Patnaik's order dated November 8, 1961, which resulted in the issuance of circular dated November 17, 1961, was actuated by any ulterior motive to benefit the Companies or concerns in which he or other Ministers like Shri Mitra were interested. I have in this connection given above the circumstances under which the order dated November 8, 1961 was made. Briefly stated, the Secretary of the Finance Department in his note dated October 27, 1961 had pointed out that the Transport Department of Orissa Government and the Orissa Road Corporation had made purchases of buses from outside the State and had thus evaded the payment of sales tax amounting Rs. 1,14,380. The Secretary then suggested that purchase of vehicles and other materials by the departments and other organizations under the Government should be made through local dealers, and in case there were no local dealers prior concurrence of Finance Department be taken before placing orders with such firms. The deviation from the above instructions should make the officer concerned personally liable for loss of sales tax revenue. Shri Patnaik, after getting report of the Minister, Transport regarding the purchase of buses, made the order, reproduced, earlier, that the Government Departments when making purchases should not try to save the sales tax as it upset treasury calculations. He also directed that the departments should be suitably informed and appropriate circular be issued. The Secretary, Finance Department, thereafter issued the circular of November 17, 1961. The above circular was most unhappily worded and offended against the basic principle that purchases should be made at the lowest price obtainable. As pointed out by the Chief Secretary in his note dated December 11, 1961, the circular in a way went beyond the directions of the Chief Minister that the sales tax should not be by-passed. When the note of the Chief Secretary was put up before Shri Patnaik, he discussed the matter with the Finance Secretary who thereupon agreed to review the matter. It was

then directed that suitable amendment be made in the circular. A meeting was thereafter held in the Chief Minister's room which was attended amongst others by the Accountant-General but not by the Chief Secretary. According to the note, dated December 17, 1961 of the Finance Secretary, Shri Patnaik then was definitely of the view that the circular should not be cancelled but power should be delegated to the departments of the Government to be exercised with the concurrence of the Financial Adviser attached to the department. It would, therefore, appear that the only modification, which was decided to be made in the circular, was that instead of the concurrence of the Finance Department for purchases from outside the State, the concurrence of the Financial Adviser attached to the departments was substituted. Further difficulties about the circular were thereafter pointed out by the Chief Secretary in his note dated February 5, 1962 as well as by others. On February 7, 1962 Shri Patnaik directed that the matter might be discussed with him by the Chief Secretary. In the meantime, representations were received from Chambers of Commerce but they were ordered to be filed by Shri Patnaik on February 20, 1962 with the observation that no consideration was necessary. It was ultimately on May 4, 1962 that a new circular was issued in supersession of the circular dated November 17, 1961. I have given my consideration to the whole matter and am of the view that the context in which the order, dated November 8, 1961 was made by Shri Patnaik shows that he was not actuated by any ulterior motive. After the issue of the circular when difficulty was pointed out by the Chief Secretary, Shri Patnaik directed that suitable amendments be made. The modification in the circular, which was directed to be made in the meeting held on December 12, 1961 was hardly sufficient to meet the situation and it is not clear as to why Shri Patnaik did not realize the full implication of the circular. It may be that Shri Patnaik was influenced by the notings and views of the Finance Secretary who was keen about the target figure of Rs. 4 crores as sales tax receipt, to overall effect of the circular on the purchases made by the State Government should not have been ignored. The sales tax payable by dealers in Orissa was no doubt higher than the sales tax payable by outside dealers on inter-State sales, but the remedy for that was a properly worded circular designed to equate the position of Orissa dealers with the outside dealers and not the kind of circular which was

issued by the Finance Department. At the same time it has to be recorded that when the Chief Secretary again pointed out the difficulty created by the circular Shri Patnaik had further discussion with him and thereafter a fresh circular was issued on May 4, 1962. It is, in my opinion difficult to spell out an inference from the material on record that Shri Patnaik was actuated by *mala fide* intention when he made the orders mentioned above, especially when we keep in view the fact that the initiative for the whole thing had emanated from the Finance Secretary and that too in the context of a purchase not from the Kalinga Industries or other companies or concerns in which the Ministers were interested but of Tata Mercedes Benz buses from the manufacturers. It may be there was error of judgment but the same cannot be equated with *mala fide* intention. The fact all the same remains, as was pointed out by the Chief Secretary in his communication, dated March 2, 1964 to Shri Bhatnagar, that as a result of circular, dated November 17, 1961 "the purchasing departments of the Government, though not precluded altogether from dealing with outside firms irrespective of the price factor, were nevertheless precluded in practice since reference to the Finance Department would have meant delay in placing orders for materials which were urgently required by various works."

Another decision, which has been assailed on behalf of the State Government in these proceedings, is that incorporated in the resolution of the Industries Department dated August 31, 1961. By this resolution price preference was given to the products of Small-Scale Industries established within the State. The details of the resolution have already been reproduced earlier. Kalinga Industries was registered as a Small-Scale Industry even though its capital exceeded rupees five lakhs, and the case of the State Government is that the above resolution was calculated to give preference to the products of Kalinga Industries. In this respect I find that the affidavit of Shri Mani shows that tubular structures factory of Kalinga Industries Ltd., was registered as a Small-Scale Industry by the Government of India, Ministry of Commerce and Industry, Small Industries Service Institute, Cuttack, for Central Government's Stores Purchase Programme. So far as the registration by the State Government was concerned, Kalinga Industries did not seek any registration for price preference. On April 1, 1961 during the period of President's Rule in Orissa a booklet purporting to be a copy of the Register of Small-Scale Industries was published by the Director of Industries, Orissa. The name

of Kalinga Industries was mentioned in the list given in the booklet. According to the preface of that publication, the Register had been compiled on the basis of door to door census by District Industries Officer.

The resolution dated August 31, 1961 gave the categories of the goods for which price preference was to be allowed to products of Small-Scale Industries as well as the extent of price preference. The only things made of iron or steel to which preference was given in terms of the above resolution were "cast iron wares where machineries, etc. are not necessary." The quantum of preference was to the extent of 10 per cent. It has been frankly conceded on behalf of the State Government by the learned Advocate-General at the time of arguments that tubular trusses sold by Kalinga Industries were made of mild steel and not of cast iron and as such Kalinga Industries was not entitled to any price preference in respect of those trusses. Had the above resolution been intended to benefit the product of Kalinga Industries, the most obvious thing, in my opinion, to do would have been to include the mild steel tubular structures also in the category of the goods to which price preference was given by the resolution. The fact that it was not done would go to show that the above resolution was not published for the benefit of Kalinga Industries.

It is no doubt true that other things being equal the tubular trusses of Kalinga Industries would have got a preference on account of being the product of a Small-Scale Industry as against the product of a non-Small-Scale Industry because of the above resolution, the fact all the same remains that the advantage in this respect, if any, was merely theoretical. The only real competitor of Kalinga Industries so far as the tubular structures were concerned was the concern, Stewarts and Lloyds of Calcutta. As against the products of Stewarts and Lloyds, those of Kalinga Industries were entitled to a preference even in terms of the Orissa General Financial Rules. According to those rules, on the same condition preference would be given to articles produced or manufactured in Orissa over those produced in any other State of the Indian Union. I, therefore, find the plea taken in the affidavits filed on behalf of Shri Patnaik that no advantage was taken by Kalinga industries on account of its being registered as a Small-Scale Industry, to be well founded. It may also be stated that the material on record shows that the policy of price preference to products of Small-Scale Industries was accepted during the time of President's Rule in Orissa and the only

question, which was left over, was the quantum of preference. This matter was finalized subsequently and it was in such circumstances that the resolution dated August 31, 1961 was issued after the coming into power of Shri Patnaik.

Coming to the question of the payment of 90 per cent advance, I find that though the provisions of Orissa Treasury Code are more stringent on the subject, the Government of Orissa, headed by Dr. Mahatab, decided in 1959 that 90 per cent of the cost of trusses should be paid to Kalinga Industries against production of a certificate from the Bankers about the readiness of the goods for despatch. This is clear from the circular letter dated December 15, 1959 which was addressed by the Planning and Co-ordination Department to all Departments of the Government of Orissa. It is no doubt true that subsequently in 1960 when there were political differences between Shri Patnaik and those in power in Orissa, Kalinga Industries waived the condition of 90 per cent advance that waiver in my opinion could not have the effect of obliterating and effacing altogether the decision taken in 1959. The fact would all the same remain that a policy decision was taken by the State Government in 1959 to give 90 per cent advance to Kalinga Industries on account of the tubular trusses purchased from it. The payment of 90 per cent advance to Kalinga Industries, during the years Shri Patnaik was in power, on the products purchased from it cannot consequently be said to be something new and abnormal.

Allegation has also been made by the State Government that circular dated November 28, 1963 was issued on the subject of 90 per cent advance to benefit Kalinga Industries and Orissa Agents. The latter concern stood in the name of the wife of Shri Biren Mitra. In this respect I find that the above circular was issued when Shri Patnaik had ceased to be Chief Minister and had been succeeded by Shri Mitra. The affidavit of Shri Patnaik, which has not been rebutted, shows that Kalinga Industries neither asked for nor received any advance from the State Government after the issue of the said circular except in the case of Health (L. S.-G.) Department order when an open tender was called and the Company had stipulated payment of the advance as one of the conditions of their offer. Orissa Agents closed its business long before November 28, 1963 and the question of that concern deriving any benefit under the above circular did not arise. Looking to all the above facts, I am of the view that it cannot be said that the circular dated November 28, 1963 was issued because of any ulterior motive.

Question then arises as to whether the rate of Rs. 946.50 paise per set of truss for grainingollas was properly arrived at before that rate was accepted by the State Government in March 1959. In this respect I find that after getting the quotation of Metpa Corporation and Modern Traders the Deputy Development Commissioner had a comparative statement prepared by the Executive Engineer. A note was then prepared wherein it was mentioned that the rates of Kalinga Industries were cheapest and there were other advantages also like the reduced cost of transport and easy availability of spare parts in purchasing the structures from Kalinga Industries. The Development Commissioner thereafter recorded his note dated May 5, 1959 (material portion of this note has been reproduced earlier), pointing out the desirability of approving the rate of Kalinga Industries. The rates were then approved by the Deputy Minister of Agriculture and Tribal and Rural Welfare Department. As the procedure adopted had been of limited tender system, the matter was put up before the Chief Minister, Dr. Mahatab, and he gave his approval on March 6, 1959. It would follow from the above that a number of officers applied their heads before the rate of Kalinga Industries was approved. This was long before Shri Patnaik became a Minister and it can not be believed that all the officers hypothecated their conscience and surrendered their power of comparative assessment to the persuasion of Shri Patnaik in approving the rate of Kalinga Industries.

An effort has been made in arguments on behalf of the State Government to draw a distinction between the orders of Secretaries and other officers, and those of the Ministers. It is urged that only the orders of the Ministers should be taken to be those of the Government and not those of Secretaries and other officers. This dichotomy, in my opinion, is without rational basis. The Government acts, through its Secretaries and other officers, and under the rules of business a number of powers have been entrusted to them. The order made by a Secretary or an Officer acting within the scope of his power, is as much the order of the Government as that made by a Minister. As things, however, stand in the present case, I find that the suggestion of the Development Commissioner was also approved by the two Deputy Ministers and the Chief Minister.

It may be stated that in February 1961, another comparative statement was prepared of 30' span trusses. Quotations

were then invited from Messrs. Aartus & Associates, who were the agents of Stewarts & Lloyds, and note dated February 12, 1961 on the file shows that the quotation of Aartus & Associates for a 30' span structure with its component parts was Rs. 935 (exclusive of sales tax) F. O. R. Calcutta, while that of Kalinga Industries for the same was Rs. 946.50 P. (exclusive of sales tax) F. O. R. Choudwar. After taking into account the cost of transportation from Calcutta to Orissa it was found that the quotation of Kalinga Industries was comparatively cheaper.

Shri Mani, Secretary of Kalinga Industries, in his affidavit on which reliance has been placed by Shri Patnaik, has repeatedly stated that, except in case of Health (L. S.-G.) Department order in 1964 which was placed after inviting tenders, Kalinga Industries continued to supply tubular trusses and its component parts during the period from June 1961 to January 1965, at rates at which they were supplied in 1959-60 and 1960-61. It has not been shown to me that the affidavit in this respect is incorrect. The material on record also shows that due to the levy of excise duty with effect from April 24, 1962 there was increase in the price of tubes.

Reference on behalf of the State Government has been made to the fact that in its letter dated February 19, 1959 Kalinga Industries had made an offer of Rs. 1,015 minus a special discount of Rs. 100, i. e., of Rs. 915 for a truss of 30' span with two sets of Purlins and all necessary fittings. It is urged that if we have to take into consideration 1959 price, in that case the price quoted in the above letter should not be lost sight of. In this respect I find that before the offer made in letter of February 19, 1959 was accepted, Kalinga Industries altered its quotation and gave the rate of Rs. 946.50 P. in letter dated March 3, 1959. As the offer made in the letter of February 19, 1959 was never accepted, the offer did not ripen into a contract and no structures were supplied at the rate mentioned in that letter. As such, the quotation given in the letter of February 19, 1959 in my opinion, will have to be excluded from consideration in determining as to what was the rate charged in 1959. Argument has also been advanced that as a discount of Rs. 100 on a price of Rs. 1,015 was offered in the letter of February 19, 1959 a discount at the same percentage should have been allowed by Kalinga Industries on all its supplies. This contention too, in my view, is unwarranted, for it is clear from that letter that the special discount was in the context of the offer made in that letter.

and was not to hold good for other quotations. As things are, I find, as already stated earlier, that the offer made in the letter of February 19, 1959 never ripened into a contract.

Reference has also been made on behalf of the State Government to the rate of Rs. 2,600 per tubular structure contained in the order, dated March 21, 1964 of Director-General of Supplies & Disposals placed with Kalinga Industries. This order has been reproduced earlier. It is urged that the rate charged by Kalinga Industries from Director-General of Supplies & Disposals would show whether price charged by Kalinga Industries on supplies made to Orissa Government were reasonable or not. In this respect I find that the rate of Rs. 2,600 mentioned in the order of Director-General of Supplies & Disposals was in respect of a specified drawing. The aforesaid drawing has not been brought on record and in the absence of that it is difficult to compare the rates charged by Kalinga Industries from Orissa Government with those charged from Director-General of Supplies & Disposals.

I am also not impressed by the argument advanced on behalf of the State Government that tubular structures of Kalinga Industries being of doubtful utility did not have a market elsewhere. The material on record shows that Kalinga Industries supplied structures worth Rs. 36 lakhs against the orders of Director-General of Supplies & Disposals during the period of 1959 to 1966. Kalinga Industries further supplied during the above period structure worth Rs. 79 lakhs to parties outside Orissa including Bharat Electronics, Bangalore, Atomic Energy Establishment, Trombay, Defence Ministry and Railway Department.

There are, however, two aspects of the matter about the adherence to the rates of 1959-60 in respect of the supplies made after the coming into power to Shri. Patnaik, Kalinga Industries, while giving the quotation of Rs. 946.50 nP. in letter dated March 3, 1959, had calculated the price of one truss with one set of purlins as Rs. 614.00. To that amount were added the items of Rs. 10.50 per hook-bolts for G. C. I. sheets, Rs. 12 for truss shoe bolts and Rs. 310 for an extra set of purlins. After 1961, for each truss of 30' span the price charged was Rs. 314.50 paise, and for each set of purlins for such a truss the price charged was Rs. 310. At this rate the price of one truss of 30' span with one set of purlins would come to Rs. 624.50 paise and not Rs. 614. It is no doubt true that in letter dated March 6, 1959 also Kalinga Industries

had charged a rate of Rs. 314.50 paise for one truss of 30' span and of Rs. 310 for one set of purlins, the fact all the same remains that in its quotation, which formed the basis of comparative statement, the price of one truss with one set of purlins had been given as Rs. 614. The price of Rs. 614 for one truss and one set of purlins does not appear to have been adhered to after June 1961. The price charged thereafter was the other rate of Rs. 314.50 paise for one truss and Rs. 310 for one set of purlins.

The second aspect of the matter, of which note should be taken, is that though statements of comparative rates in 1959 and 1960 were prepared for trusses of 30' span, no statements of comparative rates for trusses of 20' and 40' span were prepared. Metpa Corporation, agents of Stewarts & Lloyds in a telegram dated February 28, 1959 gave a quotation of 20' span structure but it does not appear that any comparative statement in respect of those structures was prepared. It seems to have been taken for granted that because the rates of Kalinga Industries were found to be cheaper for truss of 30' span, they would also be cheaper in case of trusses of spans of 20' and 40'. This assumption need not necessarily have been correct especially when we keep in view the fact that there was not much margin of difference in the rates of Kalinga Industries and those of Stewarts & Lloyds either in 1959 or 1960. Indeed in 1960 the rates of Stewarts & Lloyds given by their agents, Aartus & Associates, was Rs. 935 as against that of Rs. 946.50 paise given by Kalinga Industries. The main reason why the quotation of Kalinga Industries was found to be more attractive was the fact that the rates of Stewarts & Lloyds were F. O. R., Calcutta and this necessarily entailed additional transportation charges from Calcutta to Orissa. Apart from that, there is nothing to rule out the possibility that the quotation of one concern may be cheaper in respect of truss of one dimension, but not in respect of truss of other dimension.

I shall now deal with the three main orders on which arguments have been addressed before me. The first order which has been discussed, is that of Orissa Mining Corporation. As has been stated earlier, a letter was addressed by Kalinga Industries on July 12, 1962 to the General Manager of the Orissa Mining Corporation Ltd., offering 2,500 units of tubular structures at a cost of Rs. 16,05,250.00. On July 17, 1962 the Managing Director of the Orissa Mining Corporation Ltd., informed Kalinga Industries that the Corporation

did not require 2,500 units of structures to be delivered before February 1963. It was also mentioned that at that time there was no programme of construction which would necessitate such a large supply of tubular structures. Kalinga Industries was assured that it would be contacted again in a short time with an indent for reduced number according to requirement. A meeting of the Board of Directors of Orissa Mining Corporation, Ltd., was thereafter held on August 8, 1962 and the offer of Kalinga Industries was considered. The Chairman then observed that the Corporation would have to simultaneously take a number of centres for the programme of mining. Since most of the areas to be exploited, were sparsely populated housing became a primary necessity. Enquiry was then made by one of the members of the Board whether as many as 2,500 units of structures were required. The Chairman then stated that the Corporation certainly required 2,500 units within the next year or two. He referred to the special reduced rate and stated that such materials were getting scarce and stockpiling would be justified. The Board then decided as follows:—

- “(i) That quotation from the Indian Tube Company, Jamsedpur be obtained and compared with that available from Kalinga Industries.
- (ii) The Chairman was authorised to place order for 2,500 units of tubular structures with suppliers at a cheaper price.
- (iii) If the orders are placed with Kalinga Industries in accordance with para. (ii) above, the following conditions should be required to be fulfilled by them :—
 - (a) Orissa Mining Corporation will have the right to reject any unit or part thereof which is not of approved quality and specification.
 - (b) Orissa Mining Corporation will have the right to cancel the purchase order in respect of the units undelivered by February 28, 1963.
 - (c) The amount of advance should be covered by a Bank guarantee to be given by M/s. Kalinga Industries, Ltd.”

The note dated August 10, 1962 of the Managing Director shows that an official of Orissa Mining Corporation,

Ltd., contacted the Indian Tube Company at Jamsedpur to enquire about the availability of tubular structures. He was then informed that though the Company manufactured tubes of the specifications mentioned by him, the actual fabrication was done by the sister concern Messrs. Stewarts and Lloyds at Calcutta. The official then rang up Messrs. Stewarts and Lloyds at Calcutta and gave the concern the full specifications of the structures which were required, without mentioning the purpose of requirement. A telegram was then received from Messrs. Stewarts and Lloyds and the comparative statement reproduced earlier was prepared. The comparative statement has been scrutinized at the time of arguments and it has been found that it is hardly sufficient to give a correct picture of the matter. Although there is reference to six Bays in the comparative statement, it is not mentioned as to whether the Bays would necessitate seven trusses, including the two at the gable ends, or five trusses. The indications are that the quotation of Stewarts and Lloyds was for seven trusses. An order was thereafter placed with Kalinga Industries on behalf of the Orissa Mining Corporation, Ltd., on August 13, 1962. The mode of the payment of price was indicated in the letter dated August 28, 1962 and the details of the same have already been given, earlier.

There are some aspects of the above transaction which cannot but cause concern. There is nothing to indicate that the Orissa Mining Corporation felt the necessity of purchasing structures for mining centre before the receipt of letter dated July 12, 1962 from Kalinga Industries. Although the Managing Director of the Orissa Mining Corporation informed Kalinga Industries on July 17, 1962 that there was no programme of construction which would necessitate such a large purchase of tubular structures, the matter was taken up in the meeting of the Board of Directors of Orissa Mining Corporation on August 8, 1962, and it was resolved that the said Corporation should go in for purchase of tubular structures for constructing quarters in sparsely populated mining area. When it was enquired by one of the members as to whether the Corporation would need 2,500 units, the Chairman replied that they would be needed in the next one or two years, and that stockpiling would be necessary as the material was getting scarce. The demand was thus made to synchronize with the number of tubular structures offered by Kalinga Industries. It is further clear from the note dated August 10, 1962 of the Managing Director of the Corporation that when the

Indian Tube Company pointed out that the tubular structures were being fabricated by Messrs. Stewarts and Lloyds at Calcutta, that concern was contacted on telephone and was asked to send immediately its quotation. The fact that quotation was received by telegram, would go to show that some such indication must have been given to Messrs. Stewarts and Lloyds. The purchase involved an amount of more than Rs. 16 lakhs, and if the Orissa Mining Corporation was in earnest to have the quotation of Stewarts and Lloyds with all the details and specifications, I fail to understand as to why a letter giving all the details was not sent to the aforesaid concern and why it was not asked to send detailed quotations. The indication of a telegraphic quotation by a telephonic message can hardly be considered to be satisfactory when we keep in view the huge amount involved in the order. The offer contained in the letter of the Kalinga Industries should not have been treated like a directive from the High Command as would justify an undue haste and departure from the normal routine. The above circumstances reveal that the officer invited from Messrs. Stewarts and Lloyds was only for making a show of comparative rates rather than out of a genuine desire to have a true assessment of the comparative rates of two manufacturers.

I, therefore, find in respect of this transaction:—

- (i) Necessity for tubular structures was felt by Orissa Mining Corporation only after an offer was received from Kalinga Industries for supply of those structures.
- (ii) The demand for those tubular structures by Orissa Mining Corporation was made to synchronize with the number of such structures offered by the Kalinga Industries on the ground that it would be necessary to stockpile them.
- (iii) Although the transaction involved an amount of more than Rs. 16 lakhs, the normal procedure of getting quotations or inviting tenders was not adhered to.
- (iv) In order to keep up a semblance of comparative rates, Messrs. Stewarts and Lloyds were asked by telephonic trunk call to send their quotation immediately and a somewhat obscure comparative statement was prepared on the basis of their telegraphic quotation.

The second main order relates to purchase of tubular structures worth Rs. 16,05,250 for Paradeep Port from Kalinga Industries. In respect of this order, I find that soon after the receipt of letter dated July 12, 1962 from Kalinga Industries, when the matter was referred to the Chief Engineer-cum-Administrator, he recorded a note on July 21, 1962 that the 2,500 units of tubular structures offered by Kalinga Industries must be grabbed at and the procedure of inviting tenders should be dispensed with after obtaining sanction of competent authority. He also agreed to the term of 90 per cent advance subject to safeguards. It may be stated that the Chief Engineer-cum-Administrator, on being appointed by Shri Patnaik on somewhat liberal terms, had assumed charge of his office only five days earlier, i. e., on July 16, 1962. The proposal for purchase of 2,500 tubular structures from Kalinga Industries without inviting tender and also payment of 90 per cent advance was approved by Shri Patnaik, Chief Minister on August 10, 1962. An order was thereafter placed on August 17, 1962 with Kalinga Industries for supply of trusses to Paradeep Port at a cost of Rs. 16,05,250. 90 per cent advance of Rs. 14,44,725 was paid on August 23, 1962.

It would appear from the above that the normal procedure of inviting tenders, limited or otherwise, was not resorted to even though the purchase involved an amount of more than Rs. 16 lakhs. No quotation from any other firm having been invited, the question of preparing comparative statement of rates did not arise. The whole official machinery moved in such a manner as reveals an attitude that the offer made by Kalinga Industries had to be accepted in its entirety.

It has been argued on behalf of Shri Patnaik that there was a new Project for Paradeep Port and that there is difference between a Project and a Division. In the case of a Project you start from a scratch while in the case of a Division you have already got quarters, buildings and godowns. As Paradeep Port site was a swamp, tubular structures, it is urged, were needed for constructing residential quarters and godowns for storing cement and other material. The urgent need of the construction of residential quarters and godowns, in my opinion, did not justify a departure from the normal practice of having competitive quotations from the different manufacturers in order to see as to whether the rates quoted by Kalinga Industries were cheap and attractive. The quotation could have at least been invited from the other major

manufacturer in order to ensure that no excessive payment was made in purchase of those structures. It is difficult to believe that there arose such an urgency that there was not even time to invite quotation from the other major manufacturer of tubular structures, namely, Messrs Stewarts Lloyds. The fact that the above purchase was being made from Kalinga Industries, which had been started by Shri Patnaik before he came Chief Minister, of which his wife was the Chairman, and in which the members of his family had great interest at the time of purchase, and the fact that the purchase was of Tubular trusses for the sale of which Shri Patnaik had played such a prominent role in the past, high-light the significance of non-invitation of quotation from the other manufactures and the by-passing of the normal procedure even though the transaction involved a huge amount. To the above circumstances can be added the fact that approval for the above transaction was given by Shri Patnaik himself as Chief Minister.

It has also been argued on behalf of Shri Patnaik that the authorities concerned were aware, before they placed order for supply of tubular structures for Paradeep Port on August 17, 1962 that a comparative statement had been prepared about the rates of Kalinga Industries and Stewart and Lloyds in the office of Orissa Mining Corporation before August 13, 1962 and as such there was no necessity for inviting quotations in respect of the supply for Paradeep Port. There is, in my view, no force in this contention, because the decision to invite competitive quotation for tubular structures was taken in the meeting of the Orissa Mining Corporation on August 8, 1962. A move before that had already been made by the authorities of Paradeep Port not to invite tenders. Apart from that, it has already been shown above that the invitation of quotations by Orissa Mining Corporation from Messrs Stewart and Lloyds was in a most unsatisfactory manner.

The Audit Report of 1965 shows that till April, 1964 866 out of 2,500 trusses ordered for Paradeep Port by Kalinga Industries had not been utilized. The explanation given for that was that there was some transport difficulty and because of emergency following Chinese aggression iron and asbestos sheets could not be procured. It is not necessary to go into the question as to whether this explanation was satisfactory, because the fact all the same remains that the authorities could do till April, 1964 without one-third of the 2,500 trusses

in respect of which the offer of Kalinga Industries had been accepted with unseemly haste in August, 1962.

So far as the letter dated April 1, 1965 from Kalinga Industries to Chief Secretary, Orissa Government (reproduced earlier), is concerned I find that the offer of Kalinga Industries to take back the tubular structures supplied to Paradeep Port at original prices was made after the Cabinet sub-committee had criticised the purchase of those tubular structures. The report of the sub-committee was sent by the Prime Minister, Shri Lal Bahadur Shastri, to Shri Patnaik on January 15, 1965. It was under the pressure of that criticism that Kalinga Industries made the offer contained in letter dated April 1, 1965. It must have also been obvious that the said offer could not be accepted as it would have entailed the dismantling of all the structures, with consequential loss of money spent on transport, construction and dismantling of the structures. The offer in the very nature of things could not be taken seriously, for it was plain that it could not be acted upon.

I may state that reference has been made on behalf of the State Government to a note dated December 10, 1962. In this note it is stated that the Chief Minister asked the writer of the note to specifically mention in the note that the prices offered by Kalinga Industries were found to be competitive *qua* the other leading suppliers, and that he (the writer) had been told this fact by Shri Ramachandran of Orissa Mining Corporation. The writer has further stated that he checked up the matter with Shri Ramachandran of Orissa Mining Corporation and was informed the rates were found to be competitive. The above note, according to the learned Advocate-General, is in the hand of Shri Gian Chand, who was Joint Secretary, Commerce (Port). Earlier than this note is a note dated August 7, 1963 signed by Shri Gian Chand. Following that note is another note dated August 7, 1963 also signed by Shri Gian Chand. After that, there is still another note dated August 7, 1963 which too has been signed by Shri Gian Chand. It is not at all clear as to how a note dated December 10, 1962 could find a place in between two notes of August 7, 1963. The note dated December 10, 1962 is of a most suspicious character and I have consequently excluded it from consideration.

The third and the last main order on which arguments have been addressed before me relate to purchase of tubular trusses by Health (Local Self-Government) Department from

Kalinga Industries. In connection with this order, I find that a meeting was held on March 19, 1964 at Raj Bhavan. It was attended amongst others by Shri Atulya Ghosh, Shrimati Abha Maiti, Rehabilitation Minister, West Bengal, and the Chief Minister and other Ministers of Orissa. In that meeting Orissa Government agreed to take in 5,000 families of displaced persons from East Bengal as the situation in Calcutta and other neighbouring areas was becoming extremely explosive. It was also stated that those families would start arriving in Orissa with effect from March 29 at the rate about 200 families per day on five days in each week. It was decided that those families would be kept in the four transit camps in Koraput District, Sunabeda Civil Township, Ambaguda, Tiruveli and Padua, and one transit camp in Dungri in Sambalpur district. It was further resolved that requisite number of tenements would be put up in each area, utilizing GCI sheets, tubular trusses and other materials as per plan already prepared by the Rehabilitation Department. Those tenements were to be completed in all the areas by middle of May. Tender notice was thereafter issued for purchase of tubular structures on March 21, 1964. In the notice March 31, 1964 was mentioned as the last date for receiving quotations. Individual notice were sent to Messrs. Stewart & Lloyds, Calcutta, Kalinga Industries, Rourkela Fabricators and Hirakud Works. A notice was also sent to the Public Relations Department for publicity in local and other papers. By March 31, 1964 two tenders were received—one from Kalinga Industries and the other from Hirakud Works. Hirakud Works, it may be stated, is one of the concerns of Industrial Development Corporation of Orissa Ltd. Hirakud Works in the quotation mentioned that the material was to be supplied by the party and delivery would be made within three months after the receipt of the firm order and material. Kalinga Industries quoted a rate of Rs. 4,460 per unit for 834 units of tubular structures of the size of 20, span with length of 60' in 10' spacings. It was also mentioned that the cost of structure including transport to site but excluding columns would be Rs. 3,200 per unit. The Chief Construction Engineer, Aero-Engine Factory then scrutinized the quotations of Hirakud Works and Kalinga Industries, and found that Hirakud Works had mentioned the delivery period of three months after receipt of firm order and materials, and had also asked for materials to be supplied by the Government. The Chief Construction Engineer further

observed that it was rather difficult to compare the two tenders as they were entirely on different basis. Though an approximate comparison showed that the rate quoted by Industrial Development Corporation was likely to be slightly cheaper than the rates quoted by Kalinga Industries. In view of the short time within which the work was to be completed and in view of the other conditions stipulated in the tender of Industrial Development Corporation, the Chief Construction Engineer recommended that the tender of the Kalinga Industries might be accepted. A note was thereafter made that the families of displaced persons from East Bengal would start arriving with effect from April 5, and no time should be lost in negotiating with Industrial Development Corporation. The tender of Kalinga Industries for supply of trusses was, accordingly, directed to be accepted. A letter dated April 1, 1964 was addressed by the Under-Secretary on behalf of Health (Local Self-Government) Department to Kalinga Industries for supply of 500 units of tubular structures at the quoted rate of Rs. 3,200. It was mentioned that each unit would consist of seven number of trusses, six sets of purlins, six sets of ties and fourteen sets of truss anchor bolts and bearing plates. The above price was to be inclusive of loading and unloading and transport charges for any destination within Orissa. The places for delivery in Koraput district were also specified in the letter. On April 8, 1964 another letter in partial modification of the earlier letter, was issued on behalf of Health (Local Self-Government) Department to Kalinga Industries asking the latter to arrange for the supply of 563 units of tubular structures of 20' span at a cost of Rs. 3,593 per unit. As per this letter each unit was to consist of seven number of trusses, eight sets of purlins, six sets of ties and fourteen sets of truss anchor bolts and bearing plates. The price as earlier mentioned was inclusive of loading and unloading, and transport charges for any destination within Orissa. The places of destination were also mentioned in this letter. On April 9, 1964, a formal agreement about the above supply was executed by Kalinga Industries and the Secretary, Health (Local Self-Government) Department on behalf of the Governor of Orissa. On April 10, 1964 a letter was addressed to the Accountant-General, Orissa, that the Government had sanctioned out of an advance of Rs. 35 lakhs of Orissa Contingency Fund an expenditure of Rs. 9,43,000 representing the 50 per cent of the cost of 500 units of tubular structures to be paid to Kalinga Industries for

construction of tenements for the rehabilitation of displaced persons from East Bengal.

It appears that the tubular structures in order to be transported to Koraput district had to pass through Andhra State. The trucks were held up at Srikakulam in Andhra Pradesh by Road Transport Authorities and an amount of Rs. 600 per truck was demanded. A letter dated April 17, 1964 was thereafter addressed by the Kalinga Industries to the Secretary, Health (Local Self-Government) Department to intervene and do the needful. From letter dated August 22, 1964 addressed by the State Government to the Accountant-General, Orissa, it would appear that before that date Kalinga Industries had already supplied all the tubular trusses as per orders of the Health (Local Self-Government) Department.

The above facts go to show that so far as the order by the Health (Local Self-Government) Department was concerned it was placed with Kalinga Industries after inviting quotations from various manufacturers, and because the quotations of Kalinga Industries were found to be most attractive. The short-notice of the tender was due to the extreme urgency of the matter as the situation in Calcutta was getting explosive and the families of displaced persons were to start arriving in Orissa with effect from April 5, 1964. A formal agreement was also executed with Kalinga Industries in connection with the order. Looking to all the facts I find no impropriety in this transaction.

The State Government while calculating the profits made by Kalinga Industries in the various transactions relating to tubular structures has stated that Kalinga Industries charged an amount of Rs. 3,000 for a truss of 20' span after Shri Patnaik and Shri Mitra came into power, while earlier Kalinga Industries had charged Rs. 946 for a 30' span. It is stated that the price of a truss of 20' span should have been Rs. 650. The allegation of the State Government in this respect is wholly misconceived because in fact Kalinga Industries charged a price of Rs. 553 for a truss of 20' span including purlins and nut bolts. Another claim made by the State Government in the particulars of allegation is that Kalinga Industries has charged Rs. 3,593 for the same truss supplied to Health (Local Self-Government) Department for which the said Company had charged Rs. 946 before the coming in to power of Shri Patnaik. It is thus inferred that Kalinga Industries charged 3 times the price it used to charge

before Shri Patnaik came into power. This claim is again without any basis whatsoever, as would appear from the following comparative table of the items supplied:—

“Against Rs. 3,593	Against Rs. 946
7 Nos. 20' span Trusses	1 No. 30' span Truss
60 Nos. 10' Purlins/Ties	16 Nos. 12'-6" Purlins
14 sets Bolts and Nuts	2 sets Bolts and Nuts
Delivered to any destination in Orissa.	Delivery-ex-Factory

My findings in respect of the different matters relating to this allegation are as under—

1. The order of Shri Patnaik, dated November 8, 1961 resulting the issuance of the circular dated November 17, 1961 was not actuated by *mala fide* intention.
2. The circular of November 17, 1961 was not unhappily worded and whatever might have been the intention of Shri Patnaik, as a result of that circular, the purchasing departments were precluded in practice from purchasing materials from outside dealers irrespective of the price factor.
3. There was no ulterior motive in the publication of resolution, dated August 31, 1961 by the Industries Department.
4. The practice of payment of 90 per cent advance to Kalinga Industries came into vogue in 1959 when the Ministry headed by Dr. Mahtab was in power. It was not something newly started after the coming into power of Shri Patnaik.
5. There was no ulterior motive in the issuance of circular, dated November 28, 1963.
6. Kalinga Industries was a Company started by Shri Patnaik. Shrimati Patnaik became Chair-man of the Company when Shri Patnaik assumed office as Chief Minister and the members of his family had great interest in that Company.

7. The rate of Rs. 946.50 Paise per set of truss for grain-gollas of 30' span was fixed in 1959 after the matter had been examined by a number of officers and after the preparation of a comparative statement of rates. Approval to the above was accorded by the then Minister.
8. Except in the case of Health (Local Self-Government) Department order in 1964, which was placed after inviting tenders, the rates charged by Kalinga Industries after Shri Patnaik came into power on June 23, 1961 for tubular structures were the same as had been charged in 1959 and 1960 even though there was some increase in the price of tubes after the coming into power of Shri Patnaik.
9. The contention that tubular structures of Kalinga Industries had no market outside Orissa is not well founded.
10. The only comparative statement which was prepared before Shri Patnaik came into power was of truss of 30' span. No comparative statement was prepared of trusses of other dimensions. There was no proper basis for the assumption that because the quotation of Kalinga Industries for a 30' span truss had been found to be attractive the same would be true of trusses of other dimensions.
11. Trusses of the value of Rs. 77, 91, 217.41 Paise were purchased by different departments and a Corporation of Orissa Government from Kalinga Industries after Shri Patnaik assumed the office of the Chief Minister on June 23, 1961 till March 31, 1965.
12. In respect of the order placed on August 13, 1962 by Orissa Mining Corporation with Kalinga Industries for supply of 2,500 units of trusses of the value of Rs. 16,05,250, I find—
 - (a) Necessity for tubular structures was felt by Orissa Mining Corporation only after an offer was received from Kalinga Industries for supply of those structures.

- (b) The demand for those tubular structures by Orissa Mining Corporation was made to synchronize with the number of such structures offered by the Kalinga Industries on the ground that it would be necessary to stockpile them.
 - (c) Although the transaction involved an amount of Rs. 16 lakhs the normal procedure of getting quotations from different concerns or inviting tenders was not adhered to.
 - (i) In order to keep up a semblance of comparative rates Messrs. Stewarts & Lloyds were asked by telephonic trunk call to send their quotation immediately and a somewhat obscure comparative statement was prepared on the basis of their telegraphic quotation.
13. In respect of the order placed on August 17, 1962 by Orissa Government with Kalinga Industries for supply of 2,500 trusses for Paradeep Port of the value of Rs. 16,05,250, I find :
- (a) The normal procedure of inviting tenders limited on otherwise was not resorted to and no quotation from any other firm was invited. This course was personally approved by Shri Patnaik as Chief Minister. The whole official machinery moved in such a manner as reveals an attitude that the offer made by Kalinga Industries had to be accepted in its entirety.
 - (b) One-third of the 2,500 trusses ordered for Paradeep Port remained unutilized till April, 1964.
 - (c) Letter dated April 1, 1965 by Kalinga Industries offering to take back the trusses at the original cost was sent under the pressure of criticism levelled by the Union Cabinet Sub-Committee. It must have been obvious that the offer contained in that letter could not be accepted as it

would have resulted in loss of money spent on transportation, construction and dismantling trusses.

14. There was no impropriety in the transaction relating to purchase in April, 1964 of tubular structures of the value of Rs. 18,86,000 by Health (Local Self-Government) Department from Kalinga Industries for constructing tenements for displaced persons from East Bengal.
15. The estimate of the State Government about the extent of excess price charged by Kalinga Industries for supplies made to Orissa Government and the Companies owned by it after Shri Patnaik came into power, is misconceived and not well-founded.

CHAPTER 3

ALLEGATION No. 3

Re:

Pecuniary benefit to Shrimati Namita Patnaik through Insurance

Allegation No. 3 relates to securing pecuniary benefit to Shrimati Namita Patnaik, brother's wife of Shri Biju Patnaik, in connection with the insurance policies. The respondent named in this allegation is Shri Patnaik.

According to the case set up by the State Government in the particulars of allegations Shrimati Namita Patnaik, wife of Dr. George Patnaik, was an agent of Caledonian Insurance Company which was a foreign company. Dr. George Patnaik is the brother of Shri Biju Patnaik. It is stated that Shri Biju Patnaik, in abuse of his official position and in order to secure pecuniary benefit to Shrimati Namita Patnaik, passed orders for giving business in respect of the Fidelity Bond Policies of the State Government employees to Caledonian Insurance Company, in spite of the fact that the terms under the policy of the aforesaid Company were not suitable to the State Government. (There was other insurance Company were not suitable to the State Government.) There were other insurance companies including Orissa Co-operative Insurance Society Ltd., who were members of the Indian Insurance Companies Association Pool and who offered lesser rates. The insurance with Caledonian Insurance Company was also in disregard of the advice and direction of the Ministry of Finance, Government of India, that insurance orders should be placed with the Indian Insurance Companies which were in the pool. The above Insurance thus resulted in loss of foreign exchange. Shrimati Namita Patnaik, it is further stated, received Rs. 22,200 on account of her 15 per cent commission for fidelity, fire, motor and marine insurance during the period between August 23, 1962 to November 3, 1966. In support of the above allegation the State Government has filed the affidavits of Shri Satyaranjan Pal, Under-Secretary in the Finance Department and Inspector Hem Kanta Sahu (Vigilance).

The case of Shri Patnaik, as given in his affidavit, is that Caledonian Insurance Company was selected as the insurer for Fidelity Bond Policies of the State Government employees on its own merit and the selection had nothing to do with Shrimati Namita Patnaik being the agent of the said Company. According to Shri Patnaik he was not even aware that Shrimati Namita Patnaik was an agent of the above Company. As regards the Orissa Co-operative Insurance Society Limited, it is stated, its case did not arise at all for consideration in view of a letter received from the Indian Insurance Companies Association Pool according to which it would not be possible for the aforesaid Co-operative Society Limited to accept the business and retain the same in its own account. It is further stated that as long as foreign insurance companies were allowed to operate in India, their claim on merit could not be ignored on the ground that entrustment of any business to them would result in repatriation of their profits causing loss of foreign exchange. The insinuation of oblique intention made by the State has been denied by Shri Patnaik. Affidavit of Shri Jagdish Chandra Mohapatra, Branch Manager, Cuttack Branch of Caledonian Insurance Company has also been filed in this connection. According to Shri Mohapatra all negotiations with regard to this business was carried by him personally on behalf of Caledonian Insurance Company since in such matters Branch Manager himself must take the responsibility. As Branch Manager he had the authority to nominate any of his agents as beneficiary of the commission due on account of business secured by him. The family of Dr. George Patnaik and Shri Mohapatra's family had close friendship and long standing association for past twenty years. Dr. George Patnaik had been treating him and the members of his family free. In token of his gratitude he chose Mrs. Namita Patnaik, who was an agent of the Company, as the beneficiary of the commission due on account of this business.

Supplementary affidavits of Shri Satyaranjan Pal and Shri Patnaik have also been filed with regard to this allegation.

I find that the following facts emerge on the record in respect of allegation No. 3.

On February 28, 1958 the Finance Department of the Government of Orissa sent a letter to all the departments stating that according to Rules every officer through whose hands public money passes is to furnish security which should

as a rule be 10 per cent in excess of the maximum amount likely to be in his custody at one time. Experience showed that in case of several departments security could not be obtained from the employees handling cash because the paying capacity of the employees was limited. It was, accordingly decided that in the case of treasurers the security would consist *inter alia* of the fidelity bonds of the insurance company approved by the Government. A letter was thereafter addressed in September 16, 1959 by the Assistant Secretary, Finance Department of the Government of Orissa, to the Under-Secretary, Ministry of Finance, asking for a list of insurance companies which might take up the business of fidelity bonds. Enquiry was also made regarding financial suitability of each company. The Ministry of Finance, Government of India, sent reply on October 12, 1959 stating that in accordance with the earlier circulars insurance should be placed with the Indian Insurance Companies Association Pool (hereinafter referred to as the Pool), which was a body constituted of all important Indian insurers, and undertook joint and several responsibility in respect of Government insurances. On January 27, 1960 the Finance Department of the Government of Orissa intimated to the other departments of the Government that it had been decided that policies for fidelity bonds should be taken from the Pool instead of any individual Company.

A District Officers' conference was held on August 9, 1960 and Shri B. Shivaraman, who was the President of the Board of Revenue, then raised the point that for the fidelity insurance with the Pool the persons concerned would pay more than they would in the case of such insurance with other insurance companies. He, therefore, wanted the Board of Revenue to furnish the details of rates so that the question might be taken up further. A letter was thereafter addressed on August 27, 1960 by the Board of Revenue to the Finance Department stating that as the fidelity insurance with the Pool was more expensive than with other insurance companies, the decision taken earlier by the Government might be reviewed. It would appear that the Caledonian Insurance Company had before that quoted a rate of 2/5 per cent against the rate of 7/8 per cent of the Pool. The matter was then referred to the Ministry of Finance, and the same took it up with the Pool. The pool thereupon decided to reduce the premium rates with regard to Fidelity Guarantee Insurance Policies from 7/8 per cent to 3/8 per cent with effect from March 1, 1961. It was also mentioned that these rates would be subject to a

minimum premium of Rs. 5 per policy. On receipt of the above communication the Finance Department intimated to the Board of Revenue, Orissa, that in view of the reduction in premium rates offered by the Pool, the rates of the Pool would become cheaper than the rates offered by the non-Pool Companies.

On July 21, 1961 Shri J. C. Mahapatra, Branch Manager of the Cuttack Branch of the Caledonian Insurance Company, made a representation to the Chief Minister of Orissa. In that representation Shri Mahapatra pointed out that Caledonian Insurance Company had quoted a low rate of premium which was 40 nP. per annum for each Rs. 100 of the amount of guarantee against 14 annas for each Rs. 100 quoted by the pool. It was further stated that Caledonian Insurance Company was prepared to reduce the rate of premium still further to 30 nP. for each Rs. 100 of the amount of guarantee. Reference was also made to the past records of the said Insurance Company and it was pointed out that in 1958 in response to the call of the Government for subscribing to the State Loan the Company had purchased bonds of the value of Rs. 1 lakh. The Company, it was pointed out, had also a Branch Office at Cuttack for quick contact and settlement of claims and as such had a distinct advantage over the pool. Before, however, the receipt of the above representation from Shri Mahapatra a telegraphic enquiry had already been made on June 27, 1961 from the Controller of Insurance regarding the solvency of Caledonian Insurance Company. A reply was thereafter received from the Assistant Controller of Insurance that it was not necessary to give the information asked for in the telegram as the Orissa Government had already been intimated to place insurance business with the Pool. The matter thereafter became the subject of notings on the file. Conflicting views by the different officials were expressed on the point as to whether insurance for fidelity bonds should be taken from the Pool or from the Caledonian Insurance Company. A suggestion was thrown on behalf of the Finance Department that a further enquiry should be made from the Government of India in view of the reduced rates offered by the Caledonian Insurance Company. Shri Sivaraman, who had in the meantime taken over as Chief Secretary, then made the following note on September 17, 1961, for being put up before the Chief Minister—"Here is a file in Finance Department which is moving on at its own snail's space without any realization of the subject. The subject under consideration is Fidelity Insurance to protect

Government from losses arising out of mismanagement of funds by their officers. For all officers handling cash, the general rule is that a cash security and personal securities are to be given. Experience showed that staff find it very difficult to find the large amount of cash security at the time of joining service. It was then decided that the security should be taken in instalments but the instalments were of such small amounts and over such long periods that the security aspect was not covered. The Board of Revenue brought this matter to the notice of Government and suggested that Fidelity Insurance is an answer to the problem. It was also suggested that half the premium should be payable by Government and the other half by the staff. The finance Department then issued a letter suggesting that all the insurance should be done with the Indian Insurance Companies Association Pool at 14 annas per hundred per annum. At that time Messrs. Caledonian Insurance Company had offered 40 nP. per hundred per annum. This matter was raised in the Collectors' Conference of 1960 and the Finance Department were requested to reconsider the matter. It will be seen from this file that Finance Department then wanted the Board of Revenue to justify that the rates were in fact higher. The reply of the Financial Adviser of the Board of Revenue at pp. 35-38/c may be glanced through. How at all Finance Department considered it cheaper to pay 14 annas per hundred per annum against 40 nP. quoted by somebody else passes my understanding. A reference was then made to the Government of India and the Indian Insurance Companies Association Pool reduced their rate to 6 annas per hundred per annum. Now Caledonian Insurance Company have offered 30 nP. per hundred per annum. Finance Department now want to refer the matter again to the Government of India. The Department has forgotten that over the last two years this problem has been hanging on. The security is not there at all. This does not seem to strike Finance Department as something serious.

2. Caledonian Insurance Company is evidently a Company of standing. From the very fact that the Indian Insurance Companies Association Pool quoted such a high rate at first and then reduced it, there is a suspicion that they are not playing fair. They want to take advantage of their monopoly position. As far as Government is "concerned", financial commitments are certainly most important. A Government servant may well question why we want him to insure at a higher rate paying half the amount when another company

is quoting a lesser rate. In the interest of security I submit that Finance Department should immediately issue orders that the rate of M/s. Caledonian Insurance Company is accepted and Insurance for this year will be done on that basis.

3. After the orders issued for this year, the Finance Department can make its investigations as to whether the Insurance Pool is prepared to lower their rates further. We may also ask the Government of India how they can allow this pool to mulct the State unnecessarily if the risk does not warrant the charge. After we hear from the Government of India we can then decide whether any change will then be necessary."

Shri Biju Patnaik accepted the suggestion of the Chief Secretary on September 18, 1961. On October 3, 1961 a letter was addressed to all the Departments that it had been decided to place the fidelity insurance business with the Caledonian Insurance Company as its rate of 30 nP. was cheaper compared to the rate of the Pool.

On November 2, 1961 the Ministry of Finance in a communication to the Government of Orissa pointed out that Caledonian Insurance Company was a foreign Insurance Company with a right to repatriate its profits which necessarily results in loss of foreign exchange. The Pool was stated to be financially the soundest combine and as such the Government of Orissa should not mind paying slightly higher rate of premium to it. In a further communication dated July 24, 1962 the Ministry of Finance pointed out that the risk covered by the policy of the Pool was more comprehensive and its terms were more favourable. When the matter was brought to the notice of the Caledonian Insurance Company it also modified the policy so as to cover the other risks pointed out by the Ministry of Finance. Another point, which was made against Caledonian Insurance Company, was that according to the terms of its policy it would indemnify only if the loss was discovered within three months of the employees ceasing to act in that capacity of the termination of the agreement. It was pointed out that some times years elapsed before the misappropriation was detected. The Caledonian Insurance Company thereafter extended the period of the discovery of the loss at first to one year and thereafter to 18 months and subsequently agreed to waive the time limit.

The period for which the business of fidelity insurance was given to Caledonian Insurance Company, was initially

up to March 31, 1962. It was later extended till July 31, 1962. Thereafter it was extended to March 31, 1963. Another extension of one year was granted till March 31, 1964. Ultimately further extension of two years was granted till March 31, 1966. The suggestion of the Secretaries for granting the extension were approved on the occasion of such extensions by Shri Patnaik.

It would appear from the above that the business of fidelity insurance was entrusted to Caledonian Insurance Company because its premium rates were found to be lower than those of the Pool. As against 7/8 per cent quoted by the Pool, the Caledonian Insurance Company quoted 2/5 per cent, and as against the quotation of .37 per cent quoted by the Pool, the Caledonian Insurance Company quoted .30%. When it was pointed out that the risk covered by the Pool was more comprehensive, the Caledonian Insurance Company also modified the terms of the policy so as to make the risk more comprehensive. Again when it was pointed out that the Caledonian Insurance Company had restricted the time within which the discovery of the loss must be detected in order to make it liable, the Caledonian Insurance Company at first increased the span of the time-limit and subsequently waived the condition in this respect. It would follow from the above that in spite of the disadvantage of Caledonian Insurance Company being a foreign Company with right to repatriate its profits, there was a redeeming feature in the shape of its low rate of premium which made its terms attractive. Another circumstance in favour of the Caledonian Insurance Company which has been brought on record is that the Pool had insisted upon a minimum premium of Rs. 5 per policy. No such condition appears to have been insisted upon by the Caledonian Insurance Company.

The material discussed above, in my opinion, would go to show that the insurance business for fidelity bonds was entrusted to Caledonian Insurance Company because its terms were taken to be more favourable and not because of any ulterior consideration. It may be that there were equally good, or what may appear to some, better reasons for entrusting the insurance business to the Pool, the fact remains that the grounds for giving the business to Caledonian Insurance Company had an element of plausibility and were not such as can be deemed to be unreasonable. The approach of the Commission in a matter like this has essentially to be to see whether the impugned orders are tainted with such unrea-

sonableness as to show an oblique motive. If the orders do not suffer from this infirmity, they would not be branded *mala fide*.

Argument has been advanced on behalf of the State Government that if the criterion was to entrust the insurance business to Companies offering lower rates, the same should have been entrusted to Orissa Co-operative Insurance Society Limited as it offered a rate of 25 Paise per Rs. 100. In this respect I find that the Pool in its letter dated May 30, 1963 indicated that as the Orissa Co-operative Insurance Society Limited was one of the participants in the Pool business, it would not be possible for that Company to accept the business and retain the same. The quotation given by the said Company was stated to have been submitted through oversight because as per agreement entered into amongst the participants of the Pool business such business could not be underwritten by individual insurers. In view of the above letter I find nothing unreasonable in the attitude of the Orissa Government in not giving serious consideration to the offer made by the Orissa Co-operative Insurance Society Limited.

I would, therefore, hold that the charge of impropriety levelled in this allegation has not been substantiated.

CHAPTER 4

ALLEGATION No. 4

Re :

Purchase of Jeeps for Election use by State Aided Companies

Allegation No. 4 relates to the purchase of jeeps for use in elections by Kalinga Industries Ltd., Kalinga Tubes Ltd. and Orissa Textile Mills Ltd., without the prior approval and knowledge of the Director of Industries. The respondent named in this allegation is Shri Patnaik.

According to the case set up by the State Government in the particulars of allegations, the State Government purchased shares worth Rs. 3 lakhs in Kalinga Industries Ltd. and Rs. 12,75,000 in Orissa Textile Mills Ltd. The State Government stood guarantee for a sum of Rs. 25 lakhs for Kalinga Industries Ltd. and for Rs. 97 lakhs for Kalinga Tubes Ltd. The State Government also advanced a loan of Rs. 30 lakhs to Orissa Textile Mills Ltd. The State Government having invested large sums in these three Companies by way of shares, sanction of loans and guarantees, imposed certain conditions. One of the conditions was that each one of these Companies would require prior concurrence of the Director of Industries in respect of any contingent or capital expenditure or financial commitments or contract for a sum exceeding Rs. 5,000 in any single item.

Shri Patnaik and his family members, it is stated, had substantial interest in the above-mentioned three Companies. In April 1961, on the eve of the mid-term General Election, ten jeeps were purchased by Kalinga Tubes Ltd., nine jeeps were purchased by Orissa Textile Mills and 11 jeeps were purchased by Kalinga Industries Ltd., without the prior approval of the Director of Industries even though the price of each of those jeeps was more than Rs. 5,000. Those jeeps are stated to have been thereafter used in the election on behalf of the Congress Party candidates even though Government money and interest were involved in the Companies owning those jeeps. After the election when Shri Patnaik became the Chief Minister, those jeeps were sold but the sale-proceeds thereof, it is stated, did not go to the aforesaid Companies.

Affidavit of Inspector Md. Haroonal Rashid (Vigilance) has been filed in support of this allegation.

Shri Patnaik in his affidavit has denied the allegations and insinuations made by the State Government. According to him no vehicle was purchased by Orissa Textile Mills Ltd.; as alleged by the State Government. It is further stated that the clause in the State Aid Agreements with the Companies, relating to the prior permission of the Director of Industries for expenses of Rs. 5,000 and more on any single item of capital expenditure was not being strictly insisted upon for the reason that the Director of Industries was the Government nominee on the Board of Management of the State-aided Companies. The matters relating to capital expenditure in particular and accounts in general were usually discussed and decided in the Board meetings and in these circumstances implied consent of the Government was presumed. Regarding the use to which these vehicles were put, it is stated that the same was a matter of internal administration of the Companies and the Government was not concerned with the same, except where the interests of the Government might be in jeopardy. The sale-proceeds of the vehicles, it is added, were credited to the accounts of the Companies and the Companies have not been put to any loss in the transactions.

Affidavit of Shri V. S. S. Mani, Secretary of Kalinga Industries Ltd., and Shri R. Venkateswaran, Secretary of Kalinga Tubes Ltd., have also been filed in respect of this allegation. Supplementary affidavits have been subsequently filed by Inspector, Md. Haroonal Rashid and Shri Patnaik.

It would appear from the resume of facts given above that this allegation falls into two parts. The first part relates to the alleged impropriety in the purchase of jeeps by the three Companies—Kalinga Industries, Kalinga Tubes and Orissa Textile Mills—on the eve of the mid-term election, without the prior approval of the Director of Industries and their use in the elections for the Congress Party candidates. The second part relates to non-payment of the sale-proceeds of these jeeps after the election to the aforesaid three Companies. So far as the first part of the allegation is concerned, I find that this is not within the scope of the matters to this Commission. According to the notification appointing this Commission of Inquiry, this Commission is to enquire into alleged improprieties committed during the period from June 23, 1961 to March 8, 1967. As the alleged impropriety, which forms the first part of this allegation is stated to have been committed before June 23, 1961, it is obvious that the Commission is not to go into this matter and give its finding.

The second part of the allegation no doubt relates to the period between June 23, 1961 to March 8, 1967, but I find that there is no proof worth the name to substantiate this part of the allegation. G. W. 4 Shri H. Mohanty, Accountant of Kalinga Industries, was summoned at the instance of the State Government and he produced a copy of the account books relating to the purchase and sale of jeeps. According to the entries in the account books Rs. 1,62,333.15 Paise were sent by Kalinga Industries on the purchase of jeeps during the year 1961-62 and the entire amount was thereafter realised as a result of the sale of those jeeps. Shri S. V. R. Swami was examined as G. W. 7, and he brought with him the ledger relating to the purchase and sale of jeeps by Kalinga Tubes Ltd., during the year 1961-62. Copies of the entries in the ledger were filed by the witness. According to those entries Rs. 1,58,521.50 Paise were spent by Kalinga Tubes for the purchase of jeeps and the same amount was realised as a result of the sale of those jeeps. Shri A. Dutta, an employee of Orissa Textile Mills, was also summoned and he stated that there was no entry in the account books of Orissa Textile Mills for the purchase or sale of jeeps in the year 1961-62, because no jeep was purchased or sold in the said year. There is no material on the record to indicate that any amount spent on the purchase of the jeeps by the above-mentioned companies was not received by those Companies after the sale of those jeeps.

It has been argued on behalf of the State Government that more jeeps were purchased by the three Companies than are admitted by Shri Patnaik. In my opinion, it is not necessary to go into this aspect of the matter, as the alleged purchase relates to the period before June 23, 1961.

I would, therefore, hold that the first part of the charge of impropriety made in this allegation is beyond the terms of reference of the Commission of Inquiry and the remaining charge, which is within those terms has not been substantiated.

CHAPTER 5

ALLEGATION No. 5

Re :

Dealings in Timber and Furniture with Orissa Agents and Sree Enterprisers

Allegation No. 5 relates to transactions in timber and furniture with Orissa Agents and its employee Ved Prakash and his concern Sree Enterprisers. The respondent named in this allegation is Shri Mitra.

According to the case set up by the State Government in the particulars of allegations, Orissa Agents is a concern belonging to Shri Mitra and is run by him *benami* in the name of his wife Shrimati Easwaramma Mitra. The concern was dealing, *inter alia*, in timber and furniture and had a factory at Bhubaneswar. In 1962, the State Government required furniture worth Rs. 10,600 for Raj Bhawan. No tenders were called but quotations were invited from six firms. Out of them three firms submitted their quotations by the due date, i. e. by May 4, 1963. Orissa Agents was not one of those three firms. A comparative statement of the rates quoted by the three firms was prepared and thereafter on May 13, 1963 the Executive Engineer sent a letter to Orissa Agents requesting that concern to quote its rates. Orissa Agents then quoted rates and it was found that out of 37 items the rates of that concern were the lowest in respect of 26 items but were higher in respect of the remaining 11 items. In the meantime, there was some public feeling against Shri Patnaik and Shri Mitra. Shri Mitra then became anxious to see that the business of Orissa Agents was run in some other name, Shri Ved Prakash was an employee of Orissa Agents and it was he who had quoted rates on behalf of that concern. In view of the public feelings, Shri Kaifaitullah, Manager of Orissa Agents, intimated to the Executive Engineer that Orissa Agents had ceased to do business. Shri Ved Prakash then came forward and stated that he was prepared to supply material at the rates quoted by the Orissa Agents. Orders were then placed direct with Shri Ved Prakash to supply the furniture at the rates of Orissa Agents. It is alleged that Orissa Agents wanted to carry on business through Shri Ved Prakash and this was a device to introduce the name of Shri Ved Prakash in Government contracts to facilitate the entrustment of work to him in future.

In May, 1963, it is stated, there was necessity for having some fittings in the Laboratory in the Sainik School at Mancheswar. The amount involved was about Rs. 25,000 and the work was entrusted to the Works Department. No general tenders were called, but quotations were invited from five concerns including Orissa Agents. As per letter, dated June 10, 1963 of the Executive Engineer, Orissa Agents submitted quotations but its tender was defective. The tender of another firm Orissa Wood Crafts complied with all particulars but that firm was not entrusted with the work. Comparative statements were prepared and thereafter the work was entrusted to Orissa Agents with a direction that supply for one of the items would be at the rate quoted by Orissa Wood Crafts. Shri Ved Prakash, who had originally signed the quotations on behalf of Orissa Agents, subsequently stated that as Orissa Agents had ceased to function, he was prepared to do the work at the rates quoted by Orissa Agents. The contract was then transferred from Orissa Agents to Sree Enterprisers which was mentioned to be a concern managed by Shri Ved Prakash.

In September 1963, pelmet boards with curtain rods were required for the Regional College of Education at an estimated cost of Rs. 11,700. No tenders were called but three firms including Sree Enterprisers were approached to quote their rates. A comparative statement was prepared and Sree Enterprisers were given the work on June 6, 1964. Another order, which was placed with Sree Enterprisers, related to the purchase of furniture by the Industries Department in 1963-64. Regarding this contract five firms were at first approached but their quotations were not accepted. Later three other firms including Sree Enterprisers were approached. A comparative statement was prepared and the order was placed with Sree Enterprisers on the ground that the quotations of this concern were the lowest.

According further to the State Government a letter was issued by Orissa Agents to Divisional Forest Officer, Athgarh Forest Division, seeking quotations of rates for 3500 cft. of Kusum timber. The Divisional Forest Officer suggested a rate of Rs. 2 per cft. to the Conservator of Forests. This was very low rate in the year 1963. Ultimately the sale was manipulated in favour of Orissa Agents at a rate of less than Rs. 2 per cft. The State Government attributes the above deals to the influence of Shri Mitra,

In support of the above allegation the State Government has filed four affidavits, namely, those of Shri Gour Chandra Mohanty, Accounts Officer in the Office of Chief Engineer, Shri Jiban Ballav Singh, Joint Director of Industries, Shri Kartikeswar Patnaik, Divisional Forest Officer and Inspector, Hemakanta Sahu (Vigilance).

Shri Mitra in his affidavit has denied the allegations made against him. According to him, Orissa Agents was the sole business concern of his wife and he had nothing to do with its business. The business was started on April 1, 1959 and was closed on August 5, 1963 before Shri Mitra became Chief Minister. After August 5, 1963 the wife of Shri Mitra has not carried on any business either directly or indirectly in her own name or in the name of any other person or concern. It is further stated by Shri Mitra that he is not at all aware of the transactions referred to by the State Government in this allegation.

Supplementary affidavits in respect of this allegation have been filed by Inspector Hemakanta Sahu (Vigilance) and Shri Mitra. Two affidavits of Shri Sunil Kumar Sen, who was the Accountant of Orissa Agents, have also been filed.

The first part of this allegation relates to the order which was placed with Orissa Agents for supply of furniture for Raj Bhavan. In respect of this transaction I find that a letter dated April 24, 1963 was addressed by the Executive Engineer, Capital Construction, to eight furniture dealers asking them to quote their rates E. O. R.; New Capital, Bhubaneswar, regarding furniture as per list attached with the letter. It was also mentioned that the quotations should reach by May 4, 1963. The name of Orissa Agents is at No. 8 in the list of the furniture dealers and has been written in an ink different from that in which the names of the other dealers are written. In response to the aforesaid letter quotations of three concerns, namely, Orissa Wood Products Ltd.; dated April 30, 1963, Silpapuri, dated May 4, 1963 and Nu Bilt, dated May 3, 1963 were received. A comparative statement with respect to the three concerns was prepared by the office of the Executive Engineer on May 8, 1963. After the above comparative statement had been prepared, a letter was sent by the Executive Engineer to the Orissa Agents asking the concern to send its quotations for the furniture for Raj Bhavan. The letter was signed by the Executive Engineer on May 13, 1963 and was issued to Orissa Agents

on May 14, 1963. In the meantime on May 13, 1963 an undated letter was received in the office of the Executive Engineer from Orissa Agents giving quotation for the different items of furniture. The letter had been signed on behalf of Orissa Agents by its employee Shri Ved Prakash. A comparative statement including that of Orissa Agents was then prepared and it was found that the rates of Orissa Agents were the lowest in respect of 26 items out of the total of 37 items of furniture and were higher in respect of the remaining 11 items when compared with the quotations of some of other concerns. Orissa Agents, out of the 37 items, quoted for 36 items, Orissa Wood Products Ltd. quoted for 35 items, Silpapuri quoted for 26 items and Nu Bilt quoted for 29 items. In the aggregate the quotation of Orissa Agents was found to be the lowest. On May 30, 1963 an order was placed with Orissa Agents for supply of 35 items of furniture by the Executive Engineer. It was mentioned that the period of delivery would be within two months from the date of the issue of the letter. A letter dated August 5, 1963 was received on September 6, 1963 from Shri Kaifaitullah of Orissa Agents in the Office of the Executive Engineer that the Orissa Agents had totally closed down the business with effect from August 5, 1963. On September 9, 1963 Shri Ved Prakash, who had previously submitted the quotation on behalf of Orissa Agents addressed a letter to the Executive Engineer stating that as Orissa Agents were not executing the order placed with them for supply of various items of furniture in the Raj Bhavan he could supply those items of furniture at a very early date on the rates agreed upon by Orissa Agents. A note was thereafter recorded that the applicant had got the furniture already manufactured with him as per requirement of the Executive Engineer for the residence of the Secretary and Aide-de-Camp to Governor. On September 24, 1963 an order was placed by the Executive Engineer with Shri Ved Prakash to supply the furniture at the rates approved for Orissa Agents within two weeks. The above furniture was of the value of Rs. 10,600.

The material on record also shows that on May 16, 1964 Shri Ved Prakash addressed a letter to the Income Tax Officer, Cuttack, stating that he had taken over the business of furniture works at Bhubaneswar of Orissa Agents on the closure of its business on August 5, 1963, at a cost of Rs. 44,429.25 Paise. Shri Ved Prakash also intimated that

he had accepted his liability to Orissa Agents for that amount and the same stood to his debit in the books of Orissa Agents. Subsequently in October, 1964 the above-mentioned furniture factory was set on fire. Shri Ved Prakash then left Orissa and started living with his wife and children in the Aurobindo Ashrama at Pandichery. Orissa Agents then wrote off the amount due from Shri Ved Prakash as bad debt.

There is nothing on the record to indicate as to what were the circumstances under which the name of Orissa Agents was written in a different ink in the letter dated April 24, 1963 which was addressed to the different furniture dealers asking for their quotations. Although the name seems to have been subsequently inserted in circumstances which are not free from suspicion, the learned counsel for both the parties have argued on the assumption that Orissa Agents was one of the concerns which were asked to send quotations for the furniture. The last date for sending the quotations to the Executive Engineer was May 4, 1963. The concern, Orissa Agents, did not send its quotations within the time fixed and the Executive Engineer adopted a course which, in my opinion, was rather unusual of asking Orissa Agents on May 13, 1963 to send its quotations. The abnormality of this course becomes all the more manifest when it is kept in view that the quotations of the other three concerns, who had responded to the letter of the Executive Engineer, had already been scrutinized and a comparative statement prepared in respect of them on May 8, 1963 before Orissa Agents was reminded to send its quotation, Orissa Agents, according to Shri Mitra, was exclusively owned by his wife. Shri Mitra was in those days Deputy Chief Minister of Orissa. The soliciting of quotations from Orissa Agents after the due date and after the scrutiny of the quotations of other concerns goes to show that the officials concerned went out of their way to place order for supply of furniture with Orissa Agents. It is also to be borne in mind that there were four other concerns of furniture dealers besides Orissa Agents who had not sent quotations in spite of the letter from the Executive Engineer for the furniture for Raj Bhavan. None of those four concerns was reminded to send quotations. Only the Orissa Agents was singled out and reminded for the purpose.

It is no doubt true that the quotations of Orissa Agents in respect of 26 items of furniture were the lowest, the fact remains that the procedure adopted was such as had the effect of placing Orissa Agents in a position of distinct advantage

qua the other concerns. It is also not clear as to why the order in respect of the 11 items of furniture, regarding which the quotations of the other concerns were lower than those of Orissa Agents, was not placed with those firms.

It also appears that the above procedure was adopted without the knowledge or instigation of the management of Orissa Agents, for had Orissa Agents shown interest in the matter the concern would have sent the quotation in the very first instance without a reminder. The procedure adopted all the same points out to the existence of an atmosphere and attitude on the part of officials to go out of the way to favour Orissa Agents in the matter of placing orders.

Orissa Agents did not supply the furniture and closed its business on August 5, 1963. Shri Ved Prakash, who was previously an employee of Orissa Agents, then undertook to supply the items of furniture. As the furniture was urgently needed for the Raj Bhavan, the order was placed with him on the condition that he would supply the same within two weeks. Whatever might be the irregularity in the initial placing of orders with the Orissa Agents for the supply of furniture, I find nothing objectionable in the transfer of the orders to Shri Ved Prakash keeping in view the fact that the furniture was required urgently and Shri Ved Prakash had undertaken to supply the same at the same rate at which the Orissa Agents had agreed to supply the same.

I find no impropriety in the remaining four transactions which are the subject matter of this allegation. So far as fittings in the laboratory of the Sainik School are concerned, quotations were invited from a number of concerns including Orissa Agents in respect of seven items. Orissa Agents and three other concerns sent quotations. No defect in the quotation of Orissa Agents has been brought out at the time of arguments. The quotation of Orissa Agents was the lowest in respect of five items. In the aggregate also the quotation of Orissa Agents was the lowest. In respect of the sixth item it was given the same rate as had been mentioned by the concern giving the lowest quotation. No order was placed in respect of the seventh item. It would thus follow that an order was placed with Orissa Agents, because its rates were the lowest and most advantageous. When Orissa Agents closed the business the order was transferred to Shri Ved Prakash who was an ex-employee of

Orissa Agents and who agreed to supply the fittings at the same rate as Orissa Agents.

Regarding the two orders, i.e., one in respect of pelmet boards for Regional College and the other for Industries Department (in fact the order was by Joint Director, Orissa Khadi and Village Industries), I find that quotations of Sree Enterprisers were accepted because they were found to be the lowest. Nothing cogent has been shown at the time of arguments to the contrary. In case of pelmet boards, Sree Enterprisers quoted a rate of Rs. 4.50 per board, Rs. 1.50 for fixing charges for boards of length up to 6' besides sales tax. This was admittedly the lowest quotation. It is, however, argued on behalf of the State Government that Sree Enterprisers would have charged Rs. 2.50 for fitting in case the length of board had exceeded 6'. There is, however, no material on record to indicate that the length of Board exceeded 6' and as such it cannot be said that any favouritism was shown to Sree Enterprisers. In respect of purchase by Industries Department reference has been made on behalf of the State Government to quotation by one Shri S. B. Maharana but this quotation related to a table of a smaller size.

Coming to the purchase of Kusum Timber by Orissa Agents from Forest Department I find that Orissa Agents purchased the timber in public auction on January 21, 1963 after notice of the auction sale had been published in the Daily Samaj. The bid of Rs. 625 of Orissa Agents for 423 cft. of Kusum logs was accepted because it was the highest. The upset price of Rs. 2 per cft., was not fetched because it was found that the timber was not of good quality. It also cannot be said that the above auction sale was manipulated by Orissa Agents. Orissa Agents had asked for sale by Forest Department of 3,500 cft. of Kusum timber on June 26, 1962. Reminder was sent by Orissa Agents on September 18, 1962. The auction sale, however, took place in January 1963, i.e., about six months after the initial request of Orissa Agents. The sale was also not of 3,600 cft., but of only 423 cft. If the sale had been manipulated by Orissa Agents, it would have taken place soon after June 26, 1962 and not about six months thereafter. The sale further would have been of 3,500 cft., and not of 423 cft. only. The material on record also shows that the auction sale was not confined to Kusum logs only. Sal logs too were sold at the same time by public auction and were purchased by another party.

My findings, therefore, in respect of this allegation are :

- (1) There was no impropriety in respect of four out of the five transactions which are the subject-matter of this allegation.
- (2) In respect of the fifth transaction relating to supply of furniture for the Raj Bhavan, the Orissa Agents — a concern admitted by Shri Mitra to belong to his wife—did not send quotations within the prescribed time in response to the letter of the Executive Engineer. The Executive Engineer, after scrutinizing the quotations of the firms which had responded to his letter and after preparation of comparative statement of rates, adopted the unusual course of asking Orissa Agents over again on May 13, 1963 to send its quotation. No such reminder was sent to the other concerns who had not sent quotations in response to the Executive Engineer's letter. The quotations of Orissa Agents were received in the meanwhile and were found to be the lowest in respect of 26 items of furniture and an order was placed with that concern for supply of 35 items. Ultimately, the Orissa Agents did not supply the furniture in accordance with this order because of the closing down of its business. The order was then transferred to an employee of Orissa Agents, Shri Ved Prakash, who undertook to supply the furniture at the same rate at which Orissa Agents had agreed to supply the same.
- (3) There was no impropriety in the transfer of the order from Orissa Agents to Shri Ved Prakash.

CHAPTER 6

ALLEGATION No. 6

Re :

Issue of permit for G. C. I. sheets in favour of Orissa Agents for a Saw Mill

Allegation No. 6 relates to the issue of permits for G. C. I. sheets in favour of Orissa Agents for a Saw Mill. The respondent named in this allegation is Shri Mitra.

According to the case of the Orissa Government, as given in the particulars of allegations, Shrimati Easwaramma Mitra, wife of Shri Biren Mitra, was carrying on the business of Orissa Agents *benami* for Shri Mitra. On March 15, 1963 and March 20, 1963 Orissa Agents procured two permits for 3 cwt. and 1 ton of G. C. I. sheets, respectively from the Civil Supplies Officer, Cuttack, for the construction of Saw Mill. As Saw Mill is an industry and there was an industrial quota for industries, the proper authority to issue permits in such a case was the Director of Industries. The Civil Supplies Officer, Cuttack, was influenced by Shri Mitra, who was then Deputy Chief Minister, to issue permits in favour of Orissa Agents from the quota meant for domestic consumption. It is further stated that the Saw Mill was kept in the name of Shri S. C. Bose, who was a business associate of Shri Mitra.

In support of this allegation the State Government has filed the affidavits of Shri L. S. Panda, Under-Secretary in the Supply Department and Inspector, Hemakanta Sahu (Vigilance.)

Shri Mitra in the course of his affidavit has denied the correctness of this allegation. According to him, he had no connection with the transactions referred to in this allegation and was not even aware of those transactions. It is false, he adds, that the Civil Supplies Officer was influenced by him or at his instance or to his knowledge to issue any such permit in favour of Orissa Agents. Orissa Agents, it is further stated, was the sole and exclusive business of his wife and Shri Mitra had nothing to do with it, Mrs. Mitra was not acting *benami* for him.

Supplementary affidavits in respect of this allegation have been filed by Inspector, Hemakanta Sahu and Shri Mitra.

After hearing the learned counsel for the Parties I find that no charge of impropriety, as alleged in this allegation, has been proved against Shri Mitra. The material on record indicates that on March 9, 1963, Orissa Agents made an application to the Civil Supplies Officer, Cuttack, asking for permit of one ton of G. C. I. sheets in connection with the construction of a Saw Mill. Reference in this application was made to an earlier application made by Orissa Agents on September 25, 1962. This application of Orissa Agents was rejected by the Civil Supplies Officer on March 13, 1963, on the ground that it had not been recommended by a duly authorised person. On March 15, 1963, on an application made by Orissa Agents for three tons of G. C. I. sheets the Civil Supplies Officer passed an order for issue of permit of three cwts. of those sheets to Orissa Agents. On March 18, 1963, another application was made on behalf of Orissa Agents to the District Magistrate and Collector, Cuttack, asking for a permit of two tons of G. C. I. sheets for the proposed Saw Mill. It was mentioned that if the permit was not granted to cover up the shed, the motors and wirings would be damaged. Reference in the application was also made to an earlier application, dated September 25, 1962. The District Magistrate of Cuttack thereupon passed an order on the above application on March 18, 1963 that Orissa Agents should be issued a permit up to the extent of one ton of G.C.I. sheets. The Civil Supplies Office thereafter issued a permit for one ton of sheets.

There is nothing to show that any influence was exercised or pressure put by Shri Mitra in connection with the issue of the above permits. The fact that Orissa Agents asked for a permit of three tons of G. C. I. sheets in application, dated March 15, 1963 and the Civil Supplies Officer issued permit for only three cwts. of those sheets would go to show that Shri Mitra did not use his influence in the matter. An argument has been advanced on behalf of the State Government that the permit for G. C. I. sheets in favour of Orissa Agents should have been issued not by the Civil Supplies Officer but by the Director of Industries. Reference in this connection has been made to two press notes, dated August 31, 1950 and November 26, 1955. It is, however, not disputed that when the above-mentioned permits were issued in favour of Orissa Agents, the Iron and Steel Control Order of 1956 was in force. I have not been referred to any provision of law according to

which permits for grant of G. C. I. sheets for Saw Mill could not be validly issued by the Civil Supplies Officer, but could only be issued by the Director of Industries. In any case, if Shri Mitra was out to use his influence for procuring permits for G. C. I. sheets, he could as well have used it with the Director of Industries as he could with the District Magistrate or the Civil Supplies Officer. As things are, there is no proof or indication of the use of any such influence by Shri Mitra.

The charge contained in this allegation, therefore, remains unsubstantiated.

CHAPTER 7
ALLEGATION No. 7

Re:

**Reduction of Salami and Rent of Endowment Land leased
out to Shri M. S. Nanda**

Allegation No. 7 relates to the reduction of the Salami and annual rent of religious endowment land which had been leased in favour of Shri Madhusudan Nanda. The respondent named in this allegation is Shri Mitra.

According to the case of the State Government, as given in the particulars of allegations, Shri Madhusudan Nanda was the Secretary of the Puri District Congress Committee, and a very influential person in the Puri Congress Organization. He applied to the Commissioner, Hindu Religious Endowments, Orissa, for permanent lease of 1.50 acres of land in Dandimal Sahi, Puri Town, comprised in plot Nos. 84, 86 and 87 for the construction of a house, Coal Depot and Wood Godown. The said land belonged to Shriramdas Math, Dakhin Parswa. The Inspector of Endowments reported that plot No. 84 constituted Panthighar of the Math, land comprised in plot No. 87 was a tank and an area of 0.450 acre was lying vacant in plot No 86, while the rest of the land in that plot was under encroachment by some Bhois. There were several coconut, polang and mango trees on the vacant land. The Inspector added in the report that the transfer would be beneficial to the Math, and accordingly recommended the transfer of the vacant plot of land No. 86 and the tank in plot No. 87 subject to payment of Salami at the rate of Rs. 10,000 per acre, and an annual rent at the rate of Rs. 250 per acre. As regards plot No. 84, the Inspector stated that it could not be transferred because there was a Panthighar on it. The Trust Board of the Math thereafter agreed to the proposal and recommended the lease of the land for a Salami of Rs. 6,500 and an annual rent of Rs. 123.75 P. The objection of the hereditary trustee of the Math that the land should be leased out by public auction after wide publicity was overruled by the other members of the Board. The Executive Officer of the Math suggested that the Salami of the land should be Rs. 4,500 and the rent should be Rs. 106.25 Paise. When the matter went to the Commissioner of Endowments for sanction of the transfer, he fixed the Salami at Rs. 6,500 and the annual rent

at Rs. 104. The Commissioner also held that the transfer was for the benefit of the Math. Shri Nanda then preferred an appeal to the Orissa Government and it came up before Shri Mitra who was Minister of Law and in charge of Endowments. On the day the appeal was filed the P. A. to the Minister forwarded it to the Law Secretary with the endorsement that the Deputy Chief Minister desired that the appeal might be disposed of in the shortest time possible. The prayer made by Shri Nanda in the appeal was that the Salami should be fixed at Rs. 4,000 and the annual rent at Rs. 30 per acre. Undue haste, it is stated, was shown in the disposal of the appeal. Shri Mitra reduced the amount of Salami to Rs. 4,000 and the annual rent to Rs. 57 (in fact the amount is Rs. 80). A favour, according to the State Government, was thus shown to a party-man and a loss was caused to the Endowment.

In suport of the above allegation the State Government has filed the affidavits of Shri Prahallad Mishra, Assistant Commissioner, Endowment, Inspector Madhusudan Das (Vigilance) and Shri Krishna Chandra Mall, Under-Secretary in the Law Department.

Shri Mitra in the course of his affidavit has described this allegation as false and malicious. According to him, the order passed by him on the appeal of Shri Nanda was in exercise of the powers conferred upon him on the judicial side under the provisions of Hindu Religious Endowments Act. The order was passed to the best of Shri Mitra's judgment and was based on the material available on record. Shri Mitra has denied having shown any undue interest in the case of Shri Nanda. According to him no favour was shown to Shri Nanda or any one else.

Shri Madhusudan Nanda too has filed his affidavit denying the allegation of favouritism shown to him.

Supplementary affidavits in respect of this allegation have been filed by Shri Krushna Chandra Mall, Inspector, Anandi Kumar Sinha (Vigilance), Shri Sadasiba Misra, Additional Assistant Commissioner of Endowments and Shri Suresh Chandra Madan Ray, Tahasildar, on behalf of the State Government. As against that, Shri Mitra has filed his supplementary affidavit. An affidavit, dated July 1, 1968 was also received by post from Shri Nilakantha Misra, Advocate of Puri in respect of this allegation on July 2, 1968.

Perusal of the material documents filed by the parties shows that the land which was ordered to be leased in favour

of Shri Nanda comprised an area of 0.440 decimals of vacant plot and 0.210 decimals of land covered by the pond. The total area which was leased in favour of Shri Nanda, was 0.650 decimals. The Inspector of Endowments in his report to the Commissioner of Endowments stated that the value of the vacant land was between Rs. 8,000 and Rs. 10,000 per acre and of the pond was Rs. 3,000 per acre. Computed at the rate per acre of Rs. 8,000 for the vacant land and Rs. 3,000 for the pond land, the Salami of the land in question would come to Rs. 4,150. If, however, the Salami was calculated at the rate per acre of Rs. 10,000 for the vacant land and Rs. 3,000 for the pond land, the Salami would come to Rs. 5,030. Despite the above calculations, the Inspector of Endowments made a recommendation that the Salami should be fixed at Rs. 6,500 and the rent be fixed at Rs. 162.50 Paise. The Executive Officer of the Math, however, in his report, dated September 25, 1961 suggested that the Salami of the land in question should be Rs. 4,150 and the rent be fixed at Rs. 123.12 Paise. The Board of Trustees in a meeting, dated October 2, 1961 by a majority recommended that the Salami should be fixed at Rs. 6,500 and the rent be fixed at Rs. 123.12 Paise per annum. The Commissioner of Endowments as per his order, dated February 12, 1962 fixed the amount of Salami for the land at Rs. 6,500 and gave some direction for the rent but did not fix the actual amount of rent. The State Government has calculated the amount of rent, according to the method directed by the Commissioner of Endowments, to be Rs. 104 per annum. According, however, to the submission made on behalf of the respondent, the rent would be less than that amount. When the matter came up in appeal before Shri Mitra on July 14, 1962 he fixed the amount of Salami at Rs. 4,000 and the rent at Rs. 80. Shri Mitra, while reducing the amount of Salami, observed that there was no evidence about the price of the neighbouring lands and as such the opinion of the enquiring officers should be taken into consideration. He placed reliance upon the report of the Executive Officer, according to which the amount of Salami should be fixed at Rs. 4,150. Reference was also made to the report of Inspector of Endowments who too had indicated an amount from Rs. 4,150 to Rs. 5,030 for fixation of Salami though he ultimately did not adhere to this figure. Shri Mitra, after taking into account the above factors, came to the conclusion that a round figure of Rs. 4,000 should be fixed as Salami. Dealing with the rent, Shri Mitra took the view that as the amount of Rs. 4,000 realised as Salami would fetch interest, a reduction in the rent was called for. He accordingly fixed

the rent as Rs. 80. As the matters decided by Shri Mitra were within his jurisdiction, they cannot be assailed in these proceedings unless it is shown that Shri Mitra acted *mala fide*. The mere fact that another view in the matter could have also been taken would not go to show that the order was *mala fide*.

The State Government in order to show that the order was *mala fide* has relied upon three circumstances :—

- (1) Shri Nanda was a Congress-man and was the Secretary of Puri District Congress Committee.
- (2) When the appeal was filed by Shri Nanda before the Deputy Chief Minister, he directed that it should be disposed of as early as possible.
- (3) The appeal was allowed in as much as the amounts of Salami and annual rent were reduced.

These three factors, in my opinion, are hardly sufficient to prove that Shri Mitra acted *mala fide* or was actuated by any ulterior motive. The appeal filed by Shri Nanda was in accordance with law and Shri Mitra decided it in exercise of the powers conferred upon him by the statute. It was open to him to accept the appeal or to reject the same. Looking to all the facts and the detailed order passed by Shri Mitra, I am of the view that it cannot be said that Shri Mitra acted *mala fide* in the matter.

The State Government has also referred to the price of some of the other lands in the neighbourhood. The evidence in this respect, in my opinion is not of much value because Shri Mitra had to decide the matter on the material before him. The evidence now produced before the Commission was admittedly not before Shri Mitra.

I, therefore, find that the charge contained in this allegation has not been substantiated.

CHAPTER 8

ALLEGATION No. 8

Re:

Insurance of the Property of Orissa Road Transport Company

Allegation No. 8 relates to the alleged impropriety in the insurance of the properties of Orissa Road Transport Company Limited. The respondent named in this allegation is Shri Mitra.

According to the case of the State Government, as set out in the particulars of allegations, the Orissa Road Transport Company Limited (hereinafter referred to as the O. R. T. C.), is a Government Undertaking. By letter dated November 30, 1962 Shri S. K. Roy, Assistant Branch Secretary of the Cuttack Branch of the Oriental Fire and General Insurance Company Limited (hereinafter referred to as the Oriental Company) started correspondence with the O. R. T. C. for taking out insurance of its properties in respect of transit, fire and burglary. The O. R. T. C. vide its letter dated February 25, 1963 furnished the figure of Rs. 62,03,690 in connection with the amount of insurance required in one year. Oriental Company by letter dated February 25, 1963 quoted rate of Rs. 5.55 nP. per thousand for insurance. In the meantime O. R. T. C. had to apply for insurance under the Emergency Risk (Factories) Insurance Act, 1962, to the Oriental Company. No tenders were invited for insurance. On August 12, 1963 the Deputy General Manager of O. R. T. C. made a note on the file that the letter of Caledonian Insurance Company was not forthcoming on the file. Enquiries were made and Caledonian Insurance Company was asked to supply a duplicate copy of letter dated May 17, 1963. Accordingly, letter was received from the aforesaid Company and it offered a rate of 4.05 per thousand rupees per annum for the insurance. The quotations of the Oriental Company and Caledonian Insurance Company were forwarded by the General Manager to the Director Incharge (*i. e.* the Transport Controller) with the recommendation that the insurance might be taken out from the Caledonian Insurance Company, as its quotation was the lowest. The value of property for the purpose of fire insurance was provisionally estimated at Rs. 52,03,690. The above recommendation was placed before a meeting of the Board of Directors on April 18, 1964 and the Board resolved that the assets of O. R. T. C.

including the buses be insured against fire risk with Caledonian Insurance Company.

Shri S. K. Roy, Assistant Branch Manager of the Oriental Company, it is stated, addressed a letter to the Chief Minister on May 26, 1964 stating that on the advice of the Chief Minister he had approached the O. R. T. C. and the Secretary, Transport Department and had been assured by them that all types of insurance business would be passed on to the Oriental Company. He requested that the needful in this respect might be done. On receipt of that letter the Chief Minister desired that the business should be entrusted to the Oriental Company and the Caledonian Company half and half at the rate quoted by the Caledonian Insurance Company. An order for that purpose was then passed by the General Manager of O. R. T. C. on May 29, 1964. It is stated that the representatives of the two companies agreed to share business on 50:50 basis at the rate quoted by the Caledonian Insurance Company and submitted a letter to the General Manager, O. R. T. C. The General Manager then passed an order that since the representatives of the two Companies had agreed to share the business, he had no objection to the arrangement. An amount of Rs. 24,375 was sanctioned for the premium. Cheque for that amount was received by the Manager of the Caledonian Insurance Company on May 29, 1964. A resolution was also passed by the Board of O. R. T. C. that the insurance business be given half and half to Caledonian Insurance Company and the Oriental Company.

As the Caledonian Insurance Company, which had taken the entire premium of Rs. 24,375, did not part with the share of the Oriental Company, it is stated Shri S. K. Roy of Oriental Company addressed a letter on November 17, 1964 to the General Manager of O. R. T. C. to direct the Caledonian Insurance Company to do all that was necessary. When the Caledonian Insurance Company was addressed in this connection the Company replied that the premium amount of Rs. 24,375 handed over to it represented 50 per cent share and not the entire premium. The Oriental Company was thus deprived of its share.

According to the State Government, the Caledonian Insurance Company, which is a foreign Company, insured the properties and vehicles of O.R.T.C. under the above-mentioned policy through the agency of Shrimati Namita Patnaik, wife of Dr. George Patnaik, who is brother of Shri Biju Patnaik. She got Rs. 3,656.25 P. as her share of 15 per cent commission out of the premium of Rs. 24,375. It

is further stated that Shri S. K. Roy is a friend of Shri Mitra and Shri Mitra for some time stayed with his family in the house of Shri Roy in Cuttack. Shri Roy belongs to the Congress Party and was a Councillor of the Cuttack Municipality. He also led a demonstration in September 1964 in favour of Shri Mitra. The State Government concludes from the above facts that favouritism was shown by Shri Mitra to the above-mentioned two insurance companies, namely, Caledonian Insurance Company and Oriental Company.

In support of the above allegations the State Government has filed the affidavits of Shri Satchidananda Misra, General Manager of O.R.T.C. and Inspector H. K. Sahu (Vigilance).

Shri Mitra in the course of his affidavit has denied the allegation of his having shown any favouritism or committed any impropriety. Shri Mitra admits that he occupied the house of Shri Roy, but, according to him, it was in 1967. It is further stated by Shri Mitra that the insurance was given by him to two standard insurance companies at the lowest rate after an agreement was arrived at between them on the basis of half and half.

After having been taken through the material on record and after hearing the learned counsel for the parties, I am of the view that the charge contained in this allegation has not been proved. The material on the record indicates that the Oriental Company after making enquiries quoted a rate of Rs. 5.55 nP per thousand for insurance, as per letter dated February 25, 1963. As against that, Caledonian Insurance Company offered a rate of Rs. 4.05 per thousand rupees for the insurance as per letter dated May 17, 1963. The Board of Directors of the O.R.T.C. decided on April 18, 1964 that the assets of the Company be insured with Caledonian Insurance Company. A note was then made on the file on May 25, 1964 that the payment of Rs. 24,375 be sanctioned for payment of premium in connection with the above insurance. On May 26, 1964, a representation was made by the Branch Secretary of the Oriental Company praying that the insurance business of O.R.T.C. be given to Oriental Company. A note was then made on that representation on May 28, 1964 that Chief Minister (Shri Mitra) desired that the business should be entrusted to both the Companies (Viz., Caledonian Insurance Company and Oriental Company) half and half at the rate quoted by the Caledonian Insurance Company. On May 29, 1964 a letter was addressed on behalf of the Oriental Company to O.R.T.C. stating that it had been mutually agreed between the Oriental Company and the Caledonian Insurance

Company that the business would be equally shared between them at the rates quoted by the Caledonian Insurance Company. An order was thereafter made by the officers concerned of the O.R.T.C. that the business be given to the above-mentioned two Companies at 50:50 basis. A cheque for Rs. 24,375 was thereafter received by the Manager of the Caledonian Insurance Company. Subsequently, the Manager of the Caledonian Insurance Company declined to share that amount with Oriental Company.

It would appear from the above that the only occasion on which Shri Mitra came into the picture was when a representation dated May 26, 1964 was made to him by the Oriental Company and he directed that half of the business be given to that company. Before that, the Board of O.R.T.C. had already decided to entrust the entire business to the Caledonian Insurance Company. The modification in the insurance business made by Shri Mitra was thus to the detriment of the Caledonian Insurance Company and it cannot be said that Shri Mitra showed any favour, much less an undue favour, to the Caledonian Insurance company in making the impugned order. The order was no doubt in favour of the Oriental Company inasmuch as half the insurance business was directed to be entrusted to it, the fact remains that the Oriental Company was the leading Indian general insurance company. The material on record also indicates that it is a subsidiary to the Life Insurance Corporation of India which is a Government Undertaking. The above Company was also the Government Agent for emergency risks under the Emergency Risks (Factories) Insurance Act, of 1962. Shri Mitra, while directing that half the insurance business of O.R.T.C. be given to the Oriental Company, also ensured that the rate paid to the Oriental Company would not exceed that of the Caledonian. This would have obviously resulted in saving of considerable amount to the O.R.T.C. The fact that the Assistant Branch Secretary of the Oriental Company had personal relations with Shri Mitra would not detract from the order of Shri Mitra if we keep in view the position of that company in the sphere of insurance. The events, however, took such a shape that the Oriental Company was deprived of its share of business, but for this thing Shri Mitra was obviously not responsible.

Keeping in view all the facts referred to above, I am of the opinion that no charge of impropriety, as given in this allegation, has been proved against Shri Mitra.

CHAPTER 9

ALLEGATION No. 9

Re:

Release of stocks of wheat in favour of Shri B. N. Sharma and others and the Non-verification of Shri Sharma's Stocks

Allegation No. 9 relates to the release of stocks of wheat in favour of Shri B. N. Sharma and others and the non-verification of the wheat stock of Shri Sharma. The respondent named in this allegation is Shri Routray.

According to the case set up by the State Government in the particulars of allegations the outstanding stocks of wheat in different districts in Orissa were disproportionate in November 1966. There were excess stocks in some of the districts, whereas other districts were having deficits. It was, accordingly, decided to transport wheat from the districts having excess to the districts where there was shortage. On October 31, 1966 the Central Government informed the State Government that the price of wheat should be enhanced by Rs. 5 per quintal with effect from November 7, 1966. This date, by a telegram dated November 4, 1966, was altered to November 15, 1966. In spite of the impending rise in prices, it is stated, the Additional Civil Supplies Officer, Cuttack, issued 6465 quintals of wheat between November 1, 1966 and November 15, 1966 resulting in a loss of Rs. 32,325 to the State Exchequer,

It is further stated that Shri B. N. Sharma was dealing in two accounts, namely, Chakiwalla account for grinding wheat to flour and storage agent account for keeping wheat in store on behalf of the Government. Shri Sharma also appeared to have some private dealings with Shri Akuli Dehuri, P. A. to the then Minister Shri Routray. Shri Sharma was also a tenant in a shop-cum-residence building at Bhubaneswar of Shrimati Nalini Debhi Routray, wife of Shri Routray. Shri Sharma paid Rs. 9,640 as rent to Mrs. Routray for the period from July 1, 1965 to February 15, 1967. Shri Sharma's account books also disclosed that he had paid Rs. 200 on July 21, 1965 and Rs. 400 on July 28, 1965 to Shri Akuli Dehuri with whom he had intimacy.

Directions for the verification of the stocks of wheat of storage agents and dealers, it is stated, were given by the Additional Civil Supplies Officer after receipt of the letter, dated October 31, 1966 from the Government of India. In the list of the storage agents the name of Shri Sharma was not mentioned. In consequence thereof the stocks of all the storage agents except Shri Sharma were verified on November 15, 1966. The Chakiwalla stock of Shri Sharma was verified on November 1, 1966 when it was found that he had 140 quintals of wheat and again on November 15, 1966 when it was found that he had 100 quintals of wheat and 1,674.90 quintals of Atta. It is also stated that in spite of the intimation from the Central Government about the impending rise in the price of wheat, 2,600 quintals of wheat were issued to Shri Sharma during the period from November 2, 1966 to November 10, 1966. Out of them 1,000 quintals were issued on November 2, 1966 and two lots of 800 quintals each were issued on November 5, 1966 and November 10, 1966.

The State Government concludes from the above that Shri Routray in his capacity as Minister of Civil Supplies Department abused his official position and committed acts of favouritism to benefit persons in whom he and his P. A. were interested.

In support of this allegation the State Government has filed the affidavits of Shri L. S. Panda, Under-Secretary in the Supply Department, Inspector Brajabhandhu Baral and Inspector Hema Kanta Sahu (Vigilance).

“Shri Routray in the course of his affidavit has stated that immediately after the receipt of the telegram from the Union Government about the enhancement of the price of wheat the matter was dealt with promptly by the department and instructions were issued to all the Collectors to implement the directions of the Central Government. This was done without reference to the Minister as reference to him was unnecessary. As regards the release of the stocks of wheat to different persons during the period from November 1, 1966 till November 15, 1966, it is stated, the Union Government had not issued any directions for placing a ban on the release of wheat or the sale of wheat during that period. The question of any loss to the State Government or even to the Central Government, it is added did not arise. According further to Shri Routray the matter was dealt with at the official level and he did not come into the picture at all. Shri Routray adds that he had no knowledge of the release of wheat stocks in favour

of Shri Sharma or the non-verification of his stocks. It is, however, admitted that Shri Sharma had taken some shop rooms belonging to Mrs. Routray on rent. As regards the payment of Rs. 200 and Rs. 400 Shri Routray states that he understands from his wife that on two occasions she received those amounts through Shri Akuli Dehuri as advance rent for a shop let out to Shri Shankar Lal Sharma, brother of Shri B. N. Sharma.

Two affidavits of Shri B. N. Sharma and one affidavit of Shri Shankar Lal Sharma have also been filed in connection with this allegation.

After hearing the learned counsel for the parties I find that the charge of impropriety against Shri Routray contained in this allegation remains unsubstantiated. There is nothing on the record to show that the Additional Civil Supplies Officer, Cuttack, issued 6,465 quintals of wheat to various parties between November 1 and November 15, 1966, at the instance of Shri Routray. There is also nothing to show that the Additional Civil Supplies Officer issued wheat to Shri B. N. Sharma at the instance of Shri Routray. Likewise, there is nothing on the record to show that the name of Shri B. N. Sharma was not mentioned in the list of storage agents for the purpose of verification by the Additional Civil Supplies Officer at the instance of Shri Routray. Indeed, the material on the record shows that Shri Routray did not come into the picture at all in respect of the above three matters. The fact that Shri B. N. Sharma was a tenant of Mrs. Routray is hardly sufficient to lead to the inference that Shri Routray exercised his influence with the Additional Civil Supplies Officer to show favour to Shri Sharma. It also cannot be said that Shri Routray had an interest to benefit Shri Sharma because of his having some intimacy with the Personal Assistant of Shri Routray and because of Shri Sharma paying rent to Mrs. Routray through that Personal Assistant.

I, therefore, hold that the charge contained in this allegation against Shri Routray has not been substantiated.

CHAPTER 10

ALLEGATION No. 10

Re i

Resignation of Shri Dinabandhu Sahu and Appointment of Shri Harihar Mahapatra as Advocate-General

Allegation No. 10 relates to the resignation of Shri Dinabandhu Sahu as Advocate-General of Orissa and the appointment of Shri Harihar Mahapatra in his place. The respondent named in this allegation is Shri Tripathy.

According to the case set up by the State Government in the particulars of allegations, Shri Dinabandhu Sahu was appointed as Advocate-General of Orissa by the Cabinet headed by Shri Patnaik. Shri Sahu was Congress candidate in the 1967 general elections to the State Legislative Assembly from Kendrapara constituency. Since the post of Advocate-General is an office of profit, Shri Sahu had to give up the post before filing his nomination. As the nomination paper was to be filed on or before January 20, 1967 Shri Sahu addressed his letter of resignation to Chief Minister, Shri Tripathy on January 9, 1967. Under the Rules of Business, appointment and acceptance of the resignation of Advocate-General are decided by the Cabinet and Chief Minister has no power to accept the resignation. Shri Tripathy, to facilitate the candidature of Shri Sahu, accepted the latter's resignation in anticipation of the Cabinet decision. It is further stated that the file in question containing the letter of resignation was not placed before the Governor though it was constitutionally necessary to do so. Consequent upon the resignation of Shri Sahu as Advocate-General, the vacancy had to be filled in. Shri Tripathy then passed an order appointing Shri Harihar Mahapatra as Advocate-General for a full term of five years on a monthly retainer fee of Rs. 2,000. Shri Mahapatra had been appointed a Judge of Patna High Court in the year 1960 and had retired therefrom before he was appointed Advocate-General. At the time Shri Mahapatra was appointed Advocate-General, he was not an advocate enrolled by the State Bar Council. Shri Tripathy also at the time of appointing Shri Mahapatra

ordered amendment of rules by deleting the provision relating to the age of Advocate-General in anticipation of Cabinet approval. The retainer fee of the Advocate-General was also enhanced.

The Governor, it is stated, at that time was away to Delhi. Order was accordingly given that Secretary to the Governor might be requested to obtain his approval. A memorandum was also directed to be drafted for the Cabinet. A notification was thereafter issued about the acceptance of the resignation of Shri Dinabandhu Sahu and the appointment of Shri Mahapatra as Advocate-General.

On February 3, 1967, it is stated, Shri Mahapatra wrote a letter to Shri Tripathy stating that the former had been given an assurance that the daily fee would be increased but the rules had not been amended. On March 2, 1967 after the elections were over and it had already been known that a new Cabinet was to be formed, the daily fee of the Advocate-General was raised from Rs. 160 to Rs. 200 per day. His retainer fee was also raised from Rs. 1,500 to Rs. 2,000. Shri Mahapatra was also promised a term of five years. The file in connection with the enhancement of the fee of Advocate-General was not sent to the Governor. The State Government concludes from the above facts that Shri Tripathy abused his power in order to favour Shri Dinabandhu Sahu and Shri Harihar Mahapatra.

In support of the above allegation, the State Government has filed the affidavit of Shri Krushna Chandra Mall, Under-Secretary in the Law Department, and Shri M. V. V. S. Rao, Assistant Secretary in the Home (Election) Department.

Shri Tripathy in his affidavit has stated that there was nothing improper in the acceptance of the resignation of Shri Dinabandhu Sahu and the appointment of Shri Harihar Manapatra as Advocate-General. Shri Mahapatra was a retired Judge of Patna High Court and was appointed in

pursuance of a Cabinet decision on January 14, 1967. In view of the attainments of Shri Mahapatra, Shri Tripathy directed that his monthly retainer be fixed at Rs. 2,000. The Cabinet decided to amend the rules and accordingly the rules were amended. The allegation that any favouritism was shown to Shri Mahapatra or Shri Sahu has been categorically denied.

The resume of facts given above would show that this allegation falls into two parts. The first relates to the acceptance of the resignation of Shri Dinabandhu Sahu and the appointment of Shri Harihar Mahapatra as Advocate-General. The second relates to the grant of more favourable terms to Shri Mahapatra than were previously granted to the incumbent of the office of Advocate-General.

An Advocate-General, it may be stated, is appointed under Article 165 of the Constitution according to which the Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State. It is further provided that the Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

So far as the first part of the allegation relating to the resignation of Shri Sahu and the appointment of Shri Mahapatra as Advocate-General is concerned, I find that on January 9, 1967, Shri Sahu addressed a letter to the Chief Minister, Orissa, stating that he (Shri Sahu) was seeking election to the Orissa Legislative Assembly in the coming General Election and as such wanted to be relieved of the responsibility of the Advocate-General of the State. Request was accordingly, made by Shri Sahu to treat his letter as a letter of resignation, Shri Tripathy thereafter made a note on January 10, 1967 that the resignation had to be accepted but before that a new Advocate-General had to be selected. He directed that quick action be taken in the matter and it be included in the agenda

of the 14th Cabinet meeting. It was also directed that approval of the Cabinet might be anticipated and Shri Sahu be relieved in two or three days. The very day, i.e., on January 10, 1967, the Secretary, Law, addressed the following note to the Chief Secretary:—

In view of the impending resignation of Shri D. Sahu of his office of the Advocate-General, Chief Minister was pleased to suggest to me that we may take this opportunity to make certain alterations in the rules relating to the Advocate-General. He particularly mentioned to me the rule which provides that the Advocate-General shall cease to hold office with every change of Government and also the provision relating to the ban on the appointment of a person beyond the age of 60 years as Advocate-General. Some time back the Advocate-General had also made representations for enhancement of the retainer fee paid to him and to other Law Officers. The present retainer fee is Rs. 1,500 for the Advocate-General, Rs. 1,000 for the Government Advocate and Rs. 650 for the Standing Counsel. The idea underlying the proposed amendments is to attract the right type of Advocate to be the Advocate-General.

In connection with the matters referred to above, rules 13, 14 and 15 of the Rules relating to the Advocate-General (copy placed below) are relevant. It is rule 13 (b) which requires to be completely deleted if it is decided to do away with the existing system under which an Advocate-General has to vacate office on the formation of each new Government. There can be no objection either constitutional or legal for the deletion of that clause.

So far as the question of age is concerned, rule 14 as it stands does not prohibit the continuance in office of the Advocate-General on attaining the age of 60 years. It only provides that on attaining the age of 60 years he shall retire unless the Governor considers that it is in public interest that he should be retained for a further specified period. This may be allowed to stand. Sub-Rule (2) of rule 14 appears to be intended to cover cases where a person who had already attained the age of 60 years may in exceptional circumstances be appointed as the Advocate-General. But the word 'beyond' appears to be not very appropriate and it may be substituted by the words 'who has already attained'.

Regarding the retainer to be paid to the Advocate-General, it may perhaps be provided that at the time of every appointment the Governor shall fix the retainer at such amount not exceeding Rs. 2,000, subject to the minimum of Rs. 1,500. This will allow sufficient discretion to Government to fix the retainer having due regard to the standing and attainment of the particular person to be appointed.

A draft of the proposed rules is placed below for approval. Under the Rules of Business any amendment to the rules relating to the change of remuneration of the Advocate-General will have to go to the Cabinet and the Governor. Finance Department will be consulted after C. S. sees the file.

Minister, Law, Chief Minister and Governor may see."

It seems the Governor was then moved for accepting Shri Sahu's resignation and appointing Shri Mahapatra.

The Aide-de-Camp to the Governor, who was at Dehra Dun, sent the following telegram to the Secretary to the Governor in Orissa on January 12, 1967:—

"Governor Accepts Resignation of Shri Sahu and approves appointment of Shri Mahapatra provided that appointment of ex-justice Constitutionally Permissible."

The same day, i. e., on January 12, 1967 notification about the resignation of Shri Sahu and the appointment of Shri Mahapatra as Advocate-General were issued. Copy of the telegram, referred to above, from the Aide-de-Camp to the Governor to his Secretary was sent by the said Secretary to the Secretary, Law, on January 13, 1967. The cabinet also in its meeting held on January 14, 1967 approved the appointment of Shri Mahapatra as Advocate-General of Orissa. Shri Sahu relinquished the charge of the office of Advocate-General on January 13, 1967 and Shri Mahapatra took over the charge on January 15, 1967.

It would appear from the above that Shri Tripathy passed orders about the acceptance of resignation of Shri Sahu and the appointment of Shri Mahapatra as Shri Sahu was seeking election and his vacancy had to be filled in. Approval of the orders made in this respect was given by the Governor as well as by the Cabinet. There was, in my opinion, no impropriety in the orders passed by Shri Tripathy on this account. It has been argued on behalf of the State Government that a great hurry was shown in the matter. I, however, find nothing objectionable in that in view of the fact that Shri Sahu was to seek election and as such wanted his resignation to be accepted well in time to enable him to file his nomination paper. The urgency of the matter necessarily required prompt action.

As regards the second part of the allegation relating to the grant of favourable terms to Shri Mahapatra, I find that Shri B. K. Patra, Secretary Law, in his note dated January 10, 1967 reproduced above, made out a case for giving more favourable

terms to the Advocate-General in order to attract the right type of person. The Chief Secretary forwarded that note for approval. Shri Tripathy then directed that the rules might be modified. When the matter came to the notice of the Governor he, in his note dated March 12, 1967 pointed out that it had not been brought to his notice that rules were intended to be amended. He also observed that the order of the Governor should have been obtained for the modification of the rules. In the meanwhile a Cabinet meeting was held on March 2, 1967 and it was directed that the daily fee of the Advocate-General be raised from Rs. 160 to Rs. 200 from the date he took over. The above decision of the Cabinet had the effect of benefiting every incumbent of the office of the Advocate-General, and in my opinion, it cannot be said that Shri Tripathy was actuated by any ulterior motive when he directed that the terms of the office of the Advocate-General should be made more attractive. There is nothing on record to show that Shri Tripathy was in any way personally interested in Shri Mahapatra. On the contrary, the indications are that Shri Tripathy was impressed by the attainments of Shri Mahapatra.

I, therefore, find that the charge contained in this allegation has not been substantiated.

CHAPTER 11

ALLEGATION No. 11

Re :

Lease of Government land in favour of the wife of Shri Bibhudendu Misra

Allegation No. 11 relates to the leasing of Government land in favour of the wife of Shri Bibhudendu Misra and the respondent named in the allegation is Shri Tripathy.

According to the case set up by the State Government in the particulars of allegations, in the years 1963 and 1964 Shri Bibhudendu Misra was the Deputy Minister, Ministry of Law, Government of India. Shrimati Uma Misra, wife of Shri Misra was then a Lecturer in Government College. She had no house of her own in Puri town though her father-in-law owned a building there. Shrimati Misra fell within the category of Middle Income Group as her annual income was not more than Rs. 12,000. Shrimati Misra applied for 180 decimals of land in Balukhand Khasmahal, Puri, for construction of a residential house. As that land had already been intended to be leased to middle class people under the Master Plan, the Collector stated that there was no necessity to invite objections against the grant of such a land. In his letter to the Revenue Divisional Commissioner, the Collector mentioned that according to Urban Land Settlement Rules a maximum of 120 decimals could be leased out to an individual. The Collector, however, recommended the lease of 180 decimals to Shrimati Misra as a special case. The Revenue Divisional Commissioner forwarded the proposal to the Revenue Department with the observation that there was no objection to the lease in favour of Shrimati Misra. The Commissioner recommended that the Government might sanction lease of 180 decimals in favour of Shrimati Misra as a special case subject to payment of full market value and annual rent of Rs. 7,500 and Rs. 200 per acre respectively. The matter was then examined in the Revenue Department. The Deputy Secretary made a note that the Commissioner was competent to sanction the lease of the site but he had forwarded the case to the Government as the applicant had prayed for lease of 180 decimals of land as against the permissible maximum of 120 decimals. According to the Deputy Secretary, Shrimati

Misra had no case of her own for being allowed 60 decimals over the prescribed limit of 120 decimals, but because of her status as wife of Deputy Minister, Ministry of Law, Government of India, she deserved special consideration. The Deputy Secretary suggested that the recommendation of the Commissioner to grant 180 decimals in relaxation of the rules might be accepted. The Deputy Secretary added that Shrimati Misra's application should be disposed of along with other applications by the Commissioner. The Revenue Secretary thereafter dealt with the matter and he endorsed the file to the Minister, Revenue with the recommendation that the case might be sanctioned without referring it back to the Collector. Shri Tripathy, Minister, Revenue approved this proposal on April 22, 1964 and the Government orders were issued on April 25, 1964. The State Government concludes from the above facts that Shri Tripathy showed favouritism to Shri Bibhudendu Misra who was a Congress-man.

In support of the above allegation the State Government has filed the affidavit of Shri Iswar Chandra Dora, Under-Secretary, Revenue Department.

Shri Tripathy in the course of his affidavit has denied that any favouritism was shown in the matter of leasing the land in question in favour of Shrimati Misra. According to Shri Tripathy recommendation for the lease in favour of Shrimati Misra had been made by the Collector and the Revenue Divisional Commissioner to the Government and it was considered by the Government to be fair to sanction the lease. The Government, it is further stated, did not suffer any pecuniary loss on this account.

Shri Bibhudendu Misra too has filed his affidavit denying that any favour was shown to his wife in the allotment of the land in question.

In respect of this allegation I find that on July 31, 1963, Shrimati Uma Misra applied to the Collector, Puri for lease of Khasmahal land measuring 120 to 200 decimals out of Balukhanda Plot No. 566 for residential purposes. The Collector took it that the application of Shrimati Uma Misra was for an area of 180 decimals. The mistake seems to have persisted thereafter and the different officers on various levels proceeded on the assumption that the application of Shrimati Misra was for 180 decimals. Even the State Government in the particulars of allegation in these proceedings has

stated that the application of Shrimati Misra was for 180 decimals of land. Be that as it may, the Collector in his letter, dated January 14, 1964, to the Secretary to the Revenue Divisional Commissioner recommended that 180 decimals be leased out to Shrimati Misra as a special case. It may be mentioned that according to rule 20 of the Orissa State Urban Land Settlement Rules, 1959, a person belonging to middle class, to which category Shrimati Misra belonged, can be given an area of 120 decimals on lease without resorting to public auction. On receipt of the above letter from the Collector, a letter, dated January 25, 1964, was addressed by the Secretary to the Revenue Divisional Commissioner, to the Under-Secretary, Revenue Department, stating that Shrimati Misra did not have any house or house-site in the town of Puri and there could be no objection to the leasing out of a piece of land in her favour in Puri. It was further stated:

“The plot out of which land has been proposed to be leased out has been earmarked in the Master Plan of Puri Town for being leased out to middle class people. As Mrs. Misra's annual income entitles her to be treated as belonging to the middle class, there can be no objection to the proposed lease in her favour.

The applicant has applied for 180 decimals of land which is a little more than the prescribed limit of 120 decimals but in view of her status, Revenue Divisional Commissioner recommends that Government may sanction lease of 180 decimals of land out of the plot No. 566 in Balukhand Khasmahal in favour of Mrs. Uma Misra as a special case, subject to payment of full market value and annual rent amounting to Rs. 7,500 and Rs. 200 per acre respectively.”

In the Revenue Department the matter was examined by the Deputy Secretary and he observed in his note, dated April 20, 1964, that Shrimati Misra because of her status as the wife of a Deputy Minister of Law, Government of India, deserved special consideration, and as such the recommendation of the Commissioner to grant her 180 decimals in relaxation of the rule might be accepted. The Deputy Secretary suggested that the Commissioner be informed that the Government had no objection to the grant of 180 decimals of land to Shrimati Misra and the application should be disposed of by the Collector and the Commissioner. The Secretary of the Revenue Department thereafter forwarded the file to the Minister, Revenue with the observation that the matter be

sanctioned without referring it back to the Collector. Shri Tripathy signed the note in token of his approval on April 22, 1964. Letter dated April 25, 1964, was then addressed by the Deputy Secretary, Revenue Department to the Revenue Divisional Commissioner conveying the sanction of the Government to the lease of 180 acres of land in Balukhand Khasmahal, Puri in favour of Shrimati Misra as a special case on payment of full market value of Rs. 7,500 per acre and annual rent of Rs. 200 per acre, and subject to all other conditions as laid down under the Orissa State Urban Land Settlement Rules, 1959. It would thus appear that all the four officers at different levels, namely, the Collector, the Revenue Divisional Commissioner, the Deputy Secretary and the Secretary recommended the lease of 180 decimals of land to Shrimati Misra. The only point on which the Deputy Secretary differed was whether the order for granting the lease should be made by the Collector and Commissioner, or by the Government. In other respects the Deputy Secretary also supported the proposal about the lease of 180 decimals of land to Shrimati Misra as a special case. Shri Tripathy, while signing the proposal of the Secretary in token of correctness, accepted the recommendation of the above mentioned four officers.

It is no doubt true that the making of exceptions or special cases for any one highly connected is contrary to the concept of equality enshrined in our constitution. The question with which we are concerned, however, is whether the order made by Shri Tripathy was *mala fide* in-as-much as it was actuated by an ulterior motive. In this respect I find that no personal interest of Shri Tripathy in Shri Misra or the applicant has been proved. The mere fact that the husband of the applicant and Shri Tripathy belonged to the Congress Party and that one of them was a Deputy Minister in the Central Government and the other was a Minister in the State Government is hardly sufficient to prove the existence of an interest as might vitiate the order of Shri Tripathy. Indeed, it was not Shri Tripathy who initiated the move for lease of 180 decimals in favour of Shrimati Misra. The matter came up before him in the shape of a unanimous recommendation by four senior officers at different levels. Shri Tripathy had either to accept or reject the recommendation and he chose to accept it. The fact that Shri Tripathy in his discretion could have taken another view of the matter, which perhaps might have been more in accordance with law, is besides the point,

because we are not concerned with the question as to whether the order made by Shri Tripathy was in accordance with law but whether it was *mala fide*. Looking to all the facts, I am of the view that the impugned order cannot be held to be *mala fide*. The charge of impropriety levelled against Shri Tripathy, therefore, remains unsubstantiated.

CHAPTER 12

ALLEGATION No. 12

Re :

Use of official machinery for Election Meetings addressed by the Prime Minister

Allegation No. 12 relates to the use of official machinery in connection with the election meetings addressed by the Prime Minister in February, 1967. The respondent named in this allegation is Shri Tripathy.

According to the case set up by the State Government in the particulars of allegations, Mrs. Indira Gandhi, Prime Minister of India, was scheduled to visit Orissa on the 8th and 9th February, 1967, to secure support for Congress candidates in the ensuing general elections. Shri Tripathy, who was then Chief Minister, set in motion the Government machinery to make a arrangement for Mrs. Indira Gandhi's election tour in the State of Orissa. It was directed by Shri Tripathy as Chief Minister on February 1, 1967 that the expenses for Lunch of the Prime Minister and her party at Banki and Tea at Khurda would be incurred by the State Government to be paid back later by the Utkal Pradesh Congress Committee (hereinafter referred to as the UPCC). Likewise, it was directed that the construction of rostrums and barricades for the meetings to be addressed by her, as per specifications in the Blue Book, and the lighting arrangements at Bhubaneswar, Puri, Khurda and other places, would be arranged by the State Government the costs to be paid back by the UPCC later. As regards the arrangement for the microphone, the order was that it should be made by the UPCC and not by the State. A formal letter of the UPCC was procured on February 1, 1967 just to regularise the decision taken at Government level. Although the State Government incurred all the above expenses including the expenses for the microphone in the public meetings, it is stated, nothing has been paid by the Congress Party to reimburse the State Government except for a sum of Rs. 2,000 which was given by the UPCC to meet the expenses of catering incurred by the State Guest House for the Prime Minister's party. After the Prime Minister's visit, a bill for Rs. 46,000-85 Paise was

submitted by the State Government to the UPCC but the same has not so far been paid in spite of the reminders. The State Government concludes from the above fact that Shri Tripathy committed gross acts of impropriety and corruption in the matter of elections.

In support of the above allegations the State Government has filed the affidavit of Shri Sashibhusan Misra, Deputy Estate Officer-cum-Under-Secretary in the Political & Services Department.

Shri Tripathy in the course of his affidavit has denied having committed any impropriety in connection with the Prime Minister's visit to Orissa. According to Shri Tripathy security during Prime Minister's tour as per rules had to be maintained and the Director of Protocol had taken all necessary steps in this behalf. Since the Prime Minister had to address meetings during the election, the General Secretary of the UPCC informed the Estate Officer by a letter dated February 2, 1967 that the Prime Minister was visiting Orissa on February 8, 1967 and she would be addressing public meetings at different places. Request was made for the security arrangements and other necessary steps. The Secretary also stated that all the expenditure to be incurred in this connection during the visit of Prime Minister to Orissa would be reimbursed from the UPCC funds. The Estate Officer was, accordingly, requested to make the necessary arrangements and send the intimation to the Secretary of the UPCC. According further to Shri Tripathy, as the expenses incurred on account of the rostrums, barricades, lighting at meeting places and arrangements for the board and lodging of the Prime Minister at different places were to be borne by the UPCC, the Officer concerned should have taken adequate steps to realise the amount in advance as usual in accordance with established practice. It is further stated that the security of the Prime Minister is the first anxiety of the Chief Minister when the Prime Minister visits his State. In spite of adequate security arrangements, mischievous persons crossed the barricades and stoned the Prime Minister resulting in serious injury on her face. If no steps had been taken by the Government for adequate security arrangements, the resultant effect would have been much more serious.

Supplementary affidavit in respect of this allegation has been filed by Shri Sashibhusan Mishra.

In connection with the visit of Prime Minister to Orissa in February, 1967, Shri Tripathy passed three orders. Two of those orders are dated February 1, 1967, while the third order is dated February 7, 1967. The propriety of all the three orders has been assailed on behalf of the State Government. It would, therefore, be essential to reproduce those orders as well as give the context in which those orders were made.

The Director of Protocol recorded a note on December 30, 1966, to the effect that the newspapers report indicated a visit by the Prime Minister to Orissa for election tour. He accordingly directed that the file regarding the visit of the late Prime Minister, Shri Jawahar Lal Nehru, be found so that certain basic orders pertaining to such tour might be obtained. It was also mentioned that the Blue Book laid down that the responsibility for the Prime Minister's security rested with the State irrespective of the nature of the tour. A number of notes were made thereafter on the file. There was also some correspondence with the Inspector-General of Police regarding the steps which had to be taken in connection with the Prime Minister's visit. On January 31, 1967, a meeting attended by Secretary to the Home Department, Deputy Secretary to the Home Department and Shri A. N. Tiwari, Director of Protocol & Estates, was held in connection with the Prime Minister's visit. It was intimated that the Prime Minister would arrive in Orissa on the morning of February 8 and leave on the morning of February 9, 1967. The following decision was taken regarding rostrum and barricading in the meeting :—

“Rostrums and barricading as per the specifications laid down in the Blue Book will have to be done. The question is as to who will bear the cost. Instructions in the Blue Book are very clear that the cost of construction of rostrum and barricading will not be borne by the Government. During the Prime Minister's (Pandit Jawahar Lal Nehru's) last visit for Election purposes, the rostrums were put up by the State and the cost was reimbursed by the UPCC. No approach has so far been made by the UPCC for taking up the construction of the rostrums and barricading. Chief Minister may kindly discuss this with UPCC. If the UPCC want Government to take up the construction of rostrums on their behalf it will be done on payment of cost as per precedent.”

On February 1, 1967, Shri A. N. Tiwari, Director of Protocol, addressed the following note to the Chief Minister :—

“*Chief Minister*

Chief Secretary desired that I may obtain the broad approval of the Chief Minister on various points in connection with th

Prime Minister's visit. Yesterday night I had a telephonic discussion with Sri Sheshan, Private Secretary to Prime Minister. He gave the composition of the Prime Minister's party as follows :—

- (1) Information Advisor
- (2) Deputy Director, Intelligence
- (3) Deputy S. P., Security
- (4) P. A.
- (5) Guman
- (6) Doctor
- (7) 3 or 4 Press Correspondents.

The Private Secretary to the Prime Minister further mentioned that the Prime Minister had seen the programme and would like to have the following amendments :—

(1) Since there is an engagement at Calcutta, the arrival at Bhubaneswar may be delayed by half an hour and may be kept at 10-00 hours instead of 09-30 hours.

(2) The departure of the Prime Minister has been kept on the 9th at 9-30 hours. Since the Prime Minister has to fly to Assam, she would like to take off a little earlier. It was, therefore, suggested by Sri Sheshan that the visit to Choudwar may be dropped and she may fly from Bhubaneswar by 8-30 hours. He requested me to obtain the approval of the Chief Minister and let him know this morning.

As I am writing this note, Chief Minister was pleased to tell me that in course of discussion with the Prime Minister on telephone, Prime Minister has suggested a visit to Puri. The programme of visit to Banki, Bolgarh and Khurda having been finalised, I may suggest that the Prime Minister may leave for Puri after the meeting at Bhubaneswar, arriving Puri at 20-30 hours. She may spend the night at Puri, visit the temple on the 9th morning and drive to Airport straight, arriving airport at 9-00 hours. Chief Minister may kindly indicate his approval so that further steps will be taken accordingly.

Shri B. K. Pani has given a list of non-officials to be presented during reception and send off at page 13/c. Chief Minister may kindly indicate if some other non-officials are to be invited.

The cost of rostrum and barricading will have to be borne by the UPCC. Formal requisition from them has not yet been received. It is for orders if the PWD will be asked to take up the work and the cost will be reimbursed by the UPCC.

Lunch at Banki and Tea at Khurda is proposed to be arranged by the State Guest House and the cost will be reimbursed by the UPCC.

Arrangements for public meeting like microphone, etc., will have to be done by the UPCC. Lighting arrangements at Bhubaneswar may be done by the PWD on payment of cost by the UPCC.

For favour of consideration and approval. Further details will be worked out after obtaining the broad approval of Chief Minister."

Shri Tripathy thereupon passed the following order on the above note:

"Approved. I shall accompany P.M.

Sd. S. Tripathy

C. M.

1/2."

After the above order of Shri Tripathy, another note was addressed to him stating that according to a telephonic message from Shri Sheshan, Private Secretary to the Prime Minister, she had no plan to visit Puri, and that in other respects the tour programme was approved by her, Shri Tripathy thereupon passed the following order—

"Try to include a cultural programme between 19-30 to 20-15 and intimate Shri Sheshan. Rest of the proposals are approved. Pressmen should get passes. P. & R. Department may be consulted.

Sd. S. Tripathy

1-2."

The proposal about having the cultural programme was, however, dropped thereafter.

Two letters were received by the Director of Protocol from the General Secretary of UPCC. Letter dated January 31, 1967, which was received on February 2, 1967, was to the following effect—

“The Prime Minister is visiting Orissa on 8th February, 1967 and she will be addressing public meetings as per programme attached herewith. All Security arrangements and paraphernalia have to be maintained. All the expenses to be incurred on account of her visit to Orissa be reimbursed from the Utkal Pradesh Congress Committee Fund. Kindly arrange accordingly and inform me.”

Letter dated February 1, 1967 reads as under:—

This is to request you to kindly issue necessary instructions to the PWD for construction of rostrums and barricades at Bhubaneswar, Banki, Bolgarh, Khurda, Puri and Chowdwar in connection with the Prime Minister's public meetings on 8th and 9th instant. The cost of construction will be paid by the UPCC.

Lighting arrangements will be necessary at Bhubaneswar and Puri. This also may kindly be done for which payment will be made.

We are taking steps at our end for other arrangements of public meetings including microphones.

Necessary expenditure in connection with board, lodging and transport for the P. M. and party will be paid by the UPCC.”

On February 7, 1967 at 3-45 P.M. the Inspector-General of Police addressed a letter to Home Secretary of Orissa wherein he pointed out that the UPCC had not till that day taken steps to instal loudspeakers for the public meetings to be addressed by the Prime Minister at Chowdwar, Bhubaneswar, Khurda, Bolgarh and Banki. The Inspector-General expressed his apprehension that as far as he could see loudspeaker would not be fitted even by the evening of the following day. It was further stated that serious troubles had taken place in the public meetings of the Prime Minister when the loudspeaker system failed. The Inspector-General requested that Government should take immediate action in the matter or seriously consider cancellation of the Prime Minister's programme. The Home Secretary then addressed the following note to the Chief Secretary :—

“D. O. letter from the I.-G. of Police placed below which is self-explanatory may kindly be seen. As the Prime Minister will be addressing the election meeting during her ensuing visit, no instructions were given to Director of Public Relations

to instal public address systems. During the mid-term elections, the Congress party made their own arrangements through a firm Aerovoice Engineering Company. This time also they had indicated that they are entrusting the work to the same firm. I.-G.'s D. O. letter indicates the present position in the matter. I understand from the S D.O., Khurda, and Deputy Collector-in-charge, Banki over telephone this forenoon that no work had been started even though the local Congress Party people were mentioning that the Aerovoice would make arrangements by this evening.

2. At this stage, the Public Relations Department can at the most fix up the system for the Bhubaneswar meeting and even this work will take whole of to-night. This work can be done only on a specific request from Congress Party Organisation and on payment.
3. If no loudspeaker arrangements are fitted by this evening at the various places, the Prime Minister may have to be advised not to address the meeting at places where arrangements are not made.
4. The matter may immediately be brought to the notice of the Chief Minister."

The Chief Secretary forwarded the above note to the Chief Minister. Shri Tripathy then made the following order :

"I understand that microphone arrangements are being made.

Sd. S. Tripathy

7/2

After what I have said in the previous page, I think the arrangements at Bhubaneswar be made by the P. R. Department and the entire cost will be borne by the UPCC.

Sd. S. Tripathy

7/2"

I have given the matter my consideration and am of the view that no inference of impropriety can be drawn from any of the orders made by Shri Tripathy. So far as the first order made on February 1, 1967 is concerned, it contained the Chief Minister's approval to the note of the Director of Protocol after the Director had discussed the matter with the Home Secretary and the Deputy Home Secretary. In the note it was specifically mentioned that the cost of rostrum and barricading would have to be borne by the UPCC. A communication was also thereafter received from the UPCC stating that the UPCC would bear that cost. So far as the second order made on February 1, 1967 is concerned, I find that the cultural programme contemplated in this order was abandoned. No expense in connection with such

programme was incurred and it cannot be said as to what would have been the financial implication in case such a programme had been gone through. As the programme was abandoned, the question of any further consideration of this order, in my opinion does not arise.

Coming to the order made on February 7, 1967 I find that it was in the context of the letter from the Inspector-General of Police, who had pleaded for taking immediate steps regarding the loudspeakers. According to the Inspector-General, there would be a pandemonium in the meeting if the Prime Minister was not audible to the audience. The Home Secretary in his note thereupon observed that the Public Relations Officer could at the most fix up the system for the Bhubaneswar meeting and even then the work would take the whole of the night. The Home Secretary further mentioned that this work could be done on the request from Congress Party Organization and on payment. Shri Tripathy then passed the order on February 7, 1967 to the effect that the work might be done by the Public Relations Department and the entire cost be borne by the UPCC. Before that a communication dated January 31, 1967 had already been received from the General Secretary of the UPCC that the aforesaid Committee would reimburse the expense to be incurred by the State Government in connection with the visit of the Prime Minister. As it was made expressly clear by Shri Tripathy that the expenses for the microphone would have to be borne by the UPCC, it cannot be said that his order was vitiated by any impropriety.

It has been argued on behalf of the State Government that except for a sum of Rs. 2,000 which was given by the UPCC to meet the expenses of catering incurred by the State Guest House for the Prime Minister's party, the UPCC has not paid bill for Rs. 46,000·85 paise which was submitted by the State Government to the UPCC in spite of a number of reminders. Whatever one may think of this attitude of the UPCC., especially in view of the solemn undertaking given by its General Secretary, this fact would not go to show that the impugned orders made by Shri Tripathy were vitiated by impropriety or *mala fide* intention. The propriety of the orders made by Shri Tripathy has to be judged in the context of things as they were at the time the orders were made and not in the light of what transpired subsequently. I, therefore, hold that the charge contained in this allegation has not been substantiated.

CHAPTER 13

ALLEGATION No. 13

Re:

Satpathy Brothers and Nanda Private Ltd. Co.

Allegation No. 13 relates to the dealings of Satpathy Brothers and Nanda Private Ltd., Co. (hereinafter referred to as the Satpathy Company), the respondent named in this allegation is Shri Routray.

According to the case set up by the State Government in the particulars of allegations, after the advent of Shri Patnaik's Ministry in 1961, means were invented to create facilities for Congress-men to make money out of Government funds. With this end in view certain industries were set up at Panchayat level through Congress-men. In pursuance of the above, a rice mill was set-up at Sakhigopal in Puri district in the name of Satpathy Company. The shareholders of the Company were Shri Madhusudan Nanda, the then office bearer of the Puri District Congress Committee and Shri Sura Satpathy, President of Sakhigopal Mandal, and the latter's family members. An amount of Rs. 3 lakhs was paid to the above concern as State-aid for industries without proper and reliable security. The Supply Department, which was under Shri Routray, appointed the said Company as Storage Agent for paddy and rice from 1961-62 to 1964-65. The Company was also appointed as Purchasing Agent for rice and paddy during the year 1965-66. The paddy and rice, which were given for storage to the Company, were finding way to black market since the rate of rice in Orissa was 75 Paise and in Bengal Rs. 3 or more per Kilogram. The State Government insinuates that this must have been with the connivance and collusion of the Supply Minister. When Shri Madhusudan Nanda came to know of the above activity of Shri Satpathy he wrote to the Collector and Civil Supplies Officer on November 14, 1964 that the stock of paddy held by the Company should be verified. He also intimated to the Civil Supplies Officer that he was withdrawing his authority vested in the Managing Director, Shri Satpathy, to deal on behalf of the Company. No verification of the stock was, however, made and a few days thereafter Shri Nanda withdrew in writing his earlier letter. Before that, it is stated, on December 21, 1963 the Assistant Directors of Food Supplies were directed to visit Sakhigopal to inspect the accounts of the Company. The Assistant

Directors reported to the Government that the accounts could not be inspected as the account-books were not made available to them. Supply Department then wanted the Collector to obtain the explanation of the Company. In spite of that no explanation was furnished and no action was taken.

In January 1965, it is stated, Shri C. K. Das, another storage agent, complained that he had handed over 366.75 quintals of paddy to Satpathy Company and the Company had not given it back to him. The District Officers instead of taking any punitive action against the Company made an order in June 1965 transferring the said stock of paddy from Shri C. K. Das to the account of the Company. According further to the Government case, the above mentioned Company was entrusted with 400 quintals of paddy and 678 quintals of rice worth about Rs. 1,03,000 from the year 1963-64. The aforesaid stock, it is stated, found way to the black market. The Company was given directions to transfer 500 quintals of paddy to Nimapara and 80 quintals of rice to Sultana and Nagpur but it failed to comply with those directions. One wagon of rice was directed to be sent to Dhenkanal where there were famine conditons but the direction in this respect was also not complied with. In spite of this performance of the Company it was given huge advances and, it is stated, that an amount of about Rs. 2 lakhs is still due from the Company.

The State Government further alleges that the matter was so manipulated that a report was sent by the Collector in the year 1966 that the stocks given for storage consisting of about 400 quintals of paddy and 678 quintals of rice should be transferred to the Company at the price prevalent in 1963-64, even though the rates in 1963-64 were about 20 per cent lower than those of 1966. A condition was added that the stocks would be delivered only after the price of it was deposited in the treasury. This proposal when put up before Shri Routary was accepted on April 19, 1966. The Company, however, did not deposit the cost of the stock. An officer of the Central Bureau of Investigation then raided the godown of the Company and found that the stock worth Rs. 1,04,614 was non-existing. The State Government seeks to fasten the responsibility on Shri Routray for the dealings of Satpathy Company.

In support of the above allegation the State Government has filed the affidavit of Shri Lokanath Saran Panda, Under-Secretary in the Supply Department.

Shri Routray in the course of his affidavit has denied having committed any impropriety as also the correctness of all the insinuations made against him. According to him, perusal of the file would show that when a note of the Food Commissioner was put up before him that the carry over stocks might be disposed of and the responsibility for the deterioration might be fixed, he agreed with the proposal contained in the note. The above order, according to Shri Routray, was passed in normal course of administration in exercise of his judgement. There is nothing on the record to disclose any extraneous consideration. Shri Routray has also denied the allegations of any collusion or connivance by him.

After hearing the learned counsel for the parties, I have come to the conclusion that there is no substance in the charge contained in this allegation. There is nothing on the record to indicate that Satpathy Company was appointed Storage Agent or Purchasing Agent at the instance of Shri Routray. On the contrary, the affidavit filed on behalf of the State Government shows that such agents were appointed on the recommendation of the Collector. There is also nothing to show that Shri Routray had anything to do with the aid which was given to that Company. All that has been brought out at the time of arguments in that Shri Routray passed an order on April 19, 1966 in respect of the above Company. The State Government has questioned the propriety of that order. Before reproducing that order I may give the background of that order. On January 13, 1966, the Collector of Puri addressed a letter to the Deputy Director of Food Supplies inviting attention to an earlier letter seeking Government instructions regarding disposal of carry-over stocks relating to the year 1963-64 available with Satpathy Company. It was suggested that as the above stock was lying without any disposal, it might be released to the Storage Agent at the ex-godown rates prevailing in the year 1963-64. The Deputy Secretary thereafter made a note on April 9, 1966 wherein he referred to the Collector's letter for releasing the stock held by Satpathy Company at the ex-godown rates. The Deputy Secretary gave the details of stocks lying at different places. The rest of the note of the Deputy Secretary reads as under:—

“Deputy Director Shri M. K. Patnaik, who has seen the stocks with the Storage Agent at Nimapara, has reported saying that the quality of the stocks has deteriorated very much and immediate disposal of the stocks is essential. He also agrees that it would be desirable to release the stocks at the old

ex-godown rates of 1963-64 to the Storage Agent as they are and where they are. The Collector's proposals may be accepted.

Disposal of the stocks is linked with the question of fixing responsibility about the delay in disposal and also the causes of deterioration which as reported by the Deputy Director is due to unsatisfactory storage condition. The Storage Agent here will take delivery of the stocks at the old ex-godown rates which are lower than the present rates. But under the terms of the agreement they, as a Storage Agent, are entitled to the full storage commission and shortages till the stocks are disposed of. If they are responsible for the deterioration due to bad storage condition there is no reason why they should be paid full commission and shortage charges. The Collector has not given any proposal on this point. He may be asked to give a clear and detailed report fixing the responsibility and his suggestions, if any, to withhold payment to the Storage Agent of the commission, etc. either part or full. It is necessary to get this report to explain our action to the Audit and the P. A. C. Further, if stocks are released at the old ex-godown rates, similar proposals from other districts or other Storage Agents cannot be resisted. Deputy Director's concurrence may be taken on receipt of Collector's report.

Government orders may please be taken.

Sd.

9. 4. 1966. "

The above note of the Deputy Secretary was forwarded to Shri Routray by the Food Commissioner with the following endorsement:—

"Note above explains. The carry-over stock may be disposed of but the responsibility for deterioration must be fixed."

Shri Routray thereafter passed on April 19, 1966 one word order "Agreed". It is difficult, in my opinion, to hold that the above order of Shri Routray was vitiated by any impropriety. As would appear from the resume of facts, the Collector had requested for the release of the stock of Satpathy Company. The Deputy Director, who had seen the stock, supported the proposal of the Collector on the ground that the quality of the stock had deteriorated very much and its immediate disposal was essential. The Deputy Secretary in his note after giving all the facts suggested that the responsibility for the deterioration of the stock should be fixed. The Food Commissioner, who was also the Secretary of the Department, thereafter suggested that the stock might be disposed of and the responsibility for deterioration might be

fixed. This proposal was accepted by Shri Routray. In the light of all these facts it cannot be said that Shri Routray was influenced by any extraneous consideration when he accepted the proposal of the Food Commissioner-cum-Secretary of the Department.

It has been argued on behalf of the State Government that the stock of Satpathy Company was verified by the Central Bureau of Investigation on October 4, 1966 and a shortage of rice was found. It is inferred from the above that the said Company was indulging in improper activities. This fact, in my view, would not detract from the propriety of the order which was made by Shri Routray earlier on April 19, 1966. Shri Routray can also in no way be held responsible for the activities of Satpathy Company.

I, therefore, hold that the charge contained in this allegation has not been brought home to Shri Routray.

CHAPTER 14

ALLEGATION No. 14

Re :

Advance given to Udyog Silpa (Private) Limited for Mustard Oil Agency

Allegation No. 14 relates to the advance of Rs. 5 lakhs given to Udyog Silpa (Private) Limited for Mustard Oil Agency. The respondent named in this allegation is Shri Routray.

According to the case set up by the State Government in the particulars of allegations the State Government took a decision in 1964-65 to implement a scheme for departmental procurement of mustard seeds and production of mustard oil through private mills. The Chief Secretary then remarked in respect of Shri Madan Lal Jajodia of Udyog Silpa (Private) Limited that he was an undesirable type of man who wanted to get most of a deal with the minimum work and the department should place no reliance on him. In 1966, when there was a proposal for State trading in mustard oil through private agency Shri S. K. Jajodia son of Shri Madan Lal Jajodia, a Director of Udyog Silpa (Private) Limited, filed an application before the Supply Department offering to work as agent of the State for supply of mustard oil through his oil mills. He also indicated that he would require Rs. 5 lakhs as advance to purchase raw material for running the mills to supply the required quantities to the State. It is stated that though this proposal was something different from departmental procurement the Supply Secretary made a report that the two schemes were of the same type and it would be better if the State instead of procuring mustard seed oil's advance Rs. 5 lakhs to the miller agent and recouped the amount by supply of oil and oil cakes to be delivered by him. The State Government alleges that under the apparent influence of Shri Routray the Government became inclined to accept the offer. An agreement was drafted with the concurrence of the Law Department on March 23, 1966 for a deal with the Udyog Silpa (Private) Limited. An objection was then raised by the Finance Department that there were Panchayat Oil Mills as well as Oil Mills run by Co-operative Societies at different places which were lying idle. The advance of Rs. 5 lakhs, it was stated, would go a long way to make those mills run with profit. The suggestion of Finance Department was not accepted and the deal with Udyog Silpa (Private) Limited was

approved by Shri Routray on March 31, 1966. Two days before that, i. e. on March 29, 1966 an amount of Rs. 5 lakhs was advanced to the said Company without interest. The security offered by the Company was not subjected to scrutiny. Shri Jajodia, it is further stated, had business connections with Shri Routray for a long time. In 1958 when Shri Routray was a Minister, an insurance policy of Rs. 30,000 was taken by Shri S. K. Jajodia through Mrs. Routray.

The subsequent performance of Udyog Silpa (Private) Limited, it is alleged, showed its unreliable character and inefficiency. An amount of Rs. 1,53,998 is stated to be still due from the Company out of the advance paid to it. The State Government concludes from the above that Shri Routray has committed administrative impropriety and has gambled with the State finances to favour a particular concern.

In support of the above allegation, the State Government has filed the affidavits of Shri Lokanath Saran Panda, Under-Secretary in the Supply Department, and Inspector Hemakanta Sahu (Vigilance).

Shri Routray in the course of his affidavit has denied the various allegations of favouritism and impropriety levelled against him as well as the insinuations made by the State Government. According to Shri Routray, in 1958 his wife Shrimati Nalini Devi Routray, who is a qualified lady with a good knowledge of English and several other Indian languages and is an author and regular contributor to newspapers and periodicals, had taken the work of an Insurance Agent. The Field Officer, under whom she was working, secured the insurance from Shri Jajodia and so far as Mrs. Routray could recollect she might have signed the insurance papers. Shri Jajodia, however, paid only one premium and thereafter the policy lapsed. As regards State trading in mustard oil, it is stated, Shri Routray agreed to the proposal of Financial Adviser to the Food Commissioner. Shri Routray then passed the following order on March 1, 1966:—

“ I agree to the proposal. We have a provision of Rs. 10 lakhs for State trading in mustard oil in the current year's budget. We can appoint purchasing agents for mustard seeds but this will not be like the purchasing agents in rice and paddy. Money will be advanced against proper security. The security offered should be properly valued by the competent authority and the condition of the mill, machinery should also be examined.

This scheme is necessary because after some time, we will face difficulties with regard to supply of mustard oil. It is not that by our efforts we will be able to meet the entire demand in the State, but it will be a good thing for the Government if we command at least some stock so that we can distribute the same through fair price shops and consumer co-operative at reasonable price. This will also have a moderating effect on the market.

Sd. Nilamoni Routray

1st March 1966."

A scheme to implement the proposal was then put up by the Secretary of the Supply Department on March 11, 1966 and the same was approved by Shri Routray on March 17, 1966. On March 29, 1966 further details of the scheme were put up by the Financial Adviser to the Food Commissioner and in it a suggestion was made that the application of Udyog Silpa (Private) Limited for taking up oil agency might be taken into consideration. The Secretary of the Supply Department then put up a note for approval. It was mentioned in that note that the application of Udyog Silpa (Private) Limited had to be considered and no other firm had so far applied. This note was approved by Shri Routray on March 29, 1966. On March 31, 1966 the Secretary of the Supply Department put up a note, the concluding lines of which were as under :—

"The applicant is mortgaging property worth Rs. 12 lakhs. The value of the seed to be crushed in one year comes to about Rs. 70 lakhs and Rs. 5 lakhs is a very small percentage of the total. Then again unless payment is made to day, the entire allotment will lapse.

The payment may please be approved.

S.I. P. K. Chakravarti

31-3-1966"

Shri Routray then made the following order on that day :—

"Approved. The progress of the scheme and work should be very closely watched.

Sd. Nilamoni Routray

31-3-1966"

Shri Routray points out that the allegation of the State Government that he approved the advance of the grant of Rs. 5 lakhs two days before the agreement was executed by the Company, is false. According further to Shri Routray the question of inviting or not inviting tenders never came up before him and was never considered by him. He was pointed out that even earlier various parties were being contacted and negotiations were held at Government initiative. As regards the remarks made by the Chief Secretary on the conduct of Shri Madan Lal Jajodia, it is stated that those were in the context of the comparative assessment of the two parties for selection of oil milling agents in the coastal area. Shri Routray on that occasion approved the Chief Secretary's suggestion. Subsequently, it transpired that the other party had no oil mill at all. Dealing with the note of the Finance Department, it is stated that it was ill-informed and misleading.

An affidavit of Shri Madan Lal Jajodia has also been received in connection with this allegation.

Supplementary affidavits have been filed by Shri Loknath Saran Panda on behalf of the State Government as well as by Shri Routray.

In order to judge the propriety of the impugned orders made by Shri Routray, it would be necessary to give the background of the whole matter. On June 20, 1964, Shri P. K. Chakravarti, Secretary of the Supply Department, addressed a note to the Chief Secretary, stating that Orissa was dependent on outside agencies for mustard oil. The price of mustard seeds and oil through normal trade channel were remote. The Secretary, therefore, suggested that immediate steps should be taken for production of mustard oil so that the State authorities could have a buffer stock before the ensuing Puja when there would be great demand of the oil. According to the Secretary, 15,000 to 16,000 quintals of mustard seed should be purchased for meeting the requirements of the consuming areas. Suggestion was also made to purchase or acquire 3 or 4 mills for extraction of the oil at a cost of about Rs. 10,00,000. It was pointed out that as this was a first important step towards nationalization, there were bound to be teething troubles and the possibility of the loss could not be ruled out. As against that, it was stated, the proposal would have a tremendous psychological effect on the people that the Government was taking up by itself the production of an essential edible commodity. The Chief Secretary, while

forwarding the note to Shri Routray, stated that the risks had to be taken. He accordingly suggested that the proposal might be approved in principle and the finance Department be consulted. Shri Routray thereupon made a note that he agreed with the proposal. In a subsequent note dated July 18, 1964, Secretary, Supply Department, mentioned that the Finance Department had given qualified approval to the investment of the barest minimum for purchase of mustard seed and to the loan against the mustard oil produced. The office note shows that the work of extracting oil was thereafter taken up by the Tribal & Rural Welfare Department.

On February 10, 1966 the Financial Adviser-cum-Deputy Secretary in the Supply Department addressed a note to the Food Commissioner-cum-Secretary of the Supply Department on the subject of manufacture of mustard oil on Government account through the agency of private traders called miller agents and the distribution of the oil to the consumers at reasonable rates. It was stated in the note:—

“The essential feature of the scheme is to procure mustard seeds from outside the State on Government account and deliver the same to miller agent for milling the same into oil and deliver the resultant oil to Government on payment of a consolidated commission/remuneration for the services rendered by the agent. While we were about to implement the scheme on the above pattern, Tribal Department introduced a scheme for procurement of mustard seeds within the State and deliver the same to Supply Department. So our proposal to purchase seeds from outside the State had to be given up and we had to participate in the Tribal Scheme. We invested 4½ lakhs for purchase of seeds. The scheme of procurement of seeds through Tribal & Rural Welfare Department has also been abandoned for the fact that the industrial unit through whom the seeds had to be milled did not restrict the cost of production to the estimated cost determined by us. The said units did not execute the scheme on lines of the scheme framed by Supply Department.”

It was further stated:—

“It may be considered whether it is worthwhile now to implement the scheme and take up State Trading in mustard seeds, on the lines originally decided upon by us and on the same pattern as of the scheme of procurement of rice and paddy which has been successful ever since the inception of the Department. In other words suitable merchants in the trade may be selected for appointment as miller agents, who will procure stocks from outside the State on behalf of Government, mill the same into oil in their mills and deliver the resultant oil to Government for supply to consumers. For

this purpose Government may have to afford financial assistance to the miller agent by way of advances for procurement of seeds say to the extent of Rs. 5 lakhs and recoupe the same on delivery of oil by them. The present scheme of manufacture of mustard oil may be slightly modified to the effect that purchases will be made by the miller agents instead of by Government direct and suitable advances will be given to the said agents for procurement of seeds, etc. As a measure of security for the advance the agents may hypothecate their mills in favour of Government."

The above note was forwarded to Shri Routray, who was Deputy Chief Minister and Minister in charge of the Supply Department, by the Food Commissioner with the endorsement that early decision might be taken in the matter. Shri Routray then passed the order on March 1, 1966 which has already been reproduced earlier.

On March 5, 1966, a letter was addressed by Udyog Silpa Private Ltd., to the Food Commissioner-cum-Secretary of the Supply Department, requesting for appointment as purchasing agent of mustard seeds and for their crushing in an oil mill. It was mentioned in the letter that the Company had the biggest mustard oil mills at Jatni with a daily production capacity of 400/500 tins of 18 Kilograms each of mustard oil. The Company mentioned that it would require at least Rs. 5 lakhs to purchase the raw materials in order to run the mill regularly.

On March 11, 1966 the Financial Adviser addressed another note to the Food Commissioner wherein he referred to the fact that the new scheme approved by Government was slightly different from the previous scheme. It was further stated that under the new scheme the mustard seeds would be procured through the agency of private miller instead of through Government agency. The terms and conditions and the charges payable to the miller agent would, therefore, be different from those fixed under the previous scheme. It was mentioned that the ex-factory price of pure mustard oil would work out to be Rs. 3-19 Paise per Kilogram, which was definitely less than the wholesale price prevailing in the market. The break up of the estimated cost was also given. It was further stated :

"The miller agent will be paid the above cost and charges in monthly bills to be furnished by him against the stocks of oil disposed of and these bills will be adjusted against the Government advance given to the agent.

As and when the advances are adjusted against the bill, further advances up to the amount adjusted may be allowed to the agent from time to time so that at no time the total Government advance outstanding against the agent will not exceed Rs. 5 lakhs on the principle of imprest. Since the agent will hypothecate the immovable property (mill) in favour of Government the amount so granted will be fully secured and there will be no harm if advances be given on imprest system from time to time in order that the scheme may be implemented successfully on a large scale in the best interest of the consumers."

Shri P. K. Chakravarti, Food Commissioner-cum-Secretary of the Supply Department then addressed the following note to the Deputy Chief Minister :—

"This deals with the scheme of State Trading in mustard oil. Minutes of Deputy Chief Minister at p. 10/n will recall. In this connection, notes of the Financial Adviser from the bottom of p. 10/n may kindly be perused very carefully. In this note, the Financial Adviser has given the details of the scheme as it will be worked now. The present scheme envisages certain changes from the old scheme particularly in respect of the mustard seeds being purchased by the miller agent and not by the Government. In that way, the scheme is almost similar to our procurement scheme. The details of the costing has been given in the statement placed below at flag 'A'. It may be seen that the cost of one Kilogram of pure mustard oil works at Rs. 3.19 Paise ex-factory. This price can further be reduced substantially by getting mustard seeds at a cheaper rate and also by using second-hand tins instead of new tins. This year, due to lack of plain galvanized tins, cost of tin containers has gone very high and this naturally will force this price up at the factory level. If we use second-hand tins, the cost of tins can at least be reduced by 1/3rd.

The second governing factor in this case is the price of mustard seed which will be taken at Rs. 110 per quintal to find out the working price on an average. There are indications that this year the mustard crop in U. P. and Punjab is a bumper crop and there is quite a possibility that the seed will be available at lower price. The price is, however, subject to fluctuation and we may safely take Rs. 110 per quintal as the normal rolling price throughout the season, taking into account the rise and fall in the prices. We will have to work out a chain of retailers through which the finished product will be marketed. We will give preference to the different co-operatives including the various consumer co-operatives, and it is certain that once this oil establishes its reputation about its purity, then the customers will not hesitate to pay a little more, if necessary, than the market price of other available brands of doubtful purity. Steps will have to be taken to get our oil certified AG mark by the appropriate laboratory of the Marketing Department. A suitable brand

name has also to be decided upon which will be embossed on the container. I suggest that the mark may consist of the lion which occurs at the base of the Ashok pillar, the symbol of Government of India. There will be the super inscription 'Manufactured for Government of Orissa, Supply Department.' The brand may be called the 'MAHADEV BRAND' as it was the earlier registered brand of the miller agent who has applied for milling. This is for approval of Minister and after return of the file, the other details will be worked out and the necessary agreement signed."

Shri Routray passed on March 17, 1966 one word order on the above note "Approved".

On March 29, 1966 the following note was addressed by the Financial Adviser to the Food Commissioner:—

"Law Department have approved the draft agreement form to be prescribed for execution by Oil Miller Agents vide p. 98/N. They have made some corrections in the Draft Agreement and suggested that the agent may be made responsible for labelling the oil tins and that a provision may be made in the Agreement. In this connection it may be mentioned that there is already a provision in the Agreement vide clause 3 (a) for labelling, etc.

Finance Department saw this file last at p. 42/N wherein they accorded their concurrence. The pattern of the scheme and the Draft Agreement form concurred in by them are slightly different from the present scheme and the Draft Agreement which we are going to adopt. The charges now fixed for the agent are slightly different because under the present scheme the agent is to procure seeds on behalf of Government while in the original scheme Government were to procure departmentally and to deliver the seeds to the agent for milling. In either case the stock would belong to Government. The only difference is that the Agent will procure seeds and for this purpose he will be given a lumpsum advance from time to time on hypothecation of his mill and its premises including the machinery. As regards the price of oil it would depend upon the market fluctuations of the price of seeds and empty oil tins.

A point has arisen whether prior concurrence of Finance Department will be taken again in view of the slight change in the pattern of the scheme and agreement as discussed in the preceding para. The procurement season has already begun and it is high time that seeds should be procured immediately, if not prices will rise and we will be forced to purchase them at high rates. Secondly, there is a provision of 10 lakhs in the Budget for this year out of which Rs. 4.50 lakhs only could be spent so far leaving a balance of Rs. 5.50 lakhs unspent, if no amount is spent for procurement of seeds, etc. under this scheme. There is no time at our disposal and there will be saving in the Budget if the balance is not spent.

Then the question of selection of agent's comes in. It may be recalled that a firm styled as Udyog Silpa Private Ltd., have applied to us for taking up oil agency. Their application may perhaps be taken into consideration while selecting the agents. The terms and conditions may be discussed with the prospective Agents and if they are agreed to by them, selection may be made and the agreement be signed."

Shri P. K. Chakravarti, Food Commissioner, forwarded the above note to the Deputy Chief Minister with the following endorsement on March 29, 1966:—

"Notes prepage. The agreement as approved and modified by Law Department is to be the formal agreement. I am also of the opinion that Finance Department may see the file later as there is hardly any deviation in financial matters. The application of Udyog Silpa Private Ltd., is to be considered. So far no other firm has applied.

This is for favour of approval."

Shri Routray then passed the order "Approved" on the above note on March 29, 1966.

Following notes were made on the file on March 31, 1966:—

"Deputy Chief Minister.

Notes from p. 101/n may please be perused. The applicant is mortgaging property worth Rs. 12 lakhs against the advance of Rs. 5 lakhs. The value of seed to be crushed in one year comes to about 70 lakhs and 5 lakhs is a very small percentage of the total. Then again unless payment is made to-day, the entire allotment will lapse.

The payment may please be approved.

Sd. P. K. Chakravarti

31-3-1966

Approved. The progress of the scheme and work should be very closely watched.

Sd. N. Routray

31-3-1966

Issue cheque

Sd. P. K. Chakravarti

31-3-1966

The learned counsel for the State Government has assailed the propriety of the four orders, dated March 1, 1966, March 17, 1966, March 29, 1966 and March 31, 1966 of Shri Routray. In this respect I find that in respect of none of the orders the initiative was taken by Shri Routray. The matter came up before him in the form of proposals which had been vetted and supported by Financial Adviser as well as by the Food Commissioner-cum-Secretary of Supply Department. Shri Routray approved these proposals. He did not himself pass any detailed order except in case of order, dated March 1, 1966. The said order shows the desire of Shri Routray to secure mustard oil for the people of Orissa at reasonable price, which was quite a laudable object. No inference of ulterior motive can be drawn in my opinion against Shri Routray from any of the above orders. Shri Routray also had no personal interest in the matter. The State Government in order to show that Shri Routray had such interest alleged in particulars of allegation that Shri Jajodia had business connections with Shri Routray. There is, however, not an iota of evidence on this point. The second point made by the State Government is that in 1958 Shri Jajodia took an insurance policy of Rs. 30,000 through Mrs. Routray. The said policy lapsed after payment of the first premium and in my opinion the suggested interest of Shri Routray in Shri Jajodia because of that policy is extremely far fetched. Apart from that, if Shri Routray was interested in Shri Jajodia I fail to understand as to why he ruled out Shri Jajodia in 1964, and in accordance with the suggestion of the Chief Secretary gave preference to the concern of one Shri Modi.

Another argument advance on behalf of State Government is that Finance Department should have been consulted before the implementation of the mustard oil scheme of 1966 and payment of advance to Shri Jajodia. In this respect I find that the Secretary of Supply Department took the view that it was not necessary to consult the Finance Department at that stage and it could be done subsequently. Whether this view was correct or not is besides the point, all that we are concerned with is that Shri Routray had that advice from the Secretary and he accepted it. According to Rule 13 of Orissa Government Rules of Business, the Secretary of the department or branch concerned is in each case responsible for the careful observance of these rules, and when he considers that there has been any material departure from them he shall personally bring the matter to the notice of the Minister-in-charge and the Chief Secretary.

As regards the note of the Finance Department regarding the Panchayat Oil Mills and the Mills run by Co-operative Societies, which has been referred to on behalf of the State Government, I find that the said note was made on May 30, 1966 long after the payment of Rs. 5 lakhs as advance to Udyog Silpa (Private) Limited. So far as the security for the amount of the advance is concerned the material on record shows that property of the value of more than Rs. 12 lakhs was mortgaged with the State Government.

I, therefore, hold that the charge of impropriety contained in this allegation has not been proved against Shri Routray.

CHAPTER 15

ALLEGATION No. 15

Re :

Change of date of birth of Shri R. M. Patnaik

Allegation No. 15 relates to change of date of birth of Shri Rasika Mohan Patnaik, police officer in the official records. The respondent mentioned in the allegation is Shri Routray.

According to the case set up by the State Government in the particulars of allegation Shri Routray was being elected to the Orissa Legislative Assembly from 1949 till 1967 from various constituencies of Balasore district, which is the home district of Shri Routray. Since 1952 till the General Election in 1967 he was a member of the Council of Ministers. In the three Councils of the Ministers during the period from June 23, 1961 till February 25, 1967 Shri Routray was in charge of the Home Department. Police administration being a wing of the Home Department was during this period under Shri Routray's control.

Shri Rasika Mohan Patnaik, a member of the Orissa Police Service, it is stated, was transferred to Balasore within two months of the swearing in of the ministry headed by Shri Patnaik. Shri R. M. Patnaik joined at Balasore on August 26, 1961 as Deputy Superintendent of Police and continued there as such till April 15, 1964 when he was promoted to the rank of Superintendent of Police. Shri R. M. Patnaik was posted as such in Balasore and he continued there till October, 1966. Shri R. M. Patnaik was thus allowed to continue in the same station for more than three years against the directions given in the book circulars issued by the Government.

While posted as Deputy Superintendent of Police at Balasore Shri Rasika Mohan Patnaik made a representation to the Government on September 5, 1962 that the date of birth entered in his service book was wrong and in place of June 19, 1908 it should be February 1, 1910. Shri R. M. Patnaik made the above representation on the basis of an unverified duplicate Matriculation Certificate. Shri Routray accepted the prayer and changed the date of birth as prayed for by Shri R. M. Patnaik.

A representation was then made by Shri N. K. Chand, Advocate and Chairman of the Notified Area, Bhadrak to the Governor that there had been manipulation of the date so that the officer concerned should continue in service after June, 19, 1966. The Secretary to the Governor then asked for a report. When the file moved to the Chief Secretary he disapproved of the action and requested for reconsideration but Shri Routray declined on January 30, 1967 to reconsider the matter.

It is also stated that Shri Chakradhar Behera, who was a political rival of Shri Routray, was falsely roped in as an accused in a murder case during the tenure of office of Shri R. M. Patnaik and was acquitted. The State Government concludes from the above that Shri Routray practised nepotism in helping the aforesaid officer who had been utilised by him for victimization of his political rival.

In support of the above allegation, the State Government has filed the affidavit of Shri Gadadhar Misra, Under-Secretary in the Home Department and Inspector Madhusudan Das (Vigilance).

Shri Routray in the course of his affidavit has denied the correctness of this allegation. According to Shri Routray when a question arose with regard to the age of Shri R. M. Patnaik on a representation having been made by him, Shri Routray passed an order that the date of birth, as given in the Matriculation Certificate should be accepted as correct and conclusive. It is further stated that the Inspector-General of Police had recommended to the Government to consider favourably the memorial of Shri R. M. Patnaik and to accept the date of birth as recorded in the Matriculation Certificate. The certificate produced was Matriculation Certificate obtained from the Patna University, and neither the Inspector-General of Police nor the Department had raised any objection about its genuineness. As regards the stay of Shri R. M. Patnaik in Balasore district for more than three years, it is stated, he was not retained in the same post. There were a very large number of other cases also where officers had remained posted in the same district for more than three years in the interest of administration. So far as Shri Chakradhar Behera is concerned, it is stated, he resides in Bhadrak Subdivision over which another Deputy Superintendent of Police and not DSP R. M. Patnaik exercised Jurisdiction. It is also pointed out that Shri Behera was

arrested in connection with a murder case on December 1, 1960 when there was another Ministry. Earlier than that in 1946 too Shri Behera had been arrested and convicted in a case relating to the murder of two Forest Guards.

Shri Biju Patnaik too has filed his affidavit in respect of this allegation and has stated that all that was done properly and correctly in this case.

I have heard the learned counsel for the parties and find that on September 5, 1962 Shri R. M. Patnaik addressed a representation for correcting the date of his birth. The material part of that representation reads as under :—

“There has been a mistake in recording my date of birth of Service Records as 19-6-1908. I had lost my Matriculation Certificate for which I could not move for correction of the date. I have since obtained a duplicate copy of the Matriculation Certificate and a true copy thereof is enclosed. According to it the correct date of birth is 1-2-1910. I shall produce the original duplicate copy if so required.

I was appointed as S.-I. of Police on 2-1-1931 and I had by that date completed 20th year of my age as required in P. M. Rule 658 (iii). I have availed no other advantage in this context.”

The above representation was forwarded by the Inspector-General of Police to the Secretary to the Home Department, as per letter dated December 6, 1962 which reads as under :—

“I have the honour to forward herewith the representation of Shri Rasika Mohan Patnaik, Officiating Deputy Superintendent of Police along with a true copy of the duplicate copy of the Matriculation Certificate on the subject mentioned above for favour of disposal.

2. The date of birth ‘19-6-1908’ as recorded in the Service Book (Flag A) and the application for appointment as Sub-Inspector of Police placed in the Service Book (Flag B) appears to have been based on the affidavit made by the father of Shri Patnaik. The date of birth according to the Matriculation Certificate (copy enclosed to the representation) comes to ‘1-2-1910’. Shri Patnaik was selected for appointment as Sub-Inspector of Police on 2-12-1929. According to rules, a candidate for appointment to the post of Sub-Inspector of Police must be over 20 years of age on the 1st January following the date of selection. If the age recorded in the Matriculation Certificate was taken into consideration in 1929 Shri Patnaik would not have been selected as he would not have been of the prescribed age. It appears that he was

selected on the strength of the affidavit. But after being so selected, in December, 1929 Shri Patnaik should have been sent for training in the Police Training College with effect from 2-1-1930. In fact, however, Shri Patnaik was sent for the training one year after i.e. on 1-1-1931 and thus completed 20 years' of age according to the Matriculation Certificate before the date of appointment. It is, therefore, clear that the affidavit for age did not give any advantage to Shri Patnaik for appointment as Sub-Inspector of Police.

3. In view of the fact that affidavit age is not acceptable according to rules laid down in Police Manual Appx. 38 and that Shri Patnaik was not appointed to the post of Sub-Inspector of Police on the basis of the age in the affidavit, I request that the date of birth recorded as 19-6-1908 in the Service Book of Shri Patnaik may be changed to 1-2-1910 on the basis of the Matriculation Certificate. Early orders of Government are requested.

4. The Service Book of Shri Patnaik is sent herewith which may kindly be acknowledged."

On receipt of the above representation the Secretary of the Home Department made the following note on February 28, 1963.

"This can be done, taking a very charitable view only. The obvious fact appears to be that the officer had the advantage of selection on the basis of an affidavit regarding his age and this advantage in early selection (2-2-1929) was neutralised by the delay in admission to service on 1-1-1930 and so the affidavit age reduces the length of service the incumbent would have. Now he produces a duplicate Matriculation Certificate. If we go by this age, then the incumbent would not have been eligible on grounds of age for selection at the time of his recruitment.

So he should stick to the date declared on an affidavit and which helped him to be eligible for recruitment—both the dates of birth are obviously false.

We may therefore reject his representation."

Shri Routray thereafter passed the following order on May 1, 1963—

"Seen the recommendation of the I.-G., Police. Whatever may be, we would rely on the Matriculation certificate age."

It would appear from the above that there was a conflict between the recommendation of the Inspector-General of Police and the note of the Home Secretary. The Inspector-General recommended that the date of birth of Shri R. M. Patnaik be changed to '1-2-1910' on the basis of the Matriculation Certificate. As against that, the Home Secretary

suggested that the representation of Shri R. M. Patnaik be rejected and that he should stick to the date declared in the affidavit on the basis of which he was recruited. Shri Routray chose to accept the recommendation of the Inspector-General in preference to the suggestion of the Home Secretary. It may be that an order made in accordance with the suggestion of the Home Secretary would have been the correct one in the context of all the facts. We are, however, not concerned with the correctness of that order, but with the question as to whether it was induced by the extraneous consideration and as such was a *mala fide* order.

In order to show the *mala fide* nature of the order, the State Government has stated in the particulars of allegation that Shri Routray was interested in Shri R. M. Patnaik because the latter had been instrumental in falsely roping in Shri Chakradhar Behera, who was political rival of Shri Routray, as an accused in a murder case. The State Government has, however, adduced no evidence on this point. As such, this part of the allegation remains unsubstantiated. Another point made out on behalf of the State Government to show the interest of Shri Routray in Shri R. M. Patnaik is that on March 21, 1963 Shri Routray accepted the representation of Shri R. M. Patnaik for allowing him seniority. The fact that Shri Routray accepted two representations and not one representation of Shri R. M. Patnaik would not, in my opinion, go to show that Shri Routray had some personal interest in Shri R. M. Patnaik. It may be mentioned that at the time Shri Routray accepted the representation of Shri R. M. Patnaik regarding his seniority, he (Shri Routray) also passed the order that Shri Patnaik would not be allowed to claim any arrears as a result of the re-fixation of his seniority.

Reference has been made on behalf of the State Government to the fact that Shri Routray refused to reconsider his order dated May 1, 1963 when the Chief Secretary sent the file to him with the following note dated September 23, 1966—

"May please reconsider his order at p. 8 n. This is so obviously an attempt to cheat that it should not be countenanced."

Shri Routray then passed the following order on the above note on January 30, 1967.

"My decision at page 8 ante was in accordance with the recommendation of the I.-G., Police at page 3/c., where he has clearly and specifically stated that Shri Patnaik did not derive

any advantage for the post of S.-I. of Police on the strength of the affidavit age and was within prescribed age-limit according to his Matriculation Certificate when he was sent for training. As such, I do not think it proper to reconsider my previous decision."

The above order speaks for itself, and, in my opinion, no inference of impropriety can be spelt out of it.

Another matter which has been agitated in this allegation is that Shri R. M. Patnaik was allowed to stay in Balasore district for more than three years. It is, however, clear that Shri Patnaik was not retained on the same post in that district for more than three years. The affidavit of Shri Routray shows that a number of other Officers were also retained in a district for more than three years in the interest of administration. No charge of impropriety, in my view, can be held to have been proved against Shri Routray because of the posting of Shri R. M. Patnaik in Balasore district for more than three years, especially when there is nothing to show that Shri Routray passed any express order for the purpose. It is also significant that Shri R. M. Patnaik was transferred from Balasore district only three or four months before the general elections in 1967.

I, therefore, hold that the charge contained in this allegation has not been proved against Shri Routray.

CHAPTER 16

ALLEGATION No. 16

*Re :***Expenditure on the Project of High Explosive Factory at Burla**

Allegation No. 16 relates to the expenditure incurred by the Orissa Government on the project of High Explosive Factory at Burla which was subsequently abandoned. The respondents named in this allegation are Shri Patnaik, Shri Mitra and Shri Routray.

According to the case set up by the State Government in the particulars of allegations, it was decided in a meeting held on July 6, 1963, in the Defence Ministry, to authorise the Orissa Government to take up works in hand to the extent of Rs. 70,00,000 for proposed High Explosive Factory at Burla pending finalisation of the administrative approval of the estimates. Subsequent thereto the Home Secretary of the Orissa Government in his letter, dated the 3rd August 1963, informed the Defence Ministry that the State Public Works Department would undertake the construction of the work of the project on usual Departmental charges of 19% of the total cost. He asked for confirmation of the same and requested for an advance of Rs. 50,00,000. It is stated that there was no order from the Defence Ministry authorising the State Government to take in hand works to the extent of Rs. 70,00,000. The proceedings of the meeting held in the Defence Ministry on July 6, 1967, neither authorised nor gave any clearance to the State Government to proceed with the scheme, which had not been finalised by the Defence Ministry.

It is further stated that at the instance of Shri Patnaik and Shri Routray, who was Home Minister, the State Government initiated land acquisition proceedings in March 1963, and proceeded in the matter of their own accord. All contracts and purchases for the purpose were made by Shri Patnaik on personal level without following law, rule or procedure. Finally, the Defence Ministry as per letter, dated July 16, 1964, intimated to the State Government that the project of High Explosive Factory at Burla had been abandoned. By this time the State Government had already incurred an expenditure of Rs. 20,88,585 under different heads out of which a sum of Rs. 7,13,709 was infructuous expenditure.

On becoming aware of the above loss a suggestion was made by the Chief Secretary that the infructuous expenditure of Rs. 7,13,709 be borne by the Government of India. The suggestion was approved by the Home Minister, Shri Routray on August 27, 1964 and by the Chief Minister, Shri Mitra on October 9, 1964. Despite that the State Government did not move the Union Government to reimburse the State Government to the extent of that amount. The State Government concludes from the above that Shri Patnaik, Shri Mitra and Shri Routray were liable for the loss caused to the State. It is also stated that the hurry shows that Shri Patnaik had a personal interest in the matter in order to misuse State funds.

In support of the above allegation, the State Government has filed the affidavit of Shri Gadadhar Misra, Under-Secretary in the Home Department.

Shri Patnaik in the course of his affidavit has denied the correctness of the above allegations. According to him the officers of the State Government were under the impression that they had the approval of the Central Government to go ahead with certain items of work connected with the project and on the basis of that impression certain steps were taken in connection with the project at official level.

It is further stated by Shri Patnaik that on April 19, 1963 when the matter was put up before him, he made the following notes—

“Government of India’s letter at 4/C says that the proposal is ‘tentative’. It is better to check the position now with them and get their clearance, etc.”

Shri Mitra in the course of his affidavit has also denied the allegation made by the State Government. According to him he is not responsible for anything relating to this allegation. As Chief Minister he has done his part of the duty to the best of his judgement by approving the suggestion of the Chief Secretary to write to the Central Government to reimburse the expenditure incurred by the State Government in connection with this work.

Shri Routray through his affidavit has denied the charge levelled against him. According to him he does not recollect if he initiated any land acquisition proceedings. As a member of the Cabinet he remembers that there was a proposal of the Central Government for setting up an Explosive Factory in Orissa. Since it was very much in the interest of the State

all members of the Cabinet were of the view that every step should be taken to see that this defence priority factory was expeditiously and successfully set up in Orissa. Further, so far as he recollects, the initial steps were taken and expenditure was incurred in pursuance of the scheme of Government of India *bona fide* in the interest of the State. Other States were at that time making efforts to have the Explosive Factory located within their territorial limits. Shri Routray further states that at a subsequent stage he endorsed the recommendation of the Chief Secretary to the Chief Minister for recovery of the expenditure from the Government of India.

Shri Mardaraj too has filed his affidavit in connection with this allegation. According to him this project was a top secret defence project and was attended to by the Chief Minister, Home Minister and the Home Secretary and he (Shri Mardaraj) had no responsibility in the matter whatsoever.

I have given the matter my consideration and am of the view that there is no substance in the charge contained in this allegation. There is nothing on the record to indicate that any of the three named respondents initiated any steps for incurring expenditure in connection with the project of High Explosive Factory at Burla. On the contrary, the record indicates that when the matter was put up before Shri Patnaik on April 19, 1963 he struck a note of caution and stated that as the proposal was tentative it was better to check the position with the Government of India and get its clearance. Reference has been made on behalf of the State Government to a note dated March 14, 1963 addressed by the Chief Secretary to the Deputy Chief Minister. In this note the Chief Secretary stated that the Director-General of Ordnance Factory along with another Defence Ministry Officer had met him and discussed the question of the establishment of an explosive factory in Orissa. It was mentioned that an area of at least 4,000 acres would be required and if the site was selected steps would have to be taken for the construction of the factory and township. The Chief Secretary wanted the Government's approval to negotiate in the matter. Shri Mitra signed the above note on March 16, 1963. There was nothing in the above note seeking sanction for an expenditure and it cannot in my opinion, be said that Shri Mitra on March 16, 1963 authorised the incurring of any expenditure. The material on the record further indicates that, after an infructuous expenditure had been incurred in connection with the above project, when it came to light that the Project had been

abandoned, both Shri Routray and Shri Mitra approved the suggestion of the Chief Secretary that the Government of India should be asked to reimburse the State Government in respect of that expenditure.

Although an allegation was made by the State Government in the particulars of allegation that all contracts and purchases for the purpose were made by Shri Patnaik on personal level in connection with the above project, no evidence has been led in this connection and as such this part of the allegation should be held to be without any basis.

Apart from the above, I find that the Ministry of Defence in a communication dated April 29, 1963 to the Chief Secretary to the Government of Orissa stated that it had been decided to set up a High Explosive Factory at Burla. It was further mentioned that in order to ensure the speediest execution of the civil works, the work of construction would be entrusted to the State Government. The Ministry of Defence also stated that it assumed that in view of its earlier communication notification for acquisition of land had already been issued. Stress was laid on the fact that time being essence of the Project, the time schedule would have to be adhered to.

In a meeting attended by the Defence Minister, the Minister for Defence Production and a number of officers, held on July 6, 1963, it was decided that the State Governments of the States in which it was proposed to set up Ordnance Factories should take in hand works up to a monetary ceiling of Rs. 70 lakhs pending administrative approval. Again in a meeting held on July 23, 1963, which was attended by Defence Minister, Minister of Defence Production and a number of officers, it was decided that pending issue of administrative approval, the State authorities might take immediate action for provisioning of necessary building materials on the basis of the proposal already under consideration to avoid any further delay in commencing the work. The officers of the State Government consequently acted under the impression that they had the approval of the Central Government to go ahead with certain items of work connected with the Project. In view of what was stated in the letter of the Ministry of Defence dated April 29, 1963 and what transpired in the meetings dated July 6, 1963 and July 23, 1963, referred to above, it can in my opinion, be said that the officials of Orissa Government had a basis which was not unreasonable, for forming that

impression. Any expenditure as a result of that impression should be held to have been incurred in good faith. It is also manifest that the object of the above expenditure was to ensure the location of the High Explosive Factory in Orissa which was obviously in the interest of Orissa and its people.

I, therefore, hold that the charge of impropriety contained in this allegation has not been proved.

CHAPTER 17

ALLEGATION No. 17

Re :

Promotion of Shri R. B. Dey and his continuous posting at Cuttack

Allegation No. 17 relates to alleged favouritism to Shri R. B. Dey by promoting him as Superintendent in the Fisheries Department and his continuous posting in Cuttack. The respondent named in this allegation is Shri Mishra.

According to the case set up by the State Government in the particulars of allegations, a vacancy of the post of Superintendent in the Fisheries Department had to be filled up. The name of Shri R. B. Dey, who was an employee of that Department, was not being taken into consideration since he did not qualify for promotion. Shri Mishra as Minister in violation of rules ordered that Shri R. B. Dey, should be promoted as Superintendent. Accordingly notification dated April 14, 1965 was issued.

Complaints, it is further stated, were received against Shri Dey and the department desired to transfer Shri Dey from Cuttack where he had already been working for eleven consecutive years. Shri Mishra then gave specific orders that no notice of the complaints should be taken. The transfer of Shri Dey from Cuttack consequently could not be effected. The State Government concludes from the above that Shri Mishra abused his office by showing undue favour to Shri Dey.

In support of the above allegation the State Government has filed affidavit of Shri D. Mohapatra, Under-Secretary in the Agriculture Department and Inspector Mohd. Haroonal Rashid (Vigilance).

Shri Mishra in the course of his affidavit has denied the correctness of this allegation. According to him he did not know Shri Dey and passed the order in respect of Shri Dey purely on merits. It is further stated that Shri Mishra had taken charge of the Department of Fisheries on April 5, 1965 and on the same day he had passed the impugned order. At that time it could not have been even possible for Shri Mishra to know the officials of the department. Shri Mishra has further stated that when the question of selection of the persons for the post of Superintendent of Fisheries was

put before him he found that the Secretary had not applied uniform standard to all the candidates. Shri Mishra after looking into the matter appointed Shri Dey on merits.

Shri Mishra, it is further stated, had no hand in the initial posting of Shri Dey at Cuttack. When it was proposed to transfer Shri Dey on the basis of anonymous complaints Shri Mishra turned down the proposal because he was of the view that there would be no end of allegations and counter-allegations if anonymous complaints were encouraged by the Government and punishment awarded on that basis. Shri Mishra affirms that he did the right thing according to his belief.

Supplementary affidavit of Shri Golak Chandra Mohapatra, Under-Secretary in the Agriculture Department, has been filed on behalf of the State Government.

It would appear from the above that this allegation consists of two parts. The first part relates to the promotion of Shri R. B. Dey as Superintendent in the Fisheries Department, and the second part pertains to his continued posting at Cuttack for eleven consecutive years. So far as the first part is concerned, I find that on January 29, 1964 the Director of Fisheries addressed a letter to the Secretary of the Co-operation & Forestry Department stating that two posts of Superintendents of Fisheries were lying vacant. He sent the names in order of seniority of eight officials out of whom selection for the two vacancies might be made. The name of Shri R. B. Dey was at No. 8 in the list. The matter thereafter became the subject of noting on the official file and a note was recorded by the Secretary of the Department on January 29, 1965. He mentioned that there were four vacancies and suggested that for the purpose of promotion to the post of Superintendent of Fisheries from the post of Junior Research Assistant or District Fisheries Officer the criterion should be that a Matriculate should have five years' experience, an Intermediate should have four years' experience, a Graduate should have three years' experience and a post-Graduate should have two years' experience. The Secretary then considered the cases of eight officials whose names had been sent by the Director of Fisheries and found that the character rolls of some of them were not satisfactory, while others did not qualify for promotion as they had not put in service of sufficient length in accordance with the above criterion. It was found that Shri R. B. Dey was an I. Sc. and had been appointed on April 8, 1961. Shri Dey's name was not considered for promotion as he had not put in four years' service. Out of the eight names sent by

the Director, the Secretary recommended that Shri Charu Charan Mohanty alone might be promoted as Superintendent pending consultation with the Public Service Commission. The note of the Secretary shows that he discussed the matter with Shri S. P. Mohanty, Minister, on February 9, 1965 and the Minister approved the proposal. On March 15, 1965 the Secretary addressed another note to the Minister. After going through the list of District Fisheries Officers and Junior Research Assistants in order of seniority, the Secretary suggested, besides the name of Shri Charu Charan Mohanty, the names of Shri Surya Kumar Mohanty and Shri Padmanav Das for promotion as Superintendent. As regards the fourth vacancy, the Secretary observed that as none of the officials was eligible, relaxation of a period of six months in the period of service might be allowed. Giving the benefit of this relaxation he suggested the name of Shri Krushna Prasad Das. The papers were then put up before Shri R. P. Mishra and he passed the following order on April 5, 1965 :—

“I have examined the qualifications and experiences of the officers along with their C. C. Rs. who have been considered here for the purpose of appointment as Superintendent of Fisheries. I have found out from the records that Shri Charu Charan Mohanty's C. C. R. is not satisfactory but he has been selected to get the first preference in the list at P. 12/N. This has perhaps escaped the notice of the Secretary. On further examination it is found that six months' relaxation has been given to the number of years of experience of Shri Krushna Prasad Das only who was not considered fit at the first instance because he had not completed five years, was again considered fit by this relaxation. But this standard was not applied to other candidates, as for example Shri R. B. Dey who is an I. Sc. and the experience prescribed for Intermediate being four years he fell short of only 23 days when he was being considered by the Secretary. The same relaxation of experience should have been given to this officer also. We should not judge the claims of persons in different standards. With the qualification and experience laid down at P. 8/N. for the purpose of recruitment to the post of Superintendent of Fisheries and giving a uniform relaxation of six months of experience to all and also considering the officers from the point of view of their C.C. Rs. and seniority in service the list has to be modified as follows:—

1. Shri Krushna Prasad Das
2. Shri Ranjit Ballav Dey
3. Shri Surya Kumar Mohanty
4. Shri Padmanav Das

The above officers may be promoted to the rank of the Superintendent of Fisheries in the order mentioned above for a period of six months pending concurrence of the P. S. C.”

Promotions of the four officers in accordance with the above order were thereafter notified.

The State Government has impugned the propriety of the above order of Shri Mishra dated April 5, 1965. I have given the matter my consideration, and am of the view that it is not possible to draw an inference of impropriety from the above order. The Secretary in his note adhered to the criterion regarding length of service for the first three vacancies and allowed relaxation of six months in the case of fourth vacancy, while Shri Mishra took the view that if relaxation was to be allowed it should be on a uniform basis for all the four vacancies. This was a possible view of the matter and was by no means unreasonable. Applying the above rule, Shri Mishra selected the names of four officials including that of Shri R. B. Dey for promotion. The above order, in my opinion, smacks of no favouritism to Shri Dey. Had Shri Mishra been inclined to show favouritism to Shri R. B. Dey, he could have kept the file for about four or five days and thereafter selected Shri R. B. Dey without even resorting to the rule of relaxation because after the passage of those four or five days Shri Dey would have completed the requisite period of service.

It has been argued on behalf of the State Government that the name of Shri Charu Charan Mohanty was eliminated by Shri Mishra because he wanted to favour Shri Dey. This argument is without any basis, because even if Shri Charu Charan Mohanty had been selected the person to be eliminated would have been Shri Padmanav Das whose name was at No. 4 in the list of selected persons and not Shri R. B. Dey whose name was at No. 2. The order of Shri Mishra in fact shows that he eliminated Shri Charu Charan Mohanty because he found the entries in his character roll to be not satisfactory.

Coming to the second part of this allegation regarding the continuous posting of Shri Dey at Cuttack I find that it is nobody's case that Shri Mishra had anything to do with the initial posting of Shri Dey at Cuttack. On May 17, 1965 the Director of Fisheries addressed a letter to the Secretary of the Co-operation & Forestry Department stating that the post of Co-ordination Officer in the rank of Superintendent of Fisheries had been sanctioned to look after various schemes of Special Development Programme. The Director suggested that Shri R. B. Dey, who was associated with the Special Development Programme since its inception, might be appointed as Co-ordination Officer against this post. Shri Dey,

it would appear, was then appointed as Co-ordination Officer. Some complaints were thereafter received against Shri Dey. On July 21, 1965 the Secretary of the Department addressed a letter to the Director of Fisheries stating that in view of the complaints Shri Dey should be transferred to some other place. The Director of Fisheries sent a reply on July 30, 1965 to the Secretary stating that Shri Dey had been transferred to the post of Co-ordination Officer because he was in touch with the Special Development Programme relating to fisheries since its inception. His work in the new assignment had been found to be satisfactory. The duration of the programme was stated to be up to the end of year 1965-66. The Director pointed out that if Shri Dey was transferred immediately, proper pursuance and implementation of the Scheme would not be possible. He accordingly requested for reconsideration of the proposal to transfer Shri Dey from Cuttack. As regards the complaint against Shri Dey, the Director stated that he had not received any complaint. The Director further mentioned that if any complaint was found to be true he would take suitable action in consultation with the Secretary, and in the meantime keep a watch over the movements of Shri Dey. The matter was thereafter referred to Shri Mishra and he noted that he did not like to take any action on anonymous petitions because once they started doing so probably no person would be spared. There was, in my opinion, nothing improper in the order, made by Shri Mishra and it is difficult to hold that Shri Mishra was actuated by any extraneous consideration in making the above order.

Although this fact was not mentioned in the particulars of allegation, in the affidavit of Inspector Mohd. Haroon Rashid it is stated that Shri Dey is distantly related to Shri Biren Mitra. The nature of relationship has not been specified. In view of the fact that the material on record shows that orders in respect of Shri Dey were made on the merits of the case and did not suffer from any infirmity, his relationship with Shri Mitra would not, in my opinion, make any material difference. It is significant that on the dates Shri Mishra made the orders in respect of Shri Dey, Shri Biren Mitra had ceased to be a Minister.

I, therefore, hold that the charge contained in this allegation has not been substantiated.

CHAPTER 18

ALLEGATION No. 18

Re:

Financial Assistance to Almunda Forest Marketing Co-operative Society on the eve of Elections and the Alleged use of Government Vehicles for Elections

Allegation No. 18 relates to the financial assistance of Rs. 60,000 to Almunda Forest Marketing Society (hereinafter referred to as the Almunda Society) on the eve of elections and to the alleged use of Government vehicles for addressing election meetings. The respondent named in this allegation is Shri Sanganna.

According to the case of the Orissa Government in the particulars of allegations Shri Sanganna was elected member of the Orissa Legislative Assembly from the Koraput Constituency in the mid-term elections held in 1961. In 1962, Shri Sanganna was sworn in as Deputy Minister and the business of Tribal & Rural Welfare Department was allocated to him. In the subsequent Cabinets of Shri Mitra and Shri Tripathi, Shri Sanganna was given to Cabinet rank and allocated the same business. In the General Elections to the State Legislative Assembly held in February 1967, he contested as a Congress Candidate from Narayanpatna Constituency. The entire atmosphere in Orissa was surcharged with election fever since October and November, 1966. Shri Sanganna, it is stated, utilised Government vehicles and made extensive election tours in Koraput district especially in Narayanpatna Constituency, though he purported to be making official visits as a Minister. He is also alleged to have advanced huge sums to organisations in which he was interested for the purpose of utilising them in the elections. Reference in this connection is made to Almunda Society. It is stated that in the year 1966-67, a budget provision of Rs. 6,00,000 of the Tribal & Rural Welfare Department was made for giving financial assistance to the Forest Marketing, Tassar Rearing and other Co-operative Societies. The earlier reports of the Co-operative Authorities were to the effect that Almunda Society was running at loss in spite of the fact that the Government had granted huge subsidies in the form of share capital and working capital to the Society. Rs. 67,000 had been advanced to this Society since its inception from April 12, 1957 and during the period from 1957-58 to 1963-64 the Society suffered a net loss of Rs. 45,267.83 Paise.

Towards June, 1966, it is stated, Almunda Society submitted a petition to Shri Sanganna for a grant of Rs. 60,000. Shri Sanganna on June 29, 1966 directed the Director, Tribal & Rural Welfare Department to examine the matter and put up papers as the Society needed financial assistance for utilising the permit given to it for purchase of Tamarind. The Adivasis of Narayanapatna complained against the irregularities of the Society. Before the matter could be finalised by the Registrar of Co-operative Societies and Tribal & Rural Welfare Department, a file relating to the sanction of funds for another Society, namely, Patitapaban Marketing Co-operative Society, was submitted to the Minister, Shri Sanganna then sanctioned Rs. 27,000 for the Patitapaban Marketing Co-operative Society and Rs. 60,000 for Almunda Society on August 10, 1966.

The State Government also alleges that although the Registrar of Co-operative Societies on May 13, 1966, had reported that Almunda Society was working in an unsatisfactory condition, on June 6, 1966, he recommended the sanction of Rs. 60,000 to the Society in reply to Tribal & Rural Welfare Department's letter. The State Government infers from the aforesaid facts that the Registrar was influenced by Shri Sanganna. An objection was raised by the Financial Adviser and he suggested further investigation about the Society in order to safeguard the Government money. The Secretary of Tribal & Rural Welfare Department after discussing with the Joint Registrar, Co-operative Societies (Marketing) got a report that the Society was making profits during the years 1964-65 and 1965-66. Sanction Order was issued on October 12, 1966 after it was approved by Shri Sanganna. Telegrams were thereafter received against the Sanction Order but Shri Sanganna rejected the allegations in those telegrams as baseless. He also directed the renewal of the licence of Almunda Society.

Allegation is further made that in the months from November, 1966 onwards, Shri Sanganna made extensive tours in the Koraput district in Government vehicles and in the course of those tours addressed election meetings on January 7, 1967, January 12, 1967, February 3, 1967, February 4, 1967, February 9, 1967 and February 10, 1967 at various places.

In support of the above allegations the State Government has filed the affidavits of Shri Banamber Patnaik, Under-Secretary in the Tribal & Rural Welfare Department, Inspector Laxman Satrusal and Inspector Maheswar Patnayak (Vigilance).

Shri Sanganna in the course of his affidavit has denied the allegations made by the State Government. According to him the impugned orders were passed by him in the usual course of official business and on notes made by the officers concerned of the department. Shri Sanganna further states that Government vehicles, which were at his disposal, were never used by him for election purpose and no such allegation was made against him during the course of the election. Regarding the financial assistance to Almunda Society, it is stated, the same was given on the basis of the recommendation of the Registrar of Co-operative Societies as well as the Tribal & Rural Welfare Department. Shri Sanganna had no interest, direct or indirect, in that society.

Supplementary affidavits of S.-I. Durjyodhan Patnayak, S.-I. Balaram Mohanty, Inspector Radhakrushna Patnaik, D.-S. P. Maheswar Patnaik, Shri Banamber Patnaik and Shri J. William's have been filed on behalf of the State Government.

The first part of this allegation, as would appear from the above, relates to grant of a loan of Rs. 60,000 to Almunda Society. So far as this part of the allegation is concerned, I find that on January 2, 1966, the Secretary of the above Society addressed a letter to the Secretary, Tribal & Rural Welfare Department, through the Collector of Koraput, stating that a lease of Narayanapatna Forest Range had been granted in favour of the Society for the year 1965-66. Request was made for grant of working capital loan of Rs. 70,000 and subsidy of Rs. 7,000 to the Society so that it might be in a position to operate the lease successfully. Copy of the letter was sent *inter alia*, to the Assistant Registrar of Co-operative Societies. On March 17, 1966, the Assistant Registrar of Co-operative Societies addressed a letter to the Collector, Koraput, stating that in view of the position of Almunda Society recommendation might be made for grant of working capital of Rs. 70,000 and subsidy of Rs. 7,000 to the Society as requested by it. On March 18, 1966 the District Magistrate of Koraput addressed a letter to the Under-Secretary, Tribal & Rural Welfare Department, recommending that the necessary financial assistance be given to Almunda Society in accordance with its application and the suggestion of the Assistant Registrar, Co-operative Societies. On receipt of the above letter from the District Magistrate, the Under-Secretary of the Department addressed a letter to the Registrar of Co-operative Societies. Enclosed with that letter was the

letter from the District Magistrate along with the copies of its enclosures. The Registrar of Co-operative Societies was asked to offer his comments on the proposal of the District Magistrate, Koraput, for sanction of funds in favour of Almunda Society. On June 4/6, 1966, Shri B. B. Rath, Registrar of Co-operative Societies, sent letter to the Secretary of the Tribal & Rural Welfare Department. Material part of the letter reads as under:—

“With reference to Tribal & Rural Welfare Department letter No. 7715-T. R. W., dated 1-4-1966 on the subject mentioned above, I am to say that the Almunda Forest Marketing Co-operative Society was previously dealing in hill-brooms only and in that business the Society could not improve. It was, therefore, felt necessary to give lease of Minor Forest Produce to the society and accordingly the Minor Forest Produce lease of Narayanapatna range has been settled with it this year. The Society is now in need of funds to work out this lease.

Last year this Narayanapatna range was settled with the Guma Forest Marketing Co-operative Society and the Society was given financial assistance to the extent of Rs. 68,000 for working capital for operation of lease.

It is represented by the Almunda Forest Marketing Co-operative Society to sanction working capital of Rs. 70,000 to them for operation of lease of this Narayanapatna range this year. It is expected that working capital to the extent of Rs. 60,000 will be adequate.

I, therefore, request that Government may be pleased to sanction a sum of Rs. 60,000 to the Almunda Forest Marketing Co-operative Society out of the Budget provision of subsidy of Rs. 6 lakhs, under the scheme for organisation of forest and other Co-operative Societies during 1966-67 and communicate their orders at an early date.”

On June 22, 1966 the President of the Almunda Society addressed a letter to the Minister, Tribal & Rural Welfare Department, requesting for financial help. Shri Sanganna thereupon made a note on the letter that the departmental official should examine the matter. It was added that the Society was needing financial assistance as permit to purchase Tamarind had been given to it. On August 10, 1966 the file was put up before Shri Sanganna in connection with the financial assistance to Patitapaban Forest Marketing Society. Shri Sanganna then passed the following orders:—

“Please sanction rupees sixty thousand only to Almunda Society and rupees twenty-seven thousand only to Patitapaban M. F. C. S. Please put up sanction order for Almunda also.”

Before the above order was passed by Shri Sanganna, the Joint Secretary of the Department had made a note that, in view of the unsatisfactory performance of Almunda Society, it would perhaps be desirable to sanction Rs. 20,000 in the first instance to the Society. When the order of Shri Sanganna came to the notice of the departmental officials, a letter was addressed to the Registrar of Co-operative Societies enquiring about the condition of the Society. On October 10, 1966 the Joint Registrar of the Co-operative Societies intimated that Almunda Society had made profits in the years 1964-65 and 1965-66 with the lease of Minor forest produce of Narayana-patna Range. It was also mentioned that previously Society could not get much profit from the business of hill-brooms, but during the preceding two years the Society had been able to rehabilitate itself and make profits. The Joint Registrar recommended the grant of working capital of Rs. 60,000 to the Society. The Secretary of the Department directed that draft in the circumstances should issue to the Society. This note was thereafter signed by Shri T. Sanganna.

It would appear from the above that the grant of Rs. 60,000 to Almunda Society was ordered by Shri Sanganna in accordance with the recommendations of the Assistant Registrar of Co-operative Societies, the District Magistrate of Koraput and the Registrar of Co-operative Societies. The matter was thus scrutinized at various levels and it was thereafter that Shri Sanganna made the impugned order. There was also a precedent because in the previous year when Narayanapatna range had been settled with Guma Forest Marketing Co-operative Society, the aforesaid society was given financial assistance to the extent of Rs. 68,000 for working capital for operation of lease. It is no doubt true that there were complaints by certain elements against Almunda Society, the fact all the same remains that most of the concerned officers had supported the prayer of the Society for grant of financial assistance. Looking to all the facts I am of the view that the impugned order of Shri Sanganna was not vitiated by any impropriety.

The second part of this allegation is that Shri Sanganna used Government vehicles for addressing election meetings. Shri Sanganna in his affidavit has denied this allegation. The State Government has filed the affidavits of a number of police officers who have stated that Shri Sanganna in the course of his tours delivered speeches in support of the Congress candidates in the ensuing election. None of those Police Officers has stated that they were personally present in those meetings. No notes containing records of the speeches of Shri Sanganna have been

produced. Copies of tour diaries of District Public Relations Officer, Koraput, District Welfare Officer, Koraput and Block Development Officer, Debagam, have been produced. These officers accompanied Shri Sanganna during the various official tours. There is nothing in these diaries to show that Shri Sanganna addressed any election meeting during those tours. I have given the matter my earnest consideration and am of the view that on the material on record it cannot be said to have been proved that Shri Sanganna used Government vehicles with a view to address election meetings.

As a result of the above, I hold that the charge contained in this allegation has not been substantiated.

CHAPTER 19

ALLEGATION No. 19

Re :

Alleged Misappropriation of Government funds including sale-proceeds of Kala Kunj in connection with the Congress Session Exhibition

Allegation No. 19 relates to the alleged misappropriation of Government funds, including the sale-proceeds of the Kala Kunj, in connection with the Exhibition arranged at the time of Congress Session in 1964. The respondent named in this allegation is Shri Sanganna.

According to the case of the State Government in the particulars of allegations, the Session of the All-India Congress Committee was held in January 1964 in Bhubaneswar. An Industrial Exhibition was arranged on the occasion of that Session. Shri Sanganna headed the Exhibition Sub-Committee and in that connection utilized Government vehicles and services of Government servants. The Tribal & Rural Welfare Department opened a separate pavilion in the Industrial Exhibition. A Kala Kunj was organized in that pavilion and entry in the Kunj was allowed on payment through tickets. The sale-proceeds were collected by the Tribal & Rural Welfare Department. According to the audit report the sale-proceeds were said to be to the tune of Rs. 15,000 to Rs. 20,000, but neither proper accounts were maintained nor any money was credited to the State Exchequer. Amounts representing sale-proceeds were got deposited in the personal account of Tribal & Rural Welfare Minister, Shri Sanganna, in the State Bank of India.

The above exhibition, it is stated, was organized despite the fact that there was no provision in the budget of the department for the same. Although in the previous years the usual expense for such an Exhibition was Rs. 40,000, on this occasion an amount of Rs. 67,500 was proposed to be spent. A sum of Rs. 60,000 was sanctioned for the Exhibition and the cultural activities. The sanctioned amount is stated to have been misutilized inasmuch as Rs. 10,000 were shown to be spent on construction of statues, Rs. 15,000 on construction of two gates and Rs. 13,000 towards rent paid to the All-India Congress Committee for the space occupied for the Exhibition. Some of these expenses are stated to be faked.

The State Government also alleges that during the period of All-India Congress Committee Session a jeep allotted to Shri Sanganna for his official use was found to be utilized for the Exhibition. Miss Pillu Bahen Sidhwa, a *Seba dal* worker, while going in that jeep met with her death.

The State Government concludes from the above that Shri Sanganna misused his official position and misappropriated Government funds earned as the sale-proceeds of Kala Kunj. He also violated Financial Rules by sanctioning Rs. 60,000 for the Exhibition.

In support of the above allegation, the State Government has filed the affidavits of Shri Banambar Patnaik, Under-Secretary in the Tribal & Rural Welfare Department, and Inspector Laxman Satrusal (Vigilance).

Shri Sanganna in the course of his affidavit has denied the Government allegations. According to him there was nothing wrong for the Government to project the image of Orissa to people visiting from other States. As such the Government took the decision to participate in the Exhibition organised by the All-India Congress Committee at Bhubaneswar during its 68th Session. Shri Sanganna was the Chairman of the Exhibition Sub-Committee. Sale-proceeds of the entrance tickets for the main-gate as also ground rent collected from the Government and private pavilions were deposited in the account of Shri Sanganna in the State Bank of India. The amount deposited in his account was paid by Shri Sanganna to the chairman of the Reception Committee and this fact was also verified by the State Government. Shri J. K. Raut, Special Officer, was in charge of the Government pavilion and received certain amounts for the construction of that pavilion. Shri Raut was also stated to have collected about Rs. 5,000 from the Kala Kunj against sale of tickets towards entrance fee. When he was asked to render accounts, Shri Raut took the plea that he had deposited all the collections from the Kala Kunj pavilion in the personal account of Shri Sanganna along with the ground rent, etc. To verify the real facts by cross checking with the Exhibition accounts, Shri Sanganna asked Shri Raut to send the unsold tickets, counter-foils of the sold tickets and accounts of Kala Kunj to Chairman, Exhibition Committee (Shri B. K. Pani). Shri Raut, however, failed to do so lest the truth might come out. According to Shri Sanganna, the amount collected from Kala Kunj pavilion should have been deposited with the Government as per rules. Shri Sanganna denies having committed any irregularity in violation of Financial and Administrative Rules.

So far as the death of Miss Pillu Bahen Sidhwa is concerned, it may be stated, the same is the subject matter of allegation No. 61. Supplementary affidavits have been filed on behalf of State Government by Shri Banambar Patnaik and Inspector Mohd. Haroonal Rashid (Vigilance).

In connection with this allegation I find that letter was received from the Secretary of the Exhibition Committee of the All-India Congress Committee asking the Tribal & Rural Welfare Department regarding its requirement for setting up a pavilion in the Exhibition Ground. A note was made on the file on November 23, 1963 that a floor space of about 300 feet might be needed. It was also suggested that the Special Officer, Shri J. K. Raut, might be put in charge of the work for organizing the Pandal. Subsequently, on December 9, 1963 the Director of Public Relations of Orissa addressed a letter to all the Departments stating that the State Government had decided not to participate in the Exhibition. On December 11, 1963 following note was addressed to Shri Sanganna by Shri G. N. Das, Director & Joint Secretary of the Tribal & Rural Welfare Department :—

“Notes and orders at p. 2 *ante* would recall. Our Departmental Annual Exhibition was suspended last year. It has been proposed to hold it this year in the first week of January 1964 and not on 26th as we used to do. Advantage should be taken of the presence of eminent persons from all over the country and abroad who will congregate at Bhubaneswar at the time of the All-India National Congress to hold the Annual Exhibition of our Department. It has been estimated that a sum of Rs. 47,500 will be required to put up the Exhibition in a befitting manner. Break-up of the Expenditure may kindly be seen at ‘A’ at p. 5 *ante*. The special feature of this year’s Exhibition will be the constructions of Gates which will cost near about Rs. 13,000. For holding the Exhibition in the Gopabandhu Nagar we will have to pay rent for space which may amount to Rs. 13,000. In view of the special National occasion, Government may decide to incur an expenditure of Rs. 47,500 for holding this year’s Exhibition.

In this connection, Home (Public Relation) Department have intimated in their letter at page 5/C., that according to a decision taken in that Department the State Government will not participate in the Exhibition. Presumably, this decision will not apply to our Department because the holding of the Annual Departmental Exhibition at Bhubaneswar is a regular feature of our Department for which provision in the budget is also a regular feature.

Formal orders will issue with the concurrence of Finance Department. This is for approval.”

The above note was approved by Shri Sanganna on the same day. In pursuance of the above decision, the Department sanctioned Rs. 60,625 for the purpose. Shri Raut, Special Officer-*cum*-Under-Secretary in the Tribal & Rural Welfare Department, was put in charge of the work connected with the Exhibition on behalf of the Tribal & Rural Welfare Department. Rs. 34,600 were paid to Shri Raut as advance for putting up the Pandal and doing other work. The Department occupied an area of 80'×100' of uncovered space and 15'×175' of covered space. The rate was Rs. 2 per sq. ft. for the covered space and Re. 1 for the uncovered space. It was also decided to put up Kala Kunj within the Exhibition Ground. Entry to Kala Kunj was regulated through sale of tickets controlled by the Tribal & Rural Welfare Department. Adivasi students and their teachers were brought from various Ashrama Schools of the State to participate in the Exhibition and the cultural shows.

Shri Biju Patnaik was Chairman of the Reception Committee of the Session. Shri B. K. Pani was Chairman of the Exhibition Committee, while Shri Sanganna was the Chairman of the Exhibition Sub-Committee. The amounts collected in connection with the Exhibition on account of rent of the various pavilions as well as on account of the sale-proceeds of the entrance tickets at the main-gate were deposited in the personal account of Shri Sanganna. On April 21, 1964 Shri Sanganna addressed the following letter to Shri Biju Patnaik, Chairman of the Reception Committee—

“Dear Friend,

I enclose herewith a cheque bearing No. 297121, dated the 21-4-1964 for Rs. 20,000 (Rupees twenty-thousand) only towards collections made at the Exhibition held in connection with the 68th Session of the Indian National Congress, the receipt of which may kindly be acknowledged. This amount being included, cheque for Rs. 67,000 (Rupees sixty-seven thousand) only have been issued in your favour so far.”

An endorsement was made on that letter by the Private Secretary to Shri Patnaik about his having received the cheque of Rs. 20,000.

There were some complaints about the way of amounts sanctioned by the Tribal & Rural Welfare Department in connection with the Exhibition, had been spent. On July 7, 1965 Shri G. N. Das of Tribal & Rural

Welfare Department addressed a letter to the Additional Secretary, Finance Department requesting that the Efficiency Audit Organisation might take up the audit work to find out if any irregularities had been committed. A team of Auditors of Efficiency Audit Organisation was then deputed to audit the expenditure incurred by the Tribal & Rural Welfare Department at the time of the Exhibition. The team sent its report to the Tribal & Rural Welfare Department on February 14, 1966. The report pointed out a number of irregularities in various items of expenditure. Regarding the sale-proceeds of tickets at Kala Kunj the team observed:—

“Sale-proceeds of tickets at the Kala Kunj is found from the bill of Shri R. S. Pradhan, Contractor, Pilgrim Road, Cuttack, that he was paid a sum of Rs. 130.25 P. on 8th January 1964, by the S. O.-cum-Under-Secretary for construction of a booking office in the Exhibition premises. It is common experience that visitors had to pay at the rate of 10 paise each for entry into the Kala Kunj. In response to the half-margin memo. about the collection of gate sales, it has been stated by the S. O.-cum-U.-S. there was no intention of Government in T. & R. W. Department to charge any gate fee by selling of tickets. But the Exhibition Committee, who had arranged the entire Exhibition took a decision later on to sell tickets at the gate of Kala Kunj in order to raise funds for meeting expenditure they incurred for organising the entire Exhibition. Accordingly, they put their ticket counter, employed their own staff and sold tickets at their cost and the sale proceeds naturally went to them for which we did not keep any record. Hence the question of producing counter-foils of the tickets, registers, daily progress report and other accounts in connection with the sale of tickets sold at the gate of Kala Kunj does not arise. It was ascertained in course of audit that the Forest Department also set up a stall collecting gate fee and have eventually deposited the same into the Government account and similarly a stall was also set up by the T. & R. W. Department where payment was insisted upon at the rate of 10 paise per visitor. Shri J. N. Mohanty, Senior Head Assistant and some others were in charge of the gate sales collecting sale-proceeds. It was ascertained that he made over some sale-proceeds, about Rs. 5,000 to the S. O.-cum-U.-S. It is also learnt that the counter-foils of tickets and the accounts pertaining thereto were kept with the S. O.-cum-U.-S. The Exhibition was conducted for about 24 days and thousands of visitors were daily entering the Kala Kunj. It was the view of the Department that the sale-proceed should go into the Treasury and that the sale-proceeds were of the order of Rs. 15,000 to Rs. 20,000. It is indeed strange that when the S. O.-cum-U.-S. got a booking office constructed for the Kala Kunj and some of his office staff paid him some money

as the sale-proceeds, he explained to audit that the collection of gate fee for the Kala Kunj was not his responsibility. This is a very serious matter which should be enquired into by the Department and the result reported to audit."

After the receipt of the above report, the matter was discussed with Shri Sanganna, following note was then made on the file on October 12, 1966—

"I discussed this with the minister, Shri J. Raut must satisfy the Government regarding disposal of money that was collected by sale of tickets for 'Kala Kunj'. He should submit a report as to (1) how many receipt books were printed, (2) how many tickets were sold, (3) how many ticket books remained unsold and (4) how has the money been disposed of. He should produce authentic evidence from the press where the receipt books were printed, produced the ticket books both used and unused for verification and also produce a receipt from the person concerned who took delivery of the money from him. He should also produce a statement of accounts. This should be done as early as possible and in any case not later than 5th November 1966.

Shri Padhy should enquire on the matter discussed in para. (f) at P. 55 *ante* and also on the matter mentioned in the above paragraph and give me a report by 10-11-1966."

Shri Padhy submitted a report on July 3, 1967. On receipt of the report, Shri Raut was suspended and charge-sheeted. Explanations of a number of other officials, who were connected with the Exhibition, were also called.

The first submission, which has been made in connection with this allegation on behalf of the State Government, is that the Tribal & Rural Welfare Department should not have opened a pavilion in the Exhibition organised at the time of All-India Congress Committee Session. In this connection I find that the note dated December 11, 1963 shows that it was the usual practice of Tribal & Rural Welfare Department to hold an annual Exhibition in the month of January. No Exhibition was, however, held in January 1963, presumably because of the emergency following Chinese aggression. In January 1964 the Joint Secretary of the Department suggested that instead of having the Exhibition on January 26, the Exhibition should be held in the first week of January 1964 so as to coincide with the Congress Session. It was pointed out that by doing so advantages would be taken of the presence of eminent persons from all over the country and abroad who would congregate at Bhubaneswar. Shri Sanganna agreed with that suggestion

and I find nothing improper in that. If the object of an Exhibition is to project the image of a State or to give publicity to the activities of any of the Departments of Government, the proper occasion for that would necessarily be when there is a gathering of a large number of persons. As such, no fault can be found with the decision taken by Shri Sanganna on the proposal made by the Joint Secretary of the Department for participation in the Exhibition.

The next contention advanced on behalf of the State Government is that the Tribal & Rural Welfare Department should not have agreed to the payment of rent of about Rs. 10,000 to the Congress Organization, especially when the Exhibition was held on Government land for which the Government had charged rent at a very low rate. In this connection I find that the Audit Report shows that against the sum of Rs. 10,625 sanctioned towards ground rent, actually a sum of Rs. 9,974.63 paise was drawn for payment of rent. It would appear from the note dated December 24, 1963 that the amount to be paid to the Exhibitions Sub-Committee was not merely for accommodation but also for the amenities given by that Sub-Committee to the Tribal & Rural Welfare Department in the Exhibition Ground. It appears that the Exhibition Sub-Committee was charging uniform rate of Rs. 2 per Sq. ft. for the covered space and Re. 1 for the uncovered space. The Tribal & Rural Welfare Department having decided to hold a pavilion in the Exhibition Ground had to pay charges at the fixed rate for the space occupied by it. No inference of impropriety, in my opinion, can be drawn against Shri Sanganna on that Account.

It has then been argued on behalf of the State Government that Shri Sanganna was guilty of impropriety inasmuch as he allowed the use of Government vehicles in connection with the exhibition work. In this respect I find that no order was made by Shri Sanganna for the use of such vehicles for the purpose of Exhibition. What appears to have happened is that as a number of Government employees were associated with the pavilion opened by the Tribal & Rural Welfare Department in the Exhibition Ground and the cultural shows arranged by the Department, some Government vehicles were used by those employees. When it came to light that those vehicles had been used not only for official purposes but also for other purposes connected with the Exhibition, it was decided at the official level to debit the Exhibition Committee to the extent

of Rs. 3,019.50 P. out of the amount of Rs. 5,512.82 P. which had been spent for purchase of petrol, etc. This amount was accordingly deducted out of the amount of Rs. 9,974.63 P. which was payable as ground rent to the Exhibition Committee.

Lastly, it has been submitted on behalf of the State Government that the sale-proceeds of entrance tickets of Kala Kunj have been misappropriated and not paid to the State Government. As such, Shri Sanganna is stated to have committed impropriety. I have already reproduced above the report of the team of Efficiency Audit Organisation. The above report shows that the Special Officer was guilty of serious lapses and did not satisfactorily account for the money realized as a result of the sale of entrance tickets. The matter was then discussed with Shri Sanganna and it was ordered that the explanation of Shri J. K. Raut, Special Officer, be called on a number of points. Shri Sanganna, in my view, cannot be held responsible for the lapses of Shri Raut. Shri Raut has been suspended and charge-sheeted and it is not for the Commission to express any opinion on his conduct. It is enough to say that Shri Sanganna cannot be held to be guilty of an impropriety because of omission or commission on the part of Shri Raut.

Reference has been made on behalf of the State Government to the fact that when Shri Raut submitted an explanation, corrections therein were made by Shri Sanganna. According to Shri Sanganna, he made those corrections at the time he was ascertaining the facts from Shri Raut. Although the view can be taken that Shri Sanganna should not have himself made any corrections in the written reply of Shri Raut, I am equally of the view that no inference of impropriety smacking of moral turpitude or of collusion with Shri Raut can be drawn against Shri Sanganna from his above act. It is significant that the explanation of Shri Raut was called in pursuance of the discussion with Shri Sanganna.

Argument has been advanced in connection with the last submission that Shri Sanganna should not have paid the balance of Rs. 20,000 to the Chairman of the Reception Committee because that amount might possibly have include a sum of Rs. 5,000 realised as a result of sale-proceeds of the entrance tickets for Kala Kunj. In this connection, I find there is no material on the record to indicate that at the time Shri Sanganna sent the cheque of Rs. 20,000 to the

Chairman of the Reception Committee he was aware that the said amount included any money realised by the sale of entrance tickets for Kala Kunj. Indeed, it is the case of Shri Sanganna himself that the sale-proceeds of entrance tickets for Kala Kunj should have been credited into Government account. Shri Sanganna had no personal motive to deliberately pay Government money to the Congress.

I may also observe that there is nothing to show that apart from the amount of Rs. 67,000, which was paid by Shri Sanganna to the Chairman of the Reception Committee, any other sum was received by him in connection with the Exhibition.

I would, therefore, hold that the charge of impropriety contained in this allegation has not been proved against Shri Sanganna.

CHAPTER 20

ALLEGATION No. 20

Re :

Alleged Amassment of wealth by Shri Mallik

Allegation No. 20 relates to the construction of two houses in Bhubaneswar by Shri Mallik for an amount beyond his pecuniary resources and the letting out of one of those houses to the Government on monthly rent of Rs. 500 as against the fair rent of Rs. 440. The respondent named in this allegation is Shri Mallik.

According to the case set up by the State Government in the particulars of allegations, Shri Mallik is a man of no means, and his father owns about one acre of land. Shri Mallik was elected to the Orissa Legislative Assembly from a Scheduled Caste seat in June 1961. Before that also he was member of the Assembly from 1957 to 1961. On July 29, 1962 Shri Mallik was appointed Deputy Minister and continued in that post till March 7, 1967. As a Deputy Minister Shri Mallik was drawing a pay of Rs. 750 per mensem.

Shri Mallik, it is stated, applied for lease of a piece of Government land measuring 100 ft. × 75 ft. through Co-operative Society which was given the charge of allotting Government lands. On the representation of Shri Mallik that he belonged to the low-income group, lease of land was granted to him on concessional rate. After that Shri Mallik as a person belonging to the middle-income group, got a loan of Rs. 20,000 from the Co-operative Society. The loan was repayable in 25 instalments. Shri Mallik built a house on the aforesaid land during his Deputy Ministership and it was valued at Rs. 75,800 on October 1, 1963 by the Executive Engineer, when it was proposed to take this house on rent by the Government, Shri Mallik thereafter let out the house to the Government on a monthly rent of Rs. 500. Subsequently, Shri Mallik put up another double-storeyed house on the same land and he is now living therein. The second house is stated to be worth at least Rs. 25,000. The value of the two houses built by Shri Mallik during the period he was Deputy Minister is calculated to be Rs. 1 lakh.

The total emoluments received by Shri Mallik as Deputy Minister, it is stated, came to Rs. 42,750. Shri Mallik during his Deputy Ministership purchased two cars by taking at first a loan of Rs. 12,000 and subsequently a loan of Rs. 15,000, in all Rs. 27,000. As the loan instalments were deducted from the pay and allowances of Shri Mallik, he is stated to have received in all Rs. 28,910-39 P. out of his emoluments. Shri Mallik received Rs. 20,000 on account of rent from October 1, 1963 at the rate of Rs. 500 per mensem. Out of that, he had to pay about Rs. 4,000 towards his house building loan. The net income from the house rent was thus about Rs. 16,000. Adding this amount to the amount received on account of his emoluments by Shri Mallik the State Government has calculated the total amount to be Rs. 44,900. The monthly family expenses of Shri Mallik has been taken to be at least Rs. 500 and counting at that rate the total amount spent by Shri Mallik during the period he was Deputy Minister came to Rs. 28,500. Shri Mallik, according to the State Government, was thus left with a bare amount of Rs. 15,000 which was hardly sufficient to build houses worth Rs. 1 lakh. The fact that Shri Mallik constructed his first house by October 1963 just about a year after becoming Deputy Minister, according to the State Government, is another significant circumstance.

As regards the rent of the house let out to the Government, it is stated, the Executive Engineer assessed the fair rent of the house at Rs. 440 per mensem. Subsequently, the figure was corrected to Rs. 438. Shri Mallik, however, managed to let out the house at Rs. 500 per mensem. He thus received Rs. 60 per mensem as an extra amount from the Government. The State Government concludes from the above that Shri Mallik abused his official position to make personal gain. He is further stated to have amassed wealth from illegitimate sources.

In support of the above allegation, the State Government has filed the affidavit of Inspector Satchchidananda Mishra (Vigilance).

Shri Mallik in the course of his affidavit has stated that in 1957 when he was a member of the Legislative Assembly he got himself registered as a member of the Ekamra House Building Co-operative Society which formed for facilitating allotment of lands in the capital particularly to the members of the Legislature. During his membership of the Assembly he got an allotment of land near the Kalpana Cinema through

that Co-operative Society. As his land was undeveloped and the income of Shri Mallik as M.L.A. was low the premium was fixed at the low rate of Rs. 2,000 per acre. The plots were allotted to the other M.L.As., and members of the Society also at the same rate in the locality. In 1962 Shri Mallik became Deputy Minister, Irrigation & Power, and in 1963 he got a loan of Rs. 20,000 in the middle-income group. This loan was based on his income in those days and was repayable in 25 annual instalments commencing from February 24, 1964.

Shri Mallik further states that being burdened with heavy loans he looked for a tenant. He then negotiated with Director of Mines who was looking for a suitable accommodation. Shri Mallik demanded Rs. 500 per mensem as rent, because, according to him, this amount was reasonable and fair and was based upon the prevailing rent in the area. It is further stated that in a number of other cases the Government agreed to pay rent over and above the rent fixed by the P.W.D. As regards the cost of the building, it is stated, there are not two buildings but only one on his plot. The plan for sake of convenience shows two parts. The main portion was rented out to Mining Directorate and the other portion, which was a garage, was retained by Shri Mallik. He subsequently added two rooms on it for his residence. Regarding the cost of the building Shri Mallik states that he has his own accounts, wherein he noted the details of expenditure incurred by him from day-to-day. The details are duly supported by vouchers and receipts. Perusal of those accounts would show that the expenditure on the house up to October 10, 1963, when the main portion of the building was given on rent to the Mining Directorate, was Rs. 32,757-27 P. After that the expenditure incurred on the building comes to Rs. 16,297-06 P. For the last mentioned expenditure Shri Mallik had to depend upon the monthly house rent which he was getting from time to time. Even now the building is incomplete. The total expenditure on the house is stated to be Rs. 49,054-33 P. The details of the expenditure are also given. The sources from which Shri Mallik met this expenditure are given by him as under :—

Personal saving from 1961 to 1966 ..	Rs. 6,900-00 P.
House Building Loan ..	Rs. 20,000-00 P.
House Rent ..	Rs. 13,200-00 P.
Personal loan ..	Rs. 5,500-00 P.
Balance outstanding towards credit obtained for purchase of materials.	Rs. 3,467-41 P.

Shri Mallik adds that he has paid only three instalments of the Government loan in place of five. For the two instalments in respect of which he is a defaulter he would be charged penal interest. As regards the loan taken for the purchase of the car, Shri Mallik has stated that before purchasing the second car the loan of Rs. 12,000 obtained for the first car was fully paid back as he had sold his first car. It is further stated by Shri Mallik that he wants to sell his second car because he cannot maintain it but he is prevented from doing so as the period of two years has not been completed since the purchase of the car.

Supplementary affidavit in respect of this allegation has been filed by Inspector Satchchidananda Mishra.

It would appear from the above that this allegation consists of two parts. The first relates to the expense of the constructions of the building which was beyond the known sources of the income of Shri Mallik and the second pertains to the letting out of the building to the Government at a rate in excess of the fair rent.

So far as the first part is concerned, according to the Government affidavit, the Executive Engineer assessed the value of the building to be Rs. 75,856 in 1963 when it was proposed to take the same on rent for Directorate of Mines. The cost of the subsequent construction of the portion now occupied by Shri Mallik, though mentioned to be Rs. 25,000 in the particulars of allegations, has been given in the affidavit, filed on behalf of the State Government, to be Rs. 16,252. The total cost of the entire building, according to the affidavit, is Rs. 92,108. As against that Shri Mallik has stated that he incurred an expenditure of Rs. 32,757.27 P. up to October 10, 1963, when the main portion of the building was given on rent to the Mining Directorate. He thereafter incurred an expense of Rs. 16,297.06 P. on the construction of the additional portion and for this he had to rely upon the monthly rent that he was getting from time to time. It is stated that the constructions of the house is still incomplete. The total expenditure incurred on the construction of the building so far, according to Shri Mallik, is Rs. 49,054.33 P. The details of that expenditure are also given as under :—

Sand	Rs. 1,407.00 Paise
Brick	Rs. 5,538.13 „
Stone	Rs. 574.00 „
Cement	Rs. 7,771.06 „

Chips	Rs. 1,499.20 Paise
Wood	Rs. 3,420.66 „
Misc. like paint, nail, etc.	Rs. 4,913.20 „
Sanitary	Rs. 5,940.69 „
Electricity	Rs. 2,884.80 „
Labour	Rs. 8,997.28 „
Rod	Rs. 5,630.32 „
Iron Joint	Rs. 405.79 „
Grill	Rs. 72.20 „
	Rs. 49,054.33 Paise

The sources from which Shri Mallik is stated to have met this expenditure have already been reproduced earlier.

The above resume of facts shows that though there is hardly any difference between the State Government and Shri Mallik on the expenditure of the additional building, there is considerable divergence between them as regards the cost of the building which had been constructed before October 1963. There are, however, some aspects of the matter which throw doubt about the correctness of the valuation given by the State Government. The Executive Engineer, while assessing the value of the house to be Rs. 75,856, took the built area to be 3,160 sq. ft. As against that, in a statement of the private buildings, which had been taken on rent for the Directorate of Mines and which statement has been relied upon in the Government affidavit, the floor space of the buildings is mentioned to be 1962 sq. ft. The Executive Engineer calculated the cost of bare construction of 3,160 sq. ft. at the rate of Rs. 18 per sq. ft. to be Rs. 56,880 to which amount were added other additional items. It is, however, not clear as to what was the basis of that rate and whether it included the supervision charges which are normally included by the P. W. D. The Executive Engineer in calculating the cost of construction added Rs. 12,356 for the cost of electrical and sanitary fittings in accordance with a uniform formula of 20% of the cost of the building. According to Shri Mallik, he spent in all Rs. 5,940.69 Paise on sanitary fittings and Rs. 2,884.80 Paise on electrical fittings. The amount spent on electrical and sanitary fittings would depend upon the number of electric points and the sanitary amenities, and it would not, in my

opinion, be very appropriate to apply a set formula of calculating the expense on that account at 20% of the cost of the building. The Executive Engineer, while calculating the entire cost of the building also included Rs. 1,720 on account of the cost of the land. The material on the record, however, indicates that the full premium of the plot was paid by Shri Mallik before April 13, 1960 when the lease deed was submitted to the Estate Officer for signatures.

In order to verify the whole thing, I inspected the building in question after the close of arguments on allegation No. 20 on October 16, 1968 in the presence of Shri Mallik. The learned Advocate-General as well as the counsel for Shri Mallik were also present at the time of the inspection. I found that the building, which was completed in 1963 and was let out to the Directorate of Mines, consists of two parts. In each part, there are four rooms measuring about 21' x 11', 10' x 13', 17' x 7½' and 11' x 13'. Besides that, in each part there is a kitchen, a bath room and a lavatory of small size. There is a verandah of about 7' width in front and of the same width on the back. The building is single-storeyed and the roof is rather low. All the rooms are practically in a straight line. The construction work is of a very plain type. The floors are simple and not of a sophisticated nature with chips or marble. There is hardly any almirah in the walls and the wooden work is also of a very ordinary nature. The sanitary and electrical fittings in the building too are of a very ordinary nature. After having had a look at the building, I find it difficult to disbelieve the affidavit of Shri Mallik that he incurred an expenditure of Rs. 32,757-27 Paise up to October 10, 1963 when the building was given on rent to the Mining Directorate.

So far as the source of this amount is concerned, I find that it is admitted in the affidavit filed on behalf of the State Government that Shri Mallik took a loan of Rs. 20,000 from the Government in February 1963. It is further admitted in that affidavit that Shri Mallik took loan of Rs. 4,500 from his friends and obtained building material of the value of Rs. 4,461-75 Paise on credit. This accounts for about Rs. 29,000. Shri Mallik had been a Deputy Minister for about 15 months by the time the construction of the building was completed in October 1963, and it would not, in my opinion, have been difficult for him to contribute an amount of about Rs. 3,800 from his personal savings. It does normally happen that when one is going to construct a building one effects economy in his other expenditure. So far as the

amount of Rs. 16,252 spent on the construction of the additional portion is concerned, the case of Shri Mallik is that he could find money for the purpose from the monthly rent that he was getting from time to time. There appears to be no cogent ground to disbelieve the statement of Shri Mallik in this respect.

I would, therefore, hold that on the material on record it has not been proved that the amount spent by Shri Mallik on the building in question was disproportionate to his known sources of income.

Coming to the second part of the allegation, I find that in July 1963 the Directorate of Mines required a building for its drilling section. The aforesaid building was needed for the accommodation of the staff and the storage of accessories. As no Government building was available, a note was put on the file that the building of Shri Mallik close to Railway Station was nearing completion and the same might be taken on rent. The building was thereafter inspected by an official of the Mining Directorate. On July 26, 1963, the Deputy Director of Mines addressed a letter to Shri Mallik asking the latter if he was agreeable to let out his house on rent. Shri Mallik sent a reply on July 29, 1963, that he was willing to let out his house. As regards the rent, he said that it was close to the Railway Station and Cuttack-Bhubaneswar Road, and as such was advantageous for all purposes. The Executive Engineer thereafter assessed the fair rent of the house to be Rs. 440 per mensem. This figure was subsequently corrected to Rs. 438. When Shri Mallik was told about the fair rent assessed by the Executive Engineer, he stated that he was not prepared to let out the house for a rent of less than Rs. 500 per mensem. The Director of Mines then occupied the house with effect from October 7, 1963, and asked the Government to give sanction for taking the house on rent at the rate of Rs. 500 per mensem. A certificate about the non-availability of Government building was also supplied by the Directorate of Mines. On February 18, 1964, the Deputy Secretary in the Mining & Geology Department conveyed the sanction to the Director of Mines for taking the above house on rent at the rate of Rs. 500 per mensem, with effect from October 10, 1963.

The facts reproduced above go to show that the initiative for giving the house of Shri Mallik on rent to the Directorate of Mines were not taken by Shri Mallik. On the contrary, it was the Directorate of Mines which approached Shri Mallik for letting out his house to the Directorate. The Directorate of

Mines was also not under Shri Mallik because Shri Mallik at that time was Deputy Minister of Irrigation & Power and had nothing to do with Directorate of Mines. Shri Mallik no doubt refused to accept fair rent of the house as assessed by the Executive Engineer but in this respect I find that the Government affidavit shows that there were a number of other private houses which were taken on rent by the Directorate of Mines and for which it had to pay rent in excess of the fair rent. If the rent demanded by Shri Mallik was not acceptable to the Directorate of Mines, it was open to it not to take Shri Mallik's house on rent. There is nothing to show that Shri Mallik exercised any pressure on the Directorate of Mines to take his house on rent. Although it is not very desirable for a Department of the Government to take the house of a Minister or Deputy Minister on rent, keeping in view the different factors, referred to above, I am of the opinion that Shri Mallik cannot be held to be guilty of impropriety because of his letting out his house to the Mining Directorate at the rate of Rs. 500 per mensem.

As a result of the above, I hold that the charge contained in this allegation has not been substantiated.

CHAPTER 21

ALLEGATION No. 21

Re :

Alleged indecent behaviour towards a Lady Receptionist

Allegation No. 21 relates to alleged indecent behaviour towards Shrimati Ratnamani Choudhury, Lady Receptionist, and the respondent named in this allegation is Shri Chittaranjan Naik.

According to the case set up by the State Government as given in the particulars of allegations, Shrimati Ratnamani Choudhury was employed as a Lady Receptionist in the Orissa Secretariat. Her husband Shri Sarada Prasad Choudhury, an employee in an insurance company, applied for a permit to purchase a scooter. Shrimati Choudhury on this account went to meet Shri Chittaranjan Naik, who was Deputy Minister of Transport, in his office. It is stated that Shri Naik then behaved indecently towards Shrimati Choudhury. Petitions were then sent by Shri Choudhury to the Prime Minister, Chief Minister and Leader of the Opposition. Subsequently, Shri Naik tried to suppress the matter and succeeded in his attempt with the help of his cabinet colleagues.

In support of the above allegation, the State Government has filed the affidavit of Inspector Gouranga Patra (Vigilance).

Affidavits of Shri Sarada Prasad Choudhury and Shrimati Ratnamani Choudhury too have been filed in support of the above allegation.

Shri Naik in the course of his affidavit has denied the correctness of this allegation and described it as an absolutely false and fabricated charge. The charge is further stated to have been levelled in the process of vilification resorted to by unscrupulous and interested politicians for their own political ends. According to Shri Naik the entire thing is the result of a conspiracy by interested politicians for their personal and political ends and they have utilized the lady for this purpose. Shri Naik has also filed copies of the

letters which, according to him, were addressed by Shrimati Ratnamani Choudhury and her husband in the course of which it was stated that the news published in respect of the incident was malicious, motivated and fabricated.

So far as this allegation is concerned, the affidavit, upon which the State Government has relied, is that of Shrimati Choudhury. According to her affidavit, she is employed as a Lady Receptionist in Orissa Secretariat since September 25, 1953. She lives with her children and husband in Unit No. 1 at distance of $\frac{1}{2}$ mile from the Secretariat. As she was spending about 75 paise per day on rickshaw fare, she applied for permit to purchase a scooter. She and her husband were known to Shri Santosh Kumar Sahu, Deputy Minister, and asked for his help. Shri Sahu then told her to meet Shri Chittaranjan Naik. On June 11, 1966, she was informed by her husband that he had received intimation from the Personal Assistant to Shri Sahu that the time for Shrimati Choudhury's interview with Shri Naik had been fixed at 1-30 P.M. on that day. Shrimati Choudhury accompanied by the peon of the Reception Room then went to the office of Shri Naik in the Secretariat. She was called inside the office at about 1-30 P. M. Shri Naik then asked Shrimati Choudhury about her husband's profession and income. He also promised to help her husband in promoting his insurance business. The Private Secretary of Shri Naik was then called and was asked to type out a petition on behalf of Shrimati Choudhury addressed to the Deputy Minister so that she could sign it. The Private Secretary then typed the petition which was signed by Shrimati Choudhury. Shri Naik endorsed a recommendation on the same. The petition was then ordered to be sent to the Transport Department. After the Private Secretary had left the room, Shri Naik enquired from Shrimati Choudhury about her relationship with Shri Santosh Kumar Sahu and the reason of his interest in her. Shrimati Choudhury explained that Shri Sahu was a personal friend of her husband. Shrimati Choudhury thereafter wanted to leave but Shri Naik asked her to accompany him to his residence where his wife and children were living with him. Shrimati Choudhury, however, declined to do so. Shri Naik then told Shrimati Choudhury that her face showed that she would be a prosperous lady and he also asked her to show him her palm. She complied with the request rather grudgingly whereupon he pressed her palm. Shri Naik thereafter went into his Private Secretary's room to talk something. After a short time he came back,

Shrimati Choudhury was then sitting with her back towards the door of the Private Secretary's room. Shri Naik then caught hold of Shrimati Choudhury from behind and kissed her on one of her cheeks. When he was attempting to kiss the other cheek, she resisted and began to tremble with fear. Shri Naik then asked her whether she was annoyed. Without giving any reply, Shrimati Choudhury came out through the Private Secretary's room where she found present a number of persons including the Private Secretary. Shrimati Choudhury was very much perturbed and did not say anything to any one of them. On coming out of the room she was told that her husband had also come in the meantime and had left. When she came out of the Secretariat building, she met her husband at the gate. On the way to the house she narrated the whole incident to him. After some days she was informed by her husband that Shri Naik had tendered an apology for his misbehaviour and had stated that he took her as his sister. Shri Naik also invited Shri and Shrimati Choudhury for lunch to his residence. Shrimati Choudhury was at first reluctant to accept the invitation but subsequently she agreed and went to the residence of Shri Naik. Two ladies were present there. One of them was described as Shri Naik's sister and the other as his elder brother's wife. Shrimati Choudhury took meals with those ladies, while her husband and Shri Naik along with some other men took their meals separately. Shri Naik thereafter developed friendly relations with Shri and Shrimati Choudhury by inviting Shri Choudhury to his residence for dinner and lunch. It is further stated that on August 27, 1966 at the invitation of Shri Naik, Shri and Shrimati Choudhury went and stayed at the Guest House of Shri Naik in Calcutta. While staying there, they found that girls of questionable character were visiting that house. Shri and Shrimati Choudhury accordingly came back. Shri Choudhury is also stated to have sent petitions against Shri Naik to the Prime Minister, the Union Home Minister, the Congress President, Shri R. N. Singh Deo and a number of other persons.

I have given the matter my consideration and am of the view that the statement of Shrimati Choudhury as contained in her affidavit bristles with so many improbabilities as make it quite unsafe to place reliance upon her statement. It seems hard to believe that a Deputy Minister would make an indecent assault on a lady whom he meets for the first time in his room in the Secretariat when that room opens into another room in

which a number of persons are present. It is also not clear as to why Shrimati Choudhury did not raise any alarm or make any vocal protest at that time or immediately thereafter when she went to the room where a number of persons were present. It is further difficult to believe that Shrimati Choudhury would accept the invitation and go for lunch with her husband to the residence of Shri Naik if in fact he had made an indecent assault on her a few days before the lunch. It is also very unlikely that Shrimati Choudhury and her husband would go to Calcutta and stay at the Guest House of Shri Naik if only a couple of months before that Shrimati Choudhury had been the victim of an indecent assault by Shri Naik.

Shri Naik has produced copies of letters which were addressed by Shrimati Choudhury to his Private Secretary and by Shri Choudhury to the Chief Minister of Orissa. The purport of these letters was that some mischievous persons had given publicity to a news involving Shrimati Choudhury and the Deputy Minister, Transport. It was stated that the news was malicious, motivated and fabricated and the Deputy Minister, Transport had never misbehaved with Shrimati Choudhury. The explanation of Shrimati Choudhury in respect of the above two letters is that her husband's signatures were obtained on a plain paper by Shri Naik after her husband had been given a drink mixed with *Bhang*. As regards her own signatures, Shrimati Choudhury has stated—

“That Shri Mishra, one day, came to my house at the dead of night during the absence of my husband and gave a new *Sari* to me saying that it was sent by my husband who was then present in the Chief Minister's residence and was engaged in conversation with Shri Naik. To create belief in my mind he showed me the identity card of my husband and asked me to sign on a blank paper as desired by my husband for the purpose of typing out a letter in connection with allotment of Scooter. When I declined he asked me to accompany him in his car to Chief Minister's residence. To avoid going at such hour of night I put my signature on that paper.”

The above explanation of Shrimati Choudhury regarding her signatures and those of her husband on the two letters is rather hard to swallow.

Looking to all the facts, I am of the view that the charge of misconduct, which has been levelled against Shri Naik in this allegation has not been proved. I hold accordingly.

CHAPTER 22

ALLEGATION No. 22

Re:

Lease of Endowment Land in favour of Shrimati Patnaik

Allegation No. 22 relates to the lease of endowment land situated in Bhubaneswar in favour of Shrimati Gyan Patnaik, wife of Shri Biju Patnaik. The respondents named in this allegation are Shri Patnaik and Shri Mitra.

According to the case set up by the State Government in the particulars of allegations, Shrimati Gyan Patnaik made an application dated October 17, 1961 to the Commissioner of Hindu Religious Endowments, Orissa, for leasing out sub-plots Nos. 170, 171, 172, 173 and 174 situated in Bhubaneswar and belonging to Lord Lingaraj Endowment in her favour. Prior to that, Shri Patnaik had acquired a plot of land in the name of his wife near the Bhubaneswar aerodrome from the Bharati Math which is a public endowment. The Endowment Commissioner is subordinate to the Law Minister. Shri Mitra was in those days Deputy Chief Minister and Minister of Law. On the above application of Shrimati Gyan Patnaik a case was started by the Commissioner of Endowments. The report dated October 30, 1961 of the Executive Officer of Lingaraj Deity indicated that out of sub-plots Nos. 173 and 174 Shri Patnaik had encroached upon 160 decimals of land. Sub-plot Nos. 170 and 171 had been allotted to Shri Bhikari Charan Malia who had deposited the Salami. Shri Patnaik was stated to have encroached upon 70 decimals out of these sub-plots. The Endowment Commissioner, it is stated, without observing formalities as required by law and without calling for objections, leased out the above land, except an area of 27 decimals which was in the occupation of Shrimati Sarmistha Devi, wife of Dr. Haribandhu Mohanty, in favour of Shrimati Gyan Patnaik at comparatively low rates under the influence of Shri Patnaik and Shri Mitra.

Shri Patnaik is further stated to have constructed a palatial building on the land of Bharati Math, even though, without the sanction of the Endowment Commissioner under section 19 of the Hindu Religious Endowments Act.

no transfer of the land was possible. The said construction is stated to be unauthorised. The State Government concludes from the above that Shri Patnaik and Shri Mitra had committed acts of malfeasance, misfeasance and had abused their official power and position.

In support of the above; allegation, the State Government has filed the affidavits of Shri Prahallad Misra, Assistant Commissioner of Endowments, and Inspector Gourang Patra (Vigilance).

Shri Patnaik in the course of his affidavit has denied the correctness of this allegation and the inference drawn by the State Government. According to Shri Patnaik, his wife had put up a house on a piece of land purchased by her in 1956-57. When the endowment authorities started leasing out some land in and around that area, she made an application to the Commissioner for lease of sub-plots 170 to 174 as those plots were adjacent to the compound of her house and were essentially required for proper and convenient utilization of the house. The Commissioner after necessary enquiries granted permanent lease of the sub-plots in her favour in the normal course. As regards the encroachment, it is stated by Shri Patnaik, the same was unintended. Lands in that area had not been properly measured and demarcated previously. The Government records show that there were many similar cases of encroachment by others. The encroachments were not intentional but were occasioned by non-demarcation of the land, large stretches of which were lying fallow and waste for several years. The encroachment in this case must have taken place when Shrimati Patnaik purchased land which was contiguous to the sub-plots in question. A fence was put around the same sometime in 1957-58. As the land in question was to be leased out to the public and was not required by the endowment for its own use, the lease applied for by a person already in possession was granted in normal course.

Dealing with the question of valuation, Shri Patnaik has stated that the Endowment Commissioner fixed the Salami for the sub-plots at Rs. 4,000 per acre, *vide* his order dated September 22, 1960. Under this order, more than 80 allotments were made to different persons from plot No. 216. Shrimati Patnaik, however, offered Rs. 1,000 extra per acre, in addition to a special donation of Rs. 500 to the Deity as would be evident from the Endowment Commissioner's order

dated December 2, 1961. Shri Patnaik asserts that he never had any occasion to deal with this matter in his official capacity and he never used or allowed others to use his influence in the matter.

Shri Mitra in the course of his affidavit has also denied the correctness of the allegations made against him. According to Shri Mitra he had nothing to do with the lease of land to Shrimati Gyan Patnaik and he did not even know about it. He never asked anybody to do anything regarding the matter. The Commissioner of Hindu Religious Endowments is a statutory authority and he exercises the powers which have been conferred upon him under the provisions of the Hindu Religious Endowments Act.

Supplementary affidavit in respect of this allegation has been filed by Shri Patnaik.

I find the following order was made by the Commissioner of Endowments on December 2, 1961 for leasing the land in question to Shrimati Patnaik —

“The petitioner prays for permanent lease of such plots 170 to 174 of plot No. 2/6 in Khata No. 901 belonging to Shri Lord Lingaraj Endowment, Bhubaneswar. It is alleged that the house of the petitioner is adjacent to these plots and for proper utilisation of her house, these plots are necessary and she is willing to pay reasonable Salami and rent.”

Plot No. 216, which is in front of the Civil Aerodrome, Bhubaneswar, was ordered to be leased out to various applicants about an year ago after proper enquiry and after recommendation of the Inspector and the Trustee-board about the necessity for the lease. This being so, it was not necessary to obtain any report from the Inspector or opinion of the Trustee-board and also no publication was necessary. The Executive Officer of the Institution was asked to report about the availability of these sub-plots and he has sent a report to the effect that sub-plot No. 172 has not yet been allotted to any person and out of sub-plot No. 173, there is encroachment of 27 decimals by Shrimati Sarmistha Debi and there is encroachment of 160 decimals out of plot Nos. 173 and 174 being included in the house of the present petitioner. But these plots 172, 173 and 174 have not been allotted to any others but were left vacant. Similarly for sub-plot Nos. 170 and 171 also the petitioner's house area has covered 70 decimals and therefore it cannot be conveniently allotted to any

others. Bihkari Charan Malia applied to get sub-plots 170 and 171 on the assumption that they were vacant but by spot enquiry, I find that 70 decimals out of these two plots are already under encroachment of the petitioner's house. Bhikari Charan Malia had been allotted two other plots at the time of original allotment and therefore the question of allotting plots which are already under encroachment is not congenial.

I recorded the statement of the petitioner and she is agreeable to pay *salami* at the rate of Rs. 5,000 per acre as against Rs. 4,000 fixed for other lands in the plot and besides she is willing to pay Rs. 500 more for the deity. All the sub-plots, i. e. Nos. 170, 171, 172 and 174 are still unallotted and vacant and so also plot No. 173 except for 27 decimals and encroached upon by Shrimati Sarmistha Debi.

Upon enquiry the Endowment Commissioner had already given sanction for leasing out this entire plot No. 216 but these 5 sub-plots Nos. remained unallotted and undoubtedly it will be convenient for the petitioner to take lease of these lands as to allot it to others will undoubtedly block the frontage of her house. Moreover, the petitioner is willing to pay *salami* at a higher rate by Rs. 1,000 per acre and also a special donation of Rs. 500 and if under these circumstances, the lease will be granted to the petitioner, undoubtedly it will be more beneficial to the deity which is the sole criterion for sanctioning leases of this nature.

Therefore, I order that the land covered by sub-plots 170 to 174 (excluding 27 decimals) in occupation of Shrimati Sarmistha Debi be granted in permanent lease to the petitioner upon her paying *salami* at the rate of Rs. 5,000 per acre besides a donation of Rs. 500 and upon her agreeing to pay rent as per the rate fixed for other lands in the plot.

A registered lease deed may be executed by the Executive Officer at the entire cost of the petitioner, if desired.

Issue orders accordingly.

Copy to the Secretary to Government of Orissa, Law Department, Bhubaneswar, for favour of information.

(2) Copy to the petitioner,

“(3) Copy for publication by the S. D. O., Bhubaneswar, and

- (4) Copy to the Executive Officer, Lord Lingaraj Endowment Bhubaneswar. He is directed to contact Shrimati Sarmistha Debi and ask her to apply for lease of the encroached area informing that otherwise an application under section 68 of the O. H. R. E. Act shall be filed to recover possession of the land.

Sd. L. PANDA

2-12-1961

Commissioner of Endowments."

In my opinion, it is difficult to draw an inference of impropriety or favouritism from the above order of the Commissioner of Endowments. Perusal of the order as well as the other material on record show that plot No. 216 belonging to Lord Lingaraj Endowment, Bhubaneswar, was ordered to be leased out after being divided into sub-plots to various applicants about a year before December 2, 1961. A number of applicants, to whom the other sub-plots out of plot No. 216 were leased out, paid *salami* at the rate of Rs. 4,000 per acre. The names of some of those applicants with the numbers of their plots have also been given in the Supplementary affidavit of Shri Patnaik and they include a number of officers and other well placed persons. As against the *salami* of Rs. 4,000 per acre paid by them, Shrimati Gyan Patnaik paid *salami* at the rate of Rs. 5,000 per acre. Besides that, she gave a donation of Rs. 500 for the Deity. It would further appear that the policy of the Endowment Commissioner was to lease the sub-plots to the persons who were already in occupation of those sub-plots. The fact that Shrimati Patnaik had already encroached upon the land in question was, consequently, held to weigh in her favour. It was also observed that as the land in question was in front of Shrimati Patnaik's house, it would be more convenient to lease it in her favour. Taking into account all the circumstances, the Commissioner of Endowments directed the lease of the land in question in favour of Shrimati Patnaik. There is no element of unreasonableness in the above order and it cannot, in my opinion, be said to have been induced by some ulterior consideration.

Argument has also been advanced that Shri Patnaik misused his position by encroaching upon the land belonging to Lord Lingaraj Endowment. In this respect I find that the material on record shows that the said encroachment was made

in 1957-58 and the one factor which led to it was the fact that there had been no demarcation of the area at the site. Be that as it may as the encroachment took place long before Shri Patnaik became Chief Minister in 1961, the Commission is not to go into the question of the propriety of that act of encroachment.

I, therefore, hold that the charge of impropriety contained in this allegation has not been substantiated.

CHAPTER 23

ALLEGATION No. 23

Re:

Paradeep Port

Allegation No. 23 relates to the affairs of Paradeep Port and the respondents named are Shri Patnaik and Shri Mitra.

According to the case of the State Government in the particulars of allegations the construction of Paradeep is tainted with scandals at all stages. The project was conceived, planned, estimated and executed by Shri Patnaik with the clandestine motive of amassing money for himself and for persons and firms, in whom he was interested, at the cost of the State and without any regard to its resources. Shri Patnaik was Chief Minister till October 1, 1963 and was also Minister in charge of the Port. After that date, Shri Mitra was in charge of the Port and acted in active collaboration with Shri Patnaik with the same clandestine motive. Shri Patnaik, after relinquishing Chief Ministership, became the Chairman of the Planning Board and exercised full control over the Port affairs. It is stated that in pushing through the construction works under the plea of speedy completion; all administrative and constitutional proprieties were deliberately ignored, principles of planning and estimation were completely disregarded, departmental rules and established procedures were thrown to the winds and the resources of the State were lost sight of as a result of which the State was caught in the grip of a financial crisis. Shri Patnaik and Shri Mitra are stated to have done all this by exercising influence on the Chief Secretary, the Joint Secretary for Commerce and the Finance Secretary.

The original estimate of the project was about Rs. 11 crores. The estimate, it is stated, was raised from time to time without care and caution, and towards the later part it rose to an amount of about Rs. 26 crores. Shri Mitra, however, at that time stated in the Assembly that the expenditure of the Project would come to Rs. 17.32 crores.

Messrs. Rendel Palmer and Tritton, London, were appointed as consulting engineers for the Project in 1961 without calling for any tenders. The quotation of this firm for payment of Rs. 40 lakhs in India and £ 20,000 in England, was accepted by Shri Patnaik on August 31, 1961 on the basis

of personal discussion with a representative of the firm. The reasonableness of the rates was not ascertained in spite of the fact that the Chairman of the Calcutta Port Commission on reference had intimated that the rates were high. Although the Chief Secretary suggested that the Works Department should check up the rates and the Finance Department advised that tenders be called, Shri Patnaik finalized the matter on the basis of personal discussion with the firm's representative. On the suggestion of the Chief Secretary the agreement was divided into two parts, the first part relating to the preparation of the Project Report and Master Plan, and for this the consultants quoted Rs. 5 lakhs payable in India and £ 10,000 payable in England, and the second part relating to the preparation of detailed drawings, specifications and estimates for the Project. Some structural changes were then decided upon. In the circumstances, the firm reduced its quotation for the second part to Rs. 22 lakhs payable in India and £ 10,000 payable in England. This was accepted by Shri Patnaik. The draft of the original and revised agreement was not placed before the Law Department nor was the Finance Department consulted.

When the question of appointing a person as Chief Engineer-cum-Project Administrator arose, the Chairman of the Calcutta Port and Mr. Ganapati, an eminent engineer, were consulted and they suggested the name of Shri Rambrahmam of the Gauhati Oil Refineries for appointment as Chief Engineer. This officer had been deputed to the Mines Department of the Government of India by the Transport Department and the term of deputation was to be over by January, 1962. On being approached, Shri Rambrahmam agreed to join the Paradeep Port as Chief Engineer in a scale of Rs. 2,000—125—2,250 with a salary of Rs. 2,150 to start with free quarters and conveyance. Letters were then addressed to the Mining Department of the Government of India but Shri K. D. Malavia, Union Minister for Mines, declined to part with his services and offered to find some other suitable officer for the Project as Chief Engineer. A suggestion was then made for appointing another Engineer, Mr. Wadhwa, but the same was not pursued. The Chief Secretary had then some consultation with Shri Thirumale Iyenger (former Chief Engineer, Hirakud Dam Project) and Shri Iyenger wrote a letter suggesting the appointment of Shri Srinivasan. It was stated by Shri Iyenger that Shri Srinivasan was the General Manager, Neivilly Lignite Project, Madras, and was getting a salary of Rs. 2,500. These

two statements were not correct. Some letters then passed between the Chief Secretary and Shri A. Srinivasan. Shri A. Srinivasan was then offered the job and he joined the same. The post was not advertised and the suggestion to that effect of Public Service Commission, when approached for confirmation of the appointment, was not accepted. Shri Srinivasan was given a salary of Rs. 2,500 per mensem and favourable term in respect of pension, leave and accommodation were also agreed to.

Tugs and barges were required for Paradeep Port. No tenders were called and quotations were invited only from five firms. Two firms did not submit quotations for lack of particulars. Two other firms did not reply at all. One firm, namely, the East Bengal Engineering Works, submitted quotation. Although this firm had a high reputation for efficiency and workmanship, it is stated, the quotation submitted by it was not attended to. On the basis of a personal discussion between Shri Patnaik and the representative of another Company, Seward Workshops (India) Private Limited, Calcutta, held on March 1, 1962, an agreement was entered into on April 4, 1962 with that Company on the plea that the rates offered by the Company were lower. Though the requirement of the Port was more, order was placed for only four tugs and twelve barges. The rate quoted by the Company was Rs. 34,000 per tug but later on it was raised to Rs. 37,500 per tug. The Law and Finance Departments were not consulted and the efficiency of the Company was not ascertained. Subsequently, it transpired that this Company was of ill-repute and had no shipyard of its own. The agreement with the Company was thereafter revised and instead of 12 barges it agreed to supply only 4. The excess of steel material supplied to the Company was not recovered. The Company supplied only 2 tugs and no barges at all and the materials supplied to it were attached by the Calcutta High Court at the instance of the creditors of the firm. Another firm was thereafter asked to complete the job but the things prepared after manufacture were not of much use and had to be disposed of. The deal entailed a loss of Rs. 6 lakhs. The above Company [Seward Workshops (India) Private Limited] also entered into another agreement during the same period for supply of a self-propelled sea-going barge at a cost of Rs. 1.58 lakhs as per agreement approved by Shri Patnaik on June 15, 1962. This agreement too was in disregard of the Rules.

In July, 1962 the Joint Secretary for Commerce and the Finance Secretary went to Calcutta for discussion with the East Bengal Engineering Works for supply of 10 tugs and 13 barges. No tenders were called and the orders were placed at excessive rates. This deal was approved by Shri Patnaik. An agreement was executed on August 14, 1962 and an advance of Rs. 6,74,679.77 Paise was given to the firm. The total amount involved in this contract was Rs. 25 lakhs.

Another order, which was placed with East Bengal Engineering Works was in June, 1962 for supply of 2 self-propelled barges at a cost of Rs. 1,76,500. In this case too no tenders were called and the Finance & Law Departments were not consulted. The deal was negotiated by the Joint Secretary, Commerce.

At the time when negotiations for the second part of the agreement were in progress with the consulting engineers Shri Patnaik also negotiated with Mc Nelly Bird Engineering Co., Ltd., for ore handling plant. The consulting engineers considered the rates quoted by this Company as high but Shri Patnaik finalized the deal with the Company after saying that this Company was the best in India for the purpose. The deal was finalized after personal discussion between Shri Patnaik and a representative of the Company. The Company was requested to quote the rates for preparation of designs and drawings in case the final construction was not entrusted to it. The Company quoted Rs. 75,000 for designs with 50 per cent reduction of the charge in case the construction work was entrusted to it. The proposal was approved by Shri Patnaik and he overruled the objections of the Joint Secretary, Commerce, and Chief Secretary, in the matter.

At the time when Shri Patnaik was negotiating with Mc Nelly Bird Engineering Co., Ltd., the Chief Engineer, Shri Srinivasan, had negotiations with Messrs. Hewitt Robins in regard to supply and installations of the Ore Handling Equipment. The rate offered by Hewitt Robins was also considered to be high by the consulting engineers. After personal discussion with the representative of the Company Shri Patnaik passed an order on May 14, 1962 approving the rates quoted by Hewitt Robins with the observations that the sum of Rs. 75,000 payable to Mc Nelly Bird Engineering Co., should be paid by Messrs. Hewitt Robins.

In spite of the above direction, at the time the agreement was executed no provision was made for recovery of Rs. 75,000 from the firm.

Railway material worth about Rs. 14 lakhs, it is stated was purchased for Paradeep Port from Messrs. Raja Singh and M. E. Abdulhusein & Company, Bakhtiarpur. Recommendation of the Chief Engineer in this respect was accepted by Shri Patnaik without enquiring about the reasonableness of the rates and against the direct advice of the Iron and Steel Controller. Likewise, a contract entered by the Chief Engineer with Messrs. Tractors (India) Limited for purchase of 4 numbers of 10 Ton. mobile cranes for Rs. 8 lakhs was approved by Shri Patnaik even though no tenders had been invited. The above purchase was made even though the Government of India had informed the Chief Engineer that the cranes in question were available indigenously from a Company at Calcutta.

When a consignment of cement was taken delivery of in connection with the project, it is stated, a shortage of 4,509 bags worth Rs. 34,000 was noticed. It was also reported that 10,309 cement bags worth Rs. 77,000 had been rendered useless. An amount of Rs. 51,000 was found to have been paid on account of demurrage and wharfage charges for delay in lifting the goods from the Railway Station. This loss, it is stated, could only be due to negligence and lack of supervision. Rs. 22,70,082 are stated to have been spent on the construction of Athar-banki Bridge and other allied works at fantastically high rates. A temporary road, it is stated, was also constructed at a cost of Rs. 50,000 in connection with the Prime Minister's visit, at exorbitant rates. Similar extravagance in expenditure was shown in the construction of temporary quarters, break water and marine drive. Further, it was found that break water and marine drive had been permitted to be constructed with defective materials and had consequently flattened.

Shri Patnaik, it is further stated, had substantial personal interest in Kalinga Industries Ltd. On July 13, 1962 his Company offered to sell 2,500 units of Tubular Trusses for Paradeep Project for a price of Rs. 16.05 lakhs and undertook to complete the supply by the end of February, 1963. The Chief Engineer, who took charge of the Project on July 16 1962 immediately wrote to the Joint Secretary, Commerce, that the trusses would be required for the Port and should be

purchased forthwith since the offer of Kalinga Industries Ltd., was attractive. It was also suggested that the Government should pay 90 % advance to the Company as demanded by it. The Joint Secretary, Commerce made the requisite recommendation to the Chief Secretary who thereupon endorsed the file to the Finance Department. Shri Patnaik, who was in charge of the Finance Department, agreed and a sum of Rs. 14,44,725 was advanced to the Kalinga Industries. No tenders were called nor was any enquiry made to find out the reasonableness of the price quoted. No agreement was also executed. There was also no immediate requirement for the trusses.

The State Government concludes from the above that there was a colossal conspiracy to bleed the State white of its finances and the entire motive of Shri Patnaik was to amass wealth out of the expenditure. Shri Mitra too is stated to be responsible for this.

In support of this allegation, the State Government has filed the affidavit of Shri Banabihari Das, Senior Auditor in the Revenue Department.

Shri Patnaik in the course of his affidavit has denied the allegations made by the State Government. According to him, the Harbour Project was under consideration for over a decade when the Hirakud Dam Project was started in 1946-47. After Shri Patnaik assumed office in June 1961, the State Government worked out a massive plan with Paradeep as a major Deep-sea Port in the Eastern Zone with a 90 Mile Express Highway passing over the entire flooded delta area and connecting the 100 Million Ton iron ore deposits at Daitari-Sukinda. The scheme was old and needed considerable courage and dedication to implement it, particularly in view of the meagre financial and administrative resources available to the State at that time. Nevertheless, the decision was taken with the blessings of the then Prime Minister Pandit Jawaharlal Nehru and the Finance Minister Shri Morarji Desai. The said plan was expanded and the work was taken up in right earnest. Shri Patnaik fixed a tight time-schedule for completing this huge task within three years. The senior officials of the Government did the work. The small men, it is stated, with which the State abounds also went to work by obstructing the progress of this Multipurpose Project at every stage. By the decision of the Government, the job was placed on war-footing and normal Administrative and Financial Rules and Regulations were suspended in the interest of work. A Chief Engineer-cum-Administrator of the Project had to be

selected quickly. The need of the hour was to find a man with long experience for carrying out the large Project construction works economically and within a record time. The senior officials of the Government looked for such a man all over the country and finally selected a person of the required calibre, who was available and willing to take up the responsibility of the complex and gigantic task. The opposition, it is further stated, immediately raised a howl against the Chief Secretary and other officials as also against Shri Patnaik regarding the propriety of this appointment without going through the State Public Service Commission. The objection was overruled by Shri Patnaik as Chief Minister and according to him his decision in this respect stands more than vindicated by the excellent work done in the Project under the leadership of Shri Srinivasan, Chief Engineer-cum-Administrator of the Paradeep Port. This officer was given full powers to conduct the affairs of the Project with the only condition that he would have to complete the Project within three years and that he should keep within the estimate. That the first phase of the Project was completed well within the revised estimated expenditure and in time, speaks volumes for the efficiency and capacity of this officer and his team who made the Dream Project of Orissa possible.

Dealing with the appointment of Messrs. Rendel, Palmer and Tritton, Shri Patnaik states that even the Government of India resorted to negotiations with reputed firms of Consultants to carry out large Central Projects. In this case, the competency of the above firm was checked and was found to be unassailable. The terms of its appointment were quite favourable to the State, as well as to the Union in terms of the foreign exchange. As regards the allotment of contract to Messrs. Hewitt Robins for the complicated ore-conveyer system, it is stated, the Government came to the conclusion after considerable deliberation that this firm could satisfy the rigid requirements demanded by the Project. The rates of the firm were also found to be far cheaper than the only other big firm competent for such work. The quotations of the two firms were as under:—

	Rs.
Messrs. Mc Nelly Bird Engineering Co., Ltd.	1,75,48,496
Messrs. Hewitt Robins Incorporated (Collaborators of Tata Robins and Frazer Ltd.).	1,25,54,131

So far as the orders placed by the officials of the Project with various firms are concerned, it is stated by Shri Patnaik that he has no doubt in his mind that they acted with the best of intentions.

Shri Patnaik further states:—

“ I submit that the act of wanton accusation by the present Government against the officials, whose dedicated work alone produced this magnificent Harbour in so short a period, a work which drew the admiration of every one in India and abroad who came to visit the Port, is to say the least, undignified, unwarranted and inexcusable and calls for severe condemnation. The Officers of the State only did their duty and are defenceless in the hands of unscrupulous politicians.”

The Paradeep Port is described by Shri Patnaik as the lever of Orissa's future prosperity. It is also stated that the State got this great Deep-sea Harbour free of cost as the entire expenditure of about Rs. 15.6 crores incurred by the State Government was reimbursed by the Central Government in the shape of loan with the condition that the industrial and capital repayment be made out of the income of the Port. The Government of India, while taking over the Project from the State Government, scrutinized the expenditure through the Auditor-General of India and found it to be in order and accordingly reimbursed the State Government with every rupee expended on the Project. Shri Patnaik has in this connection relied upon letter dated January 18, 1965 addressed by the then Governor of Orissa, Dr. A. N. Khosla, to the Prime Minister in which the Governor had described the Project as the life-blood of Orissa. The Governor had also in that letter commended the vision, initiative and dynamism of Shri Patnaik.

Shri Mitra in the course of his affidavit has denied the charge levelled against him by the State Government. According to him, he never influenced the Chief Secretary or the Joint Commerce Secretary or the Finance Secretary. He also did not collude with any one and did not permit anybody to by-pass or ignore the views of Departmental Heads. So far as the statement in the Assembly is concerned, it is stated report submitted by the department concerned. Shri Mitra adds that he was never a willing party to suffer any illegality or irregularity nor was he expected to supervise cement deal of any particular department.

Shri V. S. S. Manni, Secretary of Kalinga Industries, Ltd., has also filed his affidavit in respect of this allegation.

Supplementary affidavits have been filed by Shri Banabihari Das on behalf of the State Government and Shri Patnaik.

The first question, which arises for determination in respect of this allegation, is whether there was any improper motive on the part of Shri Patnaik when he decided to go in for the construction of Paradeep Port. According to the State Government, the Project of the Port was conceived, planned, estimated and executed by Shri Patnaik with the intention of amassing wealth for himself and for persons and firms in whom he was interested. In this respect, I find that Orissa has a vast coast line. The hinterland abounds in rich mineral wealth. Orissa had, however, no port of its own and had to depend upon ports in other parts of the country. It was, therefore, in the obvious interest of Orissa to have a port of its own. According to the letter dated January 18, 1965 addressed by Dr. A. N. Khosla, Governor of Orissa, to the Prime Minister of India, the provision of a major port along the coast of Orissa was envisaged by Dr. Khosla as a supplement to the Hirakud Dam Project as far back as 1946-47. A French team then came at the request of Dr. Khosla and carried out investigation. The French team submitted a report in 1952 and recommended a site at Paradeep for the Port. Letter dated September 15, 1961 addressed by the Chief Secretary of Orissa to the Secretary to Government of India, Department of Mines & Fuel, shows that the Planning Commission asked the State Government to go ahead with the detailed preparation of the plan and estimate of the Paradeep Port. Shri Patnaik, as Chief Minister of Orissa, then took the decision to turn the idea of Paradeep into a reality. This decision of Shri Patnaik, in my opinion, shows commendable vision and foresight because the opening of a Port in Orissa is bound to prove in the long run a great boon for the State. The fact that some shortcomings came to the surface in the implementation of the scheme would not in any way detract from the correctness and propriety of the initial decision to go in for the construction of Paradeep Port. I may in this context quote from the letter dated January 18, 1965, referred to above which was addressed by Dr. A. N. Khosla, one of the top Engineers produced by the country, to the Prime Minister Dr. Khosla observed :

"The much-maligned Paradeep Port is a typical case in which personal prejudice and deliberate attempt at belittling the constructive role of the Government have dominated thinking

and created a climate of opinion against the best interests of Orissa. Cases of corruption and local bad administration can be taken care of by the Special Police Agency, and the culprits brought to book, but there is no justification for crying down the project, which is going to be the life-blood of Orissa."

It was further observed :

"The project remained more or less in cold storage and but for the vision, initiative and dynamism of Biju Patnaik, it may have continued to remain so for a much longer period."

A statement in respect of Paradeep Port was made by Shri Harihar Patel, Minister of Industries in the present Government of Orissa headed by Shri R. N. Singh Deo, in the State Legislative Assembly on July 19, 1967. In the course of that statement, Shri Patel stated that the idea of developing a Port at Paradeep was first formulated along with the scheme for the development of Hirakud Dam. According to Shri Patel, the necessity of Paradeep was felt because of the loss of Chitagang Port on the east coast after the partition of the country. On the west coast India lost Karachi but in lieu of that the Centre undertook the construction of Kandla. According further to Shri Patel, the Central Water and Power Research Commission invited a French Mission in 1951 to study the possibility of establishing a Port on the east coast. The Mission came to the conclusion that the mouth of River Mahanadi was most suitable site for establishing a major port. The Government of India after receipt of the report of the Mission did not take a decision for a long time. The Central Government, however, suggested to the State Government to undertake a model study of the harbour with the help of Central Water and Power Research Station at Poona. In 1956, the State Government took the matter seriously and approached the Central Government but found the reactions of the latter Government to be not favourable. During 1956 and 1962 a number of expert Missions were invited by the State Government in consultation with the Central Government for having expert opinions on the building of Paradeep Port. Those Missions included Japanese, Italians and other harbour experts from different parts of the world. In spite of the strong recommendations given by those experts, the Central Government did not move in the matter. In 1958, the State in the State could be exported through Paradeep, the cost realized could be invested on Paradeep Port. It was hoped that the Central Government would find the idea to be

attractive and would not hesitate to invest necessary amount on the proposed Port Project. Ultimately, the port was to be developed for also handling other cargo besides iron ore.

It would appear from the above that the idea of the Port at Paradeep had been holding the field for a number of years and had been approved by a number of foreign expert Missions. The things, however, did not go beyond the domain of a paper scheme. It was left to Shri Patnaik to resuscitate the idea and translate it into a reality. To decry this decision of his is to take, in my opinion an exceedingly myopic and biased view of the matter. Looking to all the facts, I hold that Shri Patnaik was not actuated by any improper or ulterior motive when he decided to go in for the construction of Paradeep Port.

The second question on which arguments have been addressed and which arises for determination is whether Shri Patnaik was guilty of any impropriety in giving sanction to the revised and enhanced estimate of the Project. In this respect I find that office note dated August 26, 1961 shows that a Japanese team estimated the cost of building a Port at Paradeep for handling traffic of about 5 million tons at about Rs. 9 crores. A representative of the firm of Messrs. Rendel, Palmer and Tritton, who were subsequently appointed as Consulting Engineers for the Paradeep Port, in a meeting held on August 27, 1961 stated that he generally agreed with the estimate prepared by the Japanese team but would be in a position to give more realistic estimate after the design was prepared and finalized. The firm subsequently gave an estimate of Rs. 11.66 crores. After Shri Srinivasan was appointed Chief Engineer, he gave an estimate of Rs. 12.32 crores for the first stage of construction. For the full development of the Port the Chief Engineer gave an estimate of Rs. 40 crores. This was also the estimate of the Consulting Engineers. After Chief Engineer had given his estimate for the first stage, Shri Gian Chand, Joint Secretary, Ministry of Commerce (Ports) put up note dated January 21, 1963 wherein he referred to the Government decision that the construction for an all-weather Port at Paradeep should be proceeded in such a manner that all facilities to export iron ore to the extent of 2 million tons annually were available by October 1965. It was pointed out in the note that the Chief Minister had indicated in the discussion with the Planning Commission that the expenditure on the construction of the Port which might handle 2 million tons of iron ore would be

of Rs. 12 crores. The estimate of the Chief Engineer was stated to be not different from that indicated to the Planning Commission. Suggestion was, accordingly, made that administrative approval of the Government to the estimate prepared by the Chief Engineer might be given. Shri Patnaik then directed that the file should be put up before him at Paradeep. After his visit to Paradeep, Shri Patnaik gave the administrative approval asked for.

On July 20, 1963 the Chief Engineer made a proposal for revising the estimate of the work to be done before the end of 1965 to Rs. 16,20 lakhs. It was also mentioned that if the interest on the capital be capitalized, the total investment would work out to be Rs. 16,42 lakhs. According to the proposal of the Chief Engineer, Global tenders had been invited and received for—(i) Capital Dredging for the lagoon and approach channel, (ii) one number twin suction Hopper Dredger and (iii) Manufacture, supply and erection of iron ore handling equipment capable of handling 2,500 tons of iron ore per hour. The Global tenders received had revealed that the amounts provided in the original estimates for the above three items were short of requirements. The difference in the amounts required and the amounts provided was also indicated. On November 28, 1963 Shri Srinivasan addressed another letter to Shri Gian Chand, Additional Secretary, Commerce (Ports) stating that since the submission of the original estimate, the Chief Minister and the Minister of International Trade, Government of India, wanted that ship loading arrangements should be designed to load 60,000 tons ore carriers as quickly as possible. He also gave details of some additional expenditure. Request was made by Shri Srinivasan that the estimate of the expenditure up to October 1965 be raised to Rs. 2,191.71 lakhs gross and Rs. 2,100 lakhs net. It was also mentioned that the estimate for the completion of the first stage of the Project would be Rs. 25 crores. On May 21, 1964 Shri Gian Chand put up the following note:—

“I find Government's hesitation to sanction the Revised Estimate is becoming a handle in the hand of the Chief Engineer, Paradeep to change the figures for various items of work as and when he pleases. I am indicating in the enclosed table the position as it emerges from the Revised Estimate which the Chief Engineer has submitted in the past and the latest estimate of the cost of the Project given in the letter under reference. I have also calculated the total charge which the Government has to face on items of work on which work has already started

and has to be finished somehow. In this connection table No. 2 may please be seen. The point which I wish to emphasise is that in order that Government is not ultimately confronted with the situation in which they will have to find funds beyond what they have contemplated would be required for the construction of the Port, it is absolutely necessary that there should be strict control on the Chief Engineer's taking up the work on items of work which pleases him as he has been doing so far and the items on which he is to be authorised to incur expenditure should be clearly specified along with the ceiling within which he will be allowed to incur expenditure. Unless we are prepared for this elementary financial discipline, the situation will become difficult."

Shri Sivaraman, Chief Secretary, thereafter addressed the following note to the Chief Minister :—

"Many things can be done and many things may have to be done but the financial background shall and must control our decisions. Chief Engineer does not really seem to realise that money is not easy to come by. Therefore, he has been rather extravagant in his suggestions. Unless our Technical Expert helps us in tackling the financial problems, I do not see how Government can take correct decisions. The picture as now present is not very happy.

2. The latest position about the plan is, what we have formulated, a plan of Rs. 227 crores. To achieve this target we have to float a loan of Rs. 5 crores on Paradeep this year and Rs. 4 crores in 1965-66. If we are able to get Rs. 9 crores loan then we can spend on Paradeep Project Rs. 12.92 crores out of which again Rs. 1.50 crores are expected from the Intermediate Ports allocation. It will therefore be seen that even Rs. 12.92 crores expenditure is impossible without getting Rs. 9 crores loan floatation. Such being the case, it is obvious that a bill of Rs. 20 crores cannot be met without a further floatation of Rs. 7 crores. At present, I am not able to see this money. It is, therefore, obvious that our entire approach will be to curtail expenditure as far as possible consonant with the basic fact that iron ore loading shall be done in October 1965. Other things, however, laudable and however beneficial have to wait till we find the money. Chairman, Planning Board, may see."

The Chief Minister, Shri Mitra, thereupon forwarded the file to Shri Patnaik, Chairman of Planning Board, with the observation that the latter might take a firm decision. Shri Patnaik then made the following note on the file on May 22, 1964:—

"Time has come to take up this matter squarely with Government of India and Planning Commission by personal discussion. Government of India should also be made to decide for 'take over' in 4th Plan and finance by loan the balance of our requirement during 3rd Plan, i.e., about Rs. 15.16 crores.

A clear position statement should be prepared, so that I may begin negotiations with Government of India and Planning Commission soon. Additional Secretary may discuss quickly."

A loan of Rs. 15.69 crores was thereafter granted by the Central Government for the Paradeep Port. On May 31, 1965 revised administrative approval of the Government was accorded for the Paradeep Port Project at an estimated cost of Rs. 19,91,47,000 instead of Rs. 12,32,00,000. On June 1, 1965 the Paradeep Port Project was taken over by the Central Government.

It would appear from the above that the administrative approval, which was given by Shri Patnaik, was only with respect to the estimate of Rs. 12,32,00,000. Letter dated September 10, 1963 of Shri Gian Chand shows that the Planning Commission accepted the figure of the above estimate. Both the Chief Engineers appointed for the purpose as well as the departmental officials supported the proposal for according approval to the above figure and I find nothing improper in the order of Shri Patnaik giving that approval. Subsequently, when the Chief Engineer made two revisions of his estimate, the Additional Secretary as well as the Chief Secretary took exception to the demands made by the Chief Engineer. The Additional Secretary stressed the need of observing financial discipline to avoid a difficult situation, while the Chief Secretary observed that the Chief Engineer did not seem to realize that the money was not easy to come by. The matter appears to have been thereafter vetted at different levels and ultimately an administrative approval of Rs. 19,91,47,000 was accorded. In my opinion, no inference of impropriety can be drawn against Shri Patnaik because of the approval accorded for the revised and enhanced estimate especially when he himself did not accord it.

The next question, which arises for determination and on which arguments have been addressed, relates to the appointment of Shri Srinivasan as Chief Engineer-cum-Administrator, and the remuneration granted to him. In this respect I find that the case of the State Government is that on being approached by the said Government, the Chairman of Calcutta Port as well as another eminent Engineer suggested the name of Shri Rama Brahmam for appointment as Chief Engineer-cum-Administrator. On September 15, 1961 Shri Sivaraman, Chief Secretary, addressed a letter to Shri Khera, Secretary to Government of India, Department of Mines and Fuel, stating that the State

Government required the services of an expert Engineer to finalize the matter for the construction of Paradeep Port and the name of Shri M. Rama Brahman, then employed as Civil Engineer in the Indian Oil Refineries, Ltd., at Gouhati, had been recommended to the State Government as an expert in harbour work. Request was made to Shri Khera to agree to release Shri Rama Brahman in case he was agreeable to come over to the Project. It was also pointed out that a communication had been addressed by the Chief Minister to Shri K. D. Malaviya, Minister of Mines and Fuel, for allowing Shri Rama Brahman to come over to Orissa. A letter, it would appear, was also addressed to Shri Rama Brahman by the Chief Secretary on October 10, 1961. Shri Rama Brahman sent a reply to Shri Sivaraman stating that if his pay in the scale of Rs. 2,000—125—2,250 along with a free car and a free residence was assured and if he was also assured of full amount of pension at the time of his retirement, he would have no objection to taking over the assignment in Paradeep Port. In the mean time, on September 19, 1961, a letter was received by Shri Patnaik from Shri K. D. Malaviya stating that the Managing Director of the Indian Refineries Ltd., was not prepared to spare Shri Rama Brahman. Shri Patnaik on receipt of the above letter made a note on the margin "This looks bad. We will have to do something about it". On October 24, 1961, a letter was addressed by Shri Sivaraman, Chief Secretary, to Shri Ganapati, who, it is stated, was the ex-General Manager of Rourkela and had been associated with the construction of Kandla Port. Shri Ganapati was told that the Government of India had regretted inability to spare Shri Rama Brahman. Mentioned was made of the fact that the State Government was trying to secure the services of Shri Wadhwa, General Manager of South Eastern Railway. Shri Ganapati was also informed that the Chief Secretary would be prepared to discuss the development about Paradeep with him. Nothing, it appears, came out of the above proposals. On November 9, 1961, Shri M. S. Thinumale Iyengar addressed a letter to Shri Sivaraman, Chief Secretary. The designation of Shri Iyengar who was formerly Chief Engineer, Hirakud Dam Project as given on the letter, is as under:—

"M. S. Thinumale Iyengar, I. S. E., Adviser to Government in the Public Works Department, Additional Secretary to Government and Administrator, Sharavathi Valley Hydro-Electric Project."

In that letter Shri Iyengar stated that Shri A. Srinivasan would be most suitable for expeditious execution of the Paradeep Port works. It was further stated:—

“Shri A Srinivasan is now the General Manager of the Neively Lignite Corporation. He has retired from Madras service and is now on re-employment at Neively. He is drawing a salary of Rs. 2,500 a month. He was in charge of the Lower Bhavani Project. As an Executive Engineer, he completed that Rs. 10-00 Crore Project in record time independently. He is one who has the tremendous organising capacity, drive and resourcefulness that very few possess in the modern engineering India. I am sure, if he is appointed by Orissa Government, he will deliver the goods to your satisfaction and within the time specified for the work. He is willing to leave his present job if he is appointed there.”

It may be stated that Shri Srinivasan at the time the above letter was written was not the General Manager but the Deputy General Manager of Neively Lignite Corporation and his salary was Rs. 2,000. On receipt of the above letter from Shri Iyengar, Shri Sivaraman addressed a letter to Shri Srinivasan on November 17, 1961 asking the latter if he would be prepared to come and take charge of the Paradeep Port Project. A letter was also addressed by Shri Sivaraman, to Shri T. M. S. Mani, Managing Director of Neively Lignite Corporation regarding Shri Srinivasan. Shri Mani sent back the reply that Shri Srinivasan was functioning as Deputy General Manager and his services could not be spared. Shri Srinivasan in reply to the letter which has been addressed to him stated that he would be prepared to accept the assignment if his appointment was on a contract for a period of five years. Shri Srinivasan also stated that he would need a salary of Rs. 2,500 per mensem with such increments as might be deemed suitable. The salary was stated to be exclusive of pension. Besides that, Shri Srinivasan asked for rent-free quarters and vehicle for official inspection. After the receipt of the reply of Shri Srinivasan, Shri Gian Chand addressed a note to the Chief Secretary. In the course of that note Shri Gian Chand stated:—

“Considering the paucity of experienced and able engineering personnel and considering the nature and size of the work which we are going to entrust to him, I think, there is a case for agreeing to give him a monthly salary of Rs. 2,500 with provision for a rent-free house. Shri Srinivasan has asked for a contract of 5 years and has also indicated that he may be given suitable annual increment. I would propose that we may revise the scale of the post of Chief Engineer-cum-Administrator from Rs. 2,050—2,250 to Rs. 2,250—50—2,750. Orders

of Government to give the above scale may be taken after which Finance Department will be requested to concur. We may also agree to the request of Shri Srinivasan that the pension which he is drawing at present should not be deducted from his salary. As Chief Secretary knows the usual principle is when a retired Government servant is given re-employment, to fix his pay in a manner that the pay plus pension draw by him does not exceed the substantive pay last drawn by him. This Principle, however, has already been departed from in our State in a number of cases."

The matter was then referred to the Finance Department and the Secretary of that Department in the course of his note stated:—

"In the present case it appears that Shri Srinivasan is the only choice. Therefore, his pay may be fixed as proposed by P. & C. (Paradeep) Department after taking special orders of the Government."

The Chief Secretary thereafter addressed the following note to the Chief Minister on January 1, 1962:—

"Letter of Shri A. Srinivasan at p. 10/c. F. D.'s advise prepage. We may agree to a contract of 5 years at pay Rs.2,500—50—2,750 exclusive of pension and rent-free quarters. He will be given a vehicle for official use in which case of course he can draw only the usual D. A. for such journeys in Government vehicle. This officer is highly recommended and will be a definite acquisition. PSC will be consulted."

On the above note of the Chief Secretary, Shri Patnaik recorded the following order on January 1, 1962:—

"Yes. This is excellent."

When the State Public Service Commission was approached in connection with the appointment of Shri Srinivasan, the Secretary of the Commission sent the reply on August 31, 1962, that Commission considered it desirable that the post be advertised after fixing the special qualifications required for the post. On receipt of the above letter from the Public Service Commission, Shri Gian Chand addressed a note to the Chief Secretary on September 6, 1962 in the course of which it was stated:

"The Government decision has been that the post may be filled without advertisement as a man of outstanding ability and experience for the specialised job is required. It is in this context that we had written to the Public Service Commission to approve the appointment of Shri Srinivasan. It is for consideration whether now we will accept the suggestion made by the Public Service Commission and take steps to advertise the post or the above position will be once again explained to the PSC and they requested to give

their concurrence to the appointment of Shri Srinivasan. I may point out that in the case of appointment of Directors of Health Services, namely, Shri Gantayat and Shri Khuranna posts were not referred to the Commission for approval and the PSC had duly given their approval without insisting that the post should be advertised and the applications invited."

Shri Sivaraman then addressed the following note to the Chief Minister:—

"PSC in action, What should we do ?"

On September 7, 1962, Shri Patnaik made the following order:—

"PSC should be told clearly that this post will not be advertised. Government decision in this respect is final."

Shri Sivaraman was also given the benefit of Leave Rules of permanent Government servants as per order of Shri Patnaik, dated November 29, 1962.

The above resume of facts, in my opinion, goes to show that against the salary of Rs. 2,000 which Shri Srinivasan was getting as Deputy General Manager of Neively Lignite Corporation he was given a salary of Rs. 2,500 in the grade of Rs. 2,500—50—2,750 exclusive of the pension. Shri Srinivasan was also given rent-free quarters. The terms given to Shri Shrinivasan as Chief Engineer-*cum*-Administrator of Paradeep Port, in my opinion, were rather liberal. It has, however, to be borne in mind that the Orissa State Government experienced difficulty in securing services of a competent person for the post of Chief Engineer of Paradeep Port. When the name of Shri Srinivasan was suggested by Shri Iyengar for the post, the authorities in Orissa seemed to have been impressed with the competence of Shri Shrinivasan. View also seems to have been taken that in the context of the expenditure on the project which ran into Crores, the State Government should not haggle and ask for the reduction of the emoluments asked by Shri Srinivasan. Both the Joint Secretary, Commerce (Ports) as well as the Chief Secretary suggested to the Chief Minister that they should agree to the terms of appointment asked by Shri Srinivasan. The Secretary, Finance Department, also supported the suggestion. Shri Patnaik accepted the above suggestion and although a view may be taken that the above terms erred on the side of being generous, I find it difficult to draw an inference of any *mala fide* intention on the part of Shri Patnaik because of his agreeing to the suggestions of Shri Gian Chand and Shri Sivaraman regarding the acceptance of those terms. It may also be stated that the appointment of Shri Srinivasan on the above terms was also approved

by the Cabinet on May 24, 1962. So far as the Public Service Commission is concerned, the office note of Shri Gian Chand, dated September 6, 1962 shows that the Government decision was that the post should be filled without advertisement as a man of outstanding ability and experience was needed for the specialised job. The note of Shri Sivaraman of the same date shows that he was finding the Public Service Commission to be adopting an obstructionist attitude. Shri Patnaik, in the circumstances, made the order that the Public Service Commission should be told clearly that the post would not be advertised and the Government decision in this respect was final. On January 9, 1963 the Public Service Commission while pointing out that the emoluments paid to Shri Srinivasan appeared to be erring on the side of excessiveness, concurred in his appointment as Chief Engineer-cum-Administrator—Paradeep Port. Although view can be taken that the post should have been advertised, it cannot, in my opinion, be said that there was any *mala fide* intention or ulterior motive on the part of Shri Patnaik when he passed the order referred to above. There is no material on the record to show that Shri Patnaik knew Shri Srinivasan earlier than his appointment and I fail to understand as to why Shri Patnaik should have any personal interest in appointing Shri Srinivasan and giving him liberal terms.

Reference has also been made on behalf of the State Government to a note, dated May 8, 1962 of Shri Sivaraman in the course of which Shri Sivaraman stated—

“Unless we have our men the work cannot be expedited according to our intentions. With the best of intentions Government of India’s reactions are generally slow and steady. Chief Minister has already ordered that we should go ahead on our own. This is for information”.

The above note was made by the Chief Secretary Shri Sivaraman, in the context of a letter from the Government of India suggesting that the State Government might for the time being constitute a special Field Investigations Division under a suitable Executive Engineer and defer the appointment of Chief Engineer. No sinister significance, in my opinion, attaches to the words “Unless we have our men as is being made out by the State Government”, the words “our men” in the above note are used in the sense of the men appointed by the State Government as distinct from those appointed by the Central Government”.

The State Government has assailed the appointment of Rendel, Palmer and Tritton (hereinafter referred to as RPT) as consulting Engineers for Paradeep Port. In this conne-

ction I find that the name of RPT was suggested by the Chief Engineer as per letter, dated July 17, 1961 after considering the names of three concerns. The appointment of RPT was approved because in respect of this concern it was stated by the United Kingdom Trade Commissioner—

“I do not know if there is anything he (Mr. Sarginson, representative of RPT) or his organization can do at present to help things along, but if there is I am sure you could not find a better organization on which to call.”

The material on record also shows that RPT had experience of construction of important ports like Haifa and Jaffa as well as Aden Oil Port. The firm was also associated with the construction of Tikoradi harbour and the port in Sierra Leone. The firm was also advising the British Government on its Port problems in the colonies. The firm was further stated to be the Consulting Engineers for the ports of Madras and Calcutta for nearly 30 and 50 years respectively. It would further appear from the record that the above firm prepared the first Project Report of Kandla. The firm was also consulted in the matter of Haldia and was the sole consultant of the Indian Railways for a long time. There could in the circumstances be hardly any doubt regarding the competence and previous experience of the firm.

Another factor, which weighed in favour of RPT, was its attractive term in the context of foreign exchange. Although RPT was a British firm, the remuneration it asked for was mostly in terms of Indian money and the payment in terms of sterling was of a comparatively small amount as would be apparent from what follows hereafter. The reports received by the State Government from the Centre showed that in the matter of Haldia Port out of Rs. 60 lakhs provided for consultation, Rs. 50 lakhs were in the form of foreign exchange.

As regards the remuneration paid to RPT, I find that the initial idea was to pay £20,000 besides Rs. 40 lakhs in India to RPT. The Chairman of Calcutta Port Commission was then sounded regarding the terms of RPT. He suggested that the work to be entrusted to RPT should be split up. Thereafter an agreement was entered into with RPT on January 17, 1962 by the State Government agreeing to pay £10,000 in London and Rs. 5 lakhs in Delhi for the first phase of the work, and £10,000 in London and Rs. 35 lakhs in Delhi for the second phase of the work. Subsequently, some alteration was made in the second phase of the work by eliminating the supervision of

dredging from the task entrusted to RPT and the remuneration was reduced to £ 10,000 in sterlings and 22 lakhs in rupees. After having been taken through the material on record, I find no impropriety committed by Shri Patnaik in respect of appointment and remuneration of RPT as Consulting Engineers.

The State Government has also criticised the number of contracts which were entered into for the construction of Paradeep Port. One of those contracts was with Mc Nelly Bird Engineering Company Ltd. (hereinafter referred to as MBE) and the other was with Messrs. Hewitt Robins. As the two contracts relate to the supply of iron-ore handling plant and are connected with each other, the two may be taken up together. On June 28, 1962 MBE addressed a letter to Shri Gian Chand. In this letter there was a reference to the oral discussion and information was sought with respect to a number of matters regarding the ore loading system. It was also pointed out that the Engineers of MBE in Pittsburgh, Kansas (USA) were scrutinizing the matter. Shri Patnaik, it would appear, had a very high opinion of MBE at that time, because he stated, on a note put up before him on the file, that MBE were "the best people available in the country today". Direction was thereafter issued that negotiations be carried on with MBE. It was thereafter agreed that MBE should first prepare the design of the Ore Handling Plant, and for that work they would be paid Rs. 75,000. A letter was in the meantime addressed by the Chief Engineer to the Director of Engineering (Sales) of Hewitt Robins, New York, regarding the Ore Handling Plant. Both MBE as well as Hewitt Robins gave quotations for the Iron-Ore Handling Plant. Ultimately, it was found that the quotation of Hewitt Robins for the Plant was Rs. 1,25,54,131, while that of MBE was Rs. 1,75,48,496. Hewitt Robins were found to be collaborating with Tata Robins & Frazer, and it was stated that even on technical considerations their offer was more sound and sturdy. Although the offer of MBE was initially higher, when they came to know of the offer of Hewitt Robins, MBE also reduced the quotation to the same level as that of Hewitt Robins. When the above matters were brought to the notice of Shri Patnaik, he made the following order on May 8, 1963 :—

"It appears that C. E. showed Hewitt's quotations to Birds (MBE) and the latter just brought down their prices to the level of Hewitts. Obviously, Birds have very little experience

on this engineering Project and have proved unreliable although I was anxious to place orders with them as they were an Indian firm.

Since, however, Hewitts, now Tata-Robins-Frazer, another Indian firm, has also quoted with full appropriate equipment and guarantees, we should try with them first. If foreign exchange, etc., with this firm is satisfactory, I would be prepared to place order with this firm.

We would wait till 13th and then decide."

The matter was thereafter put up before the Contract Committee. The material part of the Contract Committee in this matter reads as under :—

"The Contract Committee felt that it would have been better if the normal procedure of inviting tender had been followed in this particular case as well, but in view of the specific decision of the Government to forego this procedure, and on Chief Engineer, Paradeep's assuring that the lowest of the two quotations which had been received in the matter by the Government was quite competitive, and he did not feel that there will be substantial reduction in the price if the tenders were to be called whereas, the execution of the Project will get substantially delayed thereby the Committee proceeded with the examination of the two quotations.

As the quotation of the firm Messrs. Hewitt Robins (Tata Robins and Frazer) was the lowest of the two quotations and also certified to be technically superior to the quotation submitted by Messrs Mc Nelly Bird Engineering Co. Ltd., the Committee decided that Messrs. Hewitt Robin's quotation may be accepted.

Thereafter, the Committee discussed the terms and conditions indicated by Messrs. Hewitt Robins (Tata Robins and Frazer) as part of their quotations and found them generally acceptable."

After the matter had been vetted by the Contract Committee, a contract was entered into with Hewitt Robins. In my opinion, no inference of impropriety can be drawn against Shri Patnaik because of the above contract with Hewitt Robins. The material on the record shows that Hewitt Robins and MBE were the two major suppliers of the Ore Handling Plant in collaboration with Indian concerns. As the quotation of Hewitt Robins was found to be about half a crore lower than MBE, there was nothing improper in the acceptance of the offer of Hewitt Robins. Shri Patnaik, who had initially formed the high opinion about MBE, felt no hesitation in changing his opinion regarding that concern, especially in view of the fact that MBE at first gave a much higher quotation but reduced the same considerably on coming to know of the quotation of Hewitt Robins.

Shri Patnaik, while making an order about the acceptance of the offer of Hewitt Robins directed that Rs. 75,000 on account of the drawings prepared by MBE should be paid by Hewitt Robins. This term was not incorporated in the agreement entered into with Hewitt Robins ostensibly because Messrs. Hewitt Robins were not agreeable to the payment of the above amount.

The State Government has next assailed the contracts which were placed with Seward Workshops (India) Private Ltd., Calcutta (hereinafter referred to as Seward) and East Bengal Engineering Works (hereinafter referred to as EBE) for supply of tugs and barges. In this connection I find that on March 1, 1962 Mr. Boulton, representative of Seward, met the authorities of the State Government and made an offer for supply of barges and tugs. Quotations for the barges and tugs were then invited from five firms of Calcutta and two firms of Cuttack. The Calcutta firms included Garden Reach Workshop Ltd., Hoogly Docking & Engineering Co., M. K. Shipping and Chatering Co., Cleback Boat Company and EBE, while the Cuttack firms were Modern Traders and B. K. Misra. None of the Cuttack firms made any offer, while out of the Calcutta concerns offer was initially received only from EBE. Some of the Calcutta concerns made some further enquiry. Seward too gave quotation for the barges and tugs. On comparison the quotations of Seward were found to be favourable. The note dated April 3, 1962 of Shri Gian Chand, Joint Secretary, Commerce (Ports) shows that the performance of one of the tugs manufactured by Seward had been found to be encouraging. Recommendation was, accordingly, made for placing order for four tugs and twelve steel barges with Seward. Regarding the material for the barges and tugs, it was stated, arrangement was being made with controlled stockists. The comparative rates of Seward, EBE and Garden Reach Workshop were as under :—

	For canal tugs	For canal barges
"M/s. Seward Workshop ..	Rs. 37,500	Rs. 55,000
M/s. East Bengal Engineering Works.	Rs. 73,000	Rs. 62,000
M/s. Garden Reach Workshop	Rs. 2,17,700	Rs. 1,05,600"

The recommendation of Shri Gian Chand for placing order with Seward was supported by Shri Sivaraman, Chief Secretary, and was thereafter approved by Shri Patnaik

on April 4, 1962. An agreement was entered into with Seward on June 20, 1962 for supply of four tugs at a cost of Rs. 37,500 each. Another agreement was also entered into with Seward for supply of twelve barges at a cost of Rs. 55,000 for each barge. It may be stated that the Seward had at first quoted Rs. 34,000 for a tug but later enhanced the price to Rs. 37,500. The change in the price was due to the fact that initially what was proposed to be supplied was Single Screw Tug. Later on, decision was taken to go in for a Twin Screw Tug.

There was, it would appear, some delay in the supply of tugs and barges by Seward. Shri Gian Chand accompanied by Shri Lalit, Additional Secretary of the Finance Department, and Shri Patra, State Port Engineer, then went to Calcutta. They found that the capacity of Seward was very limited. Seward was also found to have not yet started the work of construction of canal barges. The workshop of Seward was further found to be an apology for a shipyard. Compared to that, the shipyard of EBE was found to be very well equipped. An order for supply of 10 tugs and 30 barges was placed with EBE subject to the approval of the Chief Minister. The total amount required for the tugs and barges was stated to be Rs. 25 Lakhs. The proposal for grant of approval was supported by the Chief Secretary, and Shri Patnaik gave his approval on July 28, 1962.

On December 12, 1964 an intimation was received from Seward that in a suit filed against that concern by Messrs Eastern National Construction Co. Ltd., the plaintiff had claimed lien on the goods lying in the workshop of Seward. Request was made to the State Government to make a claim in respect of the material supplied by it for construction of tugs and barges. A claim was thereafter made by the State Government and litigation relating thereto is stated to be pending in the Calcutta Court.

I have given the matter my consideration and am of the opinion that Shri Patnaik cannot be held to be guilty of any impropriety in respect of the contracts with Seward and EBE. As would appear from the above, the quotation of Seward was found to be the lowest. It was also found that a tug manufactured by Seward was giving satisfactory performance. The note dated February 25, 1964 of State Port Engineer shows that two other tugs

were also supplied by Seward. In view of the above, especially the fact that the quotation of Seward was the lowest. I find no impropriety in the placing of the orders with Seward. The fact that it subsequently came to light that the workshop of Seward was not fully equipped or the fact that the material supplied to Seward was taken possession of by a Receiver in a suit filed by a third party against Seward, would not detract from the propriety of the initial contract with Seward.

As regards EBE, it is the case of the State Government itself that this firm had a high reputation for efficiency and workmanship. This firm too had quoted along with others when the quotations were initially invited for tugs and barges. It was found that the quotation of EBE was the lowest but for the Seward. In the circumstances, when it was found that Seward was not in a position to deliver the goods the question of inviting quotations over again did not arise and the order was placed with EBE. The above facts, in my opinion, indicate that the order with EBE was not tainted with any impropriety on the part of Shri Patnaik.

The State Government has next assailed the purchases of four cranes and railway material. It has not been shown that any order in respect of these purchases was made by Shri Patnaik but it is pointed out that sanction for these purchases was accorded by the State Government. So far as the purchases of four cranes is concerned, the material on record shows that they were required for the construction of break-water. A letter was addressed by Shri Srinivasan, Chief Engineer-cum-Administrator to the Ministry of Economic and Defence Co-ordination, for the purpose of the import of the cranes. On September 19, 1963 the Ministry of Economic and Defence Co-ordination sent a reply to Shri Srinivasan to the effect that 4 Nos. of 10-ton Mobile Cranes were available Indigenously with Messrs. Coles Cranes of India Ltd., Calcutta. Shri Srinivasan was advised to approach the Director-General of Supplies for the release of the same. A letter was thereafter addressed by Shri Srinivasan to Coles Cranes of India Ltd., about the cranes. A reply was received from the above Company on November 8, 1963 that the cranes were sold by the company through its distributors, and that Messrs Tractors (India) Ltd., were the distributors in the area in which Paradeep was situated.

It was also pointed out that Messrs. Tractors (India) Ltd., had already quoted to Shri Srinivasan. On January 24, 1964 Tractors (India) Ltd., gave a quotation of Rs. 1,92,000 plus Rs. 2,750, plus Rs. 275 for a crane and extra parts. The above price was mentioned to be exclusive of Excise, Countervailing Duty, Sales Tax and other taxes. On April 21, 1964 Tractors (India) Ltd., intimated that the current price of the crane was Rs. 2,01,600 instead of Rs. 1,92,000. The increase in the price of the crane was due to the fact that the rated capacity of the crane had been increased from 10 tons to 12½. On April 23, 1964 Shri Srinivasan addressed a letter to the Secretary, Department of Commerce (Ports) for approval of the Government for purchase of 4 cranes at Rs. 2,01,600 besides taxes. Approval of the State Government in terms of the above was granted as per letter dated April 30, 1964. The above resume of facts shows that there was no impropriety involved in this transaction. Shri Srinivasan wanted to import the cranes and it was under the advice of the Government of India that he approached Coles Cranes of India Ltd. and purchased the cranes from the distributor of that Company.

So far as the purchase of railway material is concerned, I find that on October 1, 1962 Shri Sivaraman addressed a letter to Shri Khandelwal, General Manager, South Eastern Railway, for supply of second-hand railway track as the same was needed for laying the track line for movement of stone from Haridaspur Quarry. On November 23, 1962 Shri Srinivasan addressed a letter to Sivaraman, the material part of which reads as under :—

"The quarrying work at Haridaspur has come to a standstill for want of track and trucks to remove the huge 8 to 10 ton stones, choking further operation in the quarry. My study of the position showed that we may not be able to get narrow gauge track from South Eastern Railway and even if we succeed in persuading the Railway to agree, it may be nearly a year or even more, before we get the required rails and track fittings.

From the open market too it may not be easy to get the track materials and even if we do succeed in getting these, I am afraid, it will be pretty long before the rails reach the site. Then we have to drill holes in the rails, a tedious long drawn out process and also obtain fish plate and other fittings to suit the rails from other agencies.

Fortunately, I came to know that Bakhtiyarpur-Rajgir Railway (narrow gauge) has been sold by the Eastern Railway to a private party M/s. Raja Singh and M. Esmailji Abdul Hussain

& Co., Bombay and that they were dismantling the track and were ready to sell the track complete. I got into touch with that firm. The managing partner met me at Bhubaneswar and wanted Rs. 750 per ton of rails delivered near Bhakhtiyarpur Railway junction, but later agreed for Rs. 700 per ton. Before entering into negotiation on rates, I wanted to inspect the condition of the rails, track, locos, etc., to make sure if it was worthwhile to go in for the purchase of these rails and fittings.

Accompanied by Shri R. C. Dehury, Executive Engineer, Haridaspur Quarry, I went to Bhakhtiyarpur on 17-11-1962 and inspected the track, fittings, wagons and locos. They have stacked near the station about 400 tons each of 30' Lbs. and 35 Lbs. rails. They are quite good, as good as new. I then went along the track for over 2 miles and found the track extremely good. They are dismantling the track from Rajgir end. My inspection showed that it would be worthwhile to go in for the purchase of the track, as we will be getting the track with fittings complete."

As regards the sale price, it was stated in the letter that the firm after haggling had given its rock bottom prices, the details of which were reproduced in the letter. It was also pointed out that there was a heavy demand for this track from other projects and mines, and as such quick decision was necessary in the matter. On November 8, 1962 Shri Srinivasan addressed a letter to the Controller of Iron & Steel stating that the proposal was afoot to purchase second-hand rail track for which the seller was demanding Rs. 700 per ton. The Controller of Iron & Steel was requested to intimate whether the rate was reasonable. A reply was thereafter received on November 20, 1962 that the price control on used industrial scrap had been withdrawn with effect from August 28, 1962 and there was no controlled rate for the second-hand rails. The price of second-hand rails per ton as claimed by the supplier seemed to be on the high side as against the first class heavy rails of Rs. 665 per metric ton. Shri Srinivasan thereafter addressed a letter to Shri Sivaraman wherein he referred to the letter from the Controller of Iron & Steel, and stated—

"It will be seen from his letter that a rate of Rs. 665 per metric ton is reasonable. A rate of Rs. 665 per metric ton is equal to Rs. 675.55 nP. for the long ton of 2240 Lbs. This rate is for rails of all lengths and these will need further work on them in the workshop before they could be laid as track. We have to remember that the rails we are getting are fabricated ones, i. e., they have the holes drilled in them for taking in Fish Plates and are fit for the immediate laying of the track. Much so, I find that the rate I have been able to negotiate is reasonable."

The State Government thereafter accorded sanction for the purchase of the railway material at the rate negotiated by Shri Srinivasan.

No impropriety, in my opinion, can be attributed to the State Government because of its according the sanction to the purchase of the railway material in question. As would appear from the above, the railway material was urgently needed because the work at Haridaspur Quarry had come to a standstill on account of the difficulty to move heavy stones. The material on record also shows that the difficulty was being experienced in procuring second-hand railway track. There was not much difference between the negotiated price and the price expressed to be reasonable by the Controller of Iron & Steel. Another advantage in purchasing the rails for which Shri Srinivasan had negotiated was that they were already fabricated had holes in them and were fit for immediate laying of the track. The State Government, in the circumstances, thought it fit to grant the sanction asked for. I find nothing objectionable in the order of the State Government in this respect.

Arguments have also been addressed on behalf of the State Government in respect of the cost of construction of Atharbanki bridge, shortage and clotting of cement, and about the cost of construction of temporary houses. It would appear that the facts about these matters came to light when an article by Shri Nishamani Khuntia was published in the Eastern Times dated June 18, 1964. A report was thereafter called by the State Government from the Chief Engineer on June 22, 1964. The report was, thereafter, sent by the Chief Engineer.

So far as the cost of construction of Atharbanki bridge is concerned, the case of the State Government is that it came to Rs. 23,822 per rft. as against the cost of Rs. 3,500 per rft., for nearby Mahanadi bridge as pointed out in the letter, dated March 7, 1966 of the Deputy Accountant-General. The explanation of Shri Srinivasan about the high cost of construction of Atharbanki bridge was—

“The doubts and suspicions are aired by those who forget that the Atharbanki bridge site was not approachable except after a boat travel of 13 miles from Paradeep lock, which itself was connected by very poor roads. Every bit of building material, sand, stone, concrete and steel had to be taken by lorries to Paradeep lock and unloaded in a very cramped areas. Then these were led by head load and loaded into the boats standing

beyond the lock. These boats were then rowed through the mouth of the Mahanadi to the Atharbanki creek and then along the creek to the bridge site. The road and the bridge which are now seen were not there at the time of construction in May, 1963. Even water for concrete masonry and curing of the same, not to speak of drinking water required by the labour, had to be brought in drums or tanks mounted on boats from the Taldanda canal. These facts are now forgotten and a yardstick of cost of bridge per running foot for places easier of approach is used to compare the cost of a bridge in an out of the place and run the work down".

As regards the loss and damage of cement bags, Shri Srinivasan stated that in September, 1963 during one of his inspection he found that the Executive Engineer in charge of Central Stores had not bestowed the required care and attention on the transport and storing of cement. The Executive Engineer had also allowed the cement to lie in the railway goods yard on the plea that Cuttack-Kujang road was cut-off for repairs. The Executive Engineer was further found to have allowed the transport contractors to remove the cement at their convenience. Shri Srinivasan took the Executive Engineer to task and finding that his actions were not in accordance with the rules Shri Srinivasan got him replaced by another Executive Engineer with instructions to verify stock of cement. The matter was thereafter investigated by the Deputy Chief Engineer in collaboration with the Deputy Superintendent of Police of Vigilance Department. According to Shri Srinivasan, 2103 bags were found to be missing and 3,000 bags of cement were found to have become clotted. As against that, the Vigilance officials found that the loss was to the extent of 10,000 bags of cement.

As regards the construction of the temporary houses, a note dated June 30, 1964 of the Chief Secretary shows that the cost of residential houses came to as much as Rs. 30 per Sq. Ft., for office and staff accommodation it was Rs. 20 per Sq. Ft., and for the labour colony it was Rs. 13.8 per Sq. Ft. The Chief Engineer in reply stated that the brick cost at the port site was Rs. 150 per thousand and attempts to get them cheaper had proved unsuccessful. He further stated that the buildings were so far incomplete and the average cost would be within the sanctioned limit.

In respect of the above three matters, viz., those relating to Atharbanki bridge, loss of cement and construction of temporary houses, no order is shown to have been made by Shri Patnaik. It may be that there were some lapses on the

part of the officials and they were guilty of misconduct or impropriety, but the liability for the same cannot be fastened on Shri Patnaik. There is nothing to show that Shri Patnaik was acting in league with those officials, and, in my opinion Shri Patnaik cannot be held to be guilty of any impropriety on that account.

Reference on behalf of the State Government has also been made to the damage suffered by the break-water during the storms near about the beginning of August, 1964. The break-water was thereafter inspected by Mr. C. A. Peterson, representative of RPT, during the days from 24th to 26th August, 1964. It was then reported that despite the severity of the storm the damage was relatively slight. Mr. Paterson then made some suggestions for improvement.

It is, in my view, difficult to hold Shri Patnaik guilty of any impropriety because of the damage to the break-water. There is nothing to show that Shri Patnaik gave any direction about the design of the break-water and this fact resulted in a defect in the construction. In a matter of this type the Government has necessarily to depend upon the opinion of the experts and even if there is a lapse on their part, a Minister cannot be held to be guilty of misconduct simply on that account. Apart from the above, I find that no order is shown to have been made by Shri Patnaik regarding the break-water.

I, therefore, find that in none of the matters, which have been discussed above, has the charge of impropriety been proved against Shri Patnaik.

So far as the purchase of trusses for Paradeep Port is concerned, the same has been dealt with in allegation No. 2.

Accompanied by the parties counsel I visited on October 19, 1968 the Paradeep Port. It has struck me to be a stupendous task to convert the arid and dreary region adjoining the estuary of Mahanadi into a township with life humming for the building of a major port on the coastline of Orissa. It speaks for the initiative and spirit of enterprise of Shri Patnaik that he undertook to translate into living reality the idea of port at Paradeep in spite of the financial difficulties and the comparative economic backwardness of Orissa. Paradeep is intended to be one of the deepest sea ports of the country. The draught was initially 42 feet, but I have been given to understand that because of the process of dredging being insufficient and not commensurate

with the needs of the Port, the drought was reduced to 28 feet. The lack of sufficient dredging facility resulted in a heavy back log and accumulation of silt, thus reducing the harbour depth and also constructing the approach channel. The dredging has since been intensified. Two dredgers, Konaik, belonging to Paradeep Port authorities, and Mohana, lent by Calcutta Port Trust authorities, were at work and the drought was stated to be 33 feet at the time of my visit. The position was expected to improve further with the digging of sand trap wells (for which a Yugoslav team is at work) and more dredging. At present the Port has only one berth which is mainly used for loading iron ore. It has been stated that the Central Government is now contemplating to connect Paradeep Port by rail and to construct another berth which can be used for loading and unloading cargo other than iron ore. The rail link and the construction of the second berth are expected to be completed by 1971. This gives great hope for the future and though much remains to be done, the impression I have gathered of the place is that a Project has been set going which is bound to play a vital role in the future prosperity of Orissa.

The notings on the official files show that Shri Patnaik was associated with the major decisions taken in respect of the construction of the Port. Shri Patnaik was in the picture when the Chief Engineer was selected or when the selection was made of RPT as consulting engineers as also when a major contract like those with Hewitt Robins were entered into. The State Government draws a sinister inference from the above and it is urged on its behalf that Shri Patnaik wanted to make underhand money out of all this. There is no cogent evidence justifying such an inference, and I have not been able to accept the stand of the State Government in this respect. My own view of the matter is that as Paradeep Port was to some extent a creation of Shri Patnaik, he took keen interest in the various matters relating thereto and as such came into the picture when the major decisions in respect of the Port were taken. It was also necessary to obtain the orders of Shri Patnaik as Chief Minister and the Minister in charge of the Finance and Ports. The notings on the file show that Shri Patnaik did not shirk a decision when a matter was put up before him but passed orders in respect thereof with firmness and without equivocation. As a result thereof, procrastination was avoided and the things were speeded up.

There is, however, one aspect of the matter to which reference should be made. According to the affidavit of Shri Patnaik, the job of the construction of Paradeep Port was placed on war-footing and normal administrative and financial rules and regulations were suspended in the interest of work. In this respect I am of the view that the administrative and financial rules are designed to protect public money. They provide for checks and counter-checks, sanctions and other formalities to ensure that there is no wastage or misappropriation of public funds. Sometimes the rules are found to be irksome to the quick implementation of a Project but we have to put up with this irritating inconvenience in the larger interests of financial discipline. In case the administration finds a particular rule or set of rules to be obstructive or hampering the quick execution of essential works of urgent nature. It is always open to the authorities concerned to take step for the modification or amendment of rules. But as long as the rules are there, they have to be obeyed and complied with, and no one has any right to by-pass them or to act in their defiance. If a Chief Minister or any one else in charge of the administration says that administrative and financial rules might be kept in abeyance, he creates a climate of financial indiscipline of which the conditions in the country being what they are, some officials are bound to take advantage and this must necessarily result in extravagance, wastage and misappropriation. Shri Patnaik should not have been obvious of this aspect of the matter. According to Shri Patnaik the administrative and financial rules were suspended because he wanted the project to be completed within the scheduled time. This may be so. The material on the record shows that a target date of October, 1965 had been fixed for the completion of the work. This fact, however, did not justify the non-compliance with the rules, as it was bound to create a climate of financial indiscipline which Orissa with its meagre economic resources could ill-afford. I would, therefore, hold that the above direction about the suspension of administrative and financial rules, to which there is a reference in the affidavit of Shri Patnaik, was indiscreet and the result of misguided zeal. The one redeeming feature, however, is that no such direction was issued in writing and there is nothing on the official files making mention of such a direction. It would further appear from the affidavit of Shri Patnaik that though he gave the above direction he also insisted that the official concerned should keep within the estimates.

Nothing has been pointed against Shri Mitra at the time of arguments. I would, therefore, hold that the charge of impropriety levelled against him is wholly without any basis.

My findings in respect of the various matters agitated in this allegation are as under:—

- (1) Shri Patnaik converted the idea of Paradeep Port, which had been lying in cold storage, into a living reality. The Port is bound to prove a boon for the people of Orissa in the long run and its construction speaks for the foresight, initiative and drive of Shri Patnaik.
- (2) The charge of impropriety in respect of the various matters discussed in this allegation has not been proved against Shri Patnaik.
- (3) Although there is no order on the official file to that effect, according to Shri Patnaik the normal administrative and financial rules were directed to be suspended for the completion of the Port Project within the scheduled time. This was indiscreet and was bound to create a climate of financial indiscipline.
- (4) Nothing has been brought out to show any act of impropriety by Shri Mitra.

CHAPTER 24

ALLEGATION No. 24

Re :

Stamp Duty of Rs. 97,000 on a deed in respect of a guarantee

Allegation No. 24 relates to stamp duty of Rs. 97,000 payable on a tripartite agreement, which was in the nature of a mortgage, between Kalinga Tubes Limited, Industrial Financial Corporation of India (hereinafter to be referred as IFC) and the Government of Orissa in connection with the guarantee given by the State Government for benefit of Kalinga Tubes. The respondents named in this allegation are Shri Patnaik and Shri Mitra.

According to the case set up by the State Government in the particulars of allegation, the State Government had stood guarantee for debenture loan of Rs. 16 lakhs in 1952 and of Rs. 20 lakhs in 1954, which had been advanced by Indian Mutual Life Insurance Ltd., Madras to Kalinga Tubes Limited. Shri Patnaik and the members of his family had substantial interest in the Kalinga Tubes Ltd., and the State Government stood guarantee on the application filed by Shri Patnaik as Director of Kalinga Tubes. Kalinga Tubes decided to raise a further loan from the IFC and the State Government agreed to stand guarantee for this loan. The IFC wanted to become the sole trustee for the debentures and for this purpose it became necessary to liquidate the loan of the Life Insurance Corporation of India, which had by this time taken over the business of the above mentioned Insurance Company. Accordingly, it was agreed that the IFC would make a total investment of Rs. 97 lakhs out of which the amount due to the Life Insurance Corporation of India was to be paid off. A deed of guarantee was executed by the State Government in favour of IFC for the said sum of Rs. 97 lakhs. In addition to this a tripartite agreement, which was in the nature of a mortgage, had to be executed between the IFC the Kalinga Tubes Ltd., and the State Government. A clause was inserted in the draft tripartite agreement that the State Government would bear the stamp duty payable on the tripartite agreement. The agreement was approved by Shri Patnaik as Chief Minister and Minister of Industries on December 25, 1961. The Finance Department, it is stated, was not consulted even

though stamp duty is a subject relating to that department. The Legal Remembrancer made a note that the State Government was interested in the matter only as a guarantor and it was for the administrative department to consider as to whether the State Government would take the responsibility for the stamp duty.

According further to the State Government as it had taken upon itself the liability for payment of the stamp duty, the IFC wanted adjudication by the Collector of the document under section 31 of the Indian Stamp Act and necessary endorsement of certificate thereon under section 32 of the Act. The Kalinga Tubes Ltd., moved the Collector for the purpose and the Industries Department informed the District Sub-Registrar, Cuttack, that the Government was pleased to decide that the document in question would be exempted from stamp duty under section 3 of the Indian Stamp Act. On adjudication proceedings, the Collector held that exemption under section 3 of the Indian Stamp Act was not applicable and the State Government had to actually pay the stamp duty. The order of the Collector was upheld by the Board of Revenue to which Board the matter was referred. The Board also held that the document being a mortgage-deed was chargeable with stamp duty in accordance with Article 40 of Schedule 1 of the Stamp Act.

After the decision of the Board of Revenue, it is stated steps were taken to take advance from the contingency fund for payment of stamp duty. Ultimately, a notification, dated August 31, 1963, under section 9 of the Stamp Act, was issued with the approval of the Chief Minister to include documents of the nature in question in the list of documents on which stamp duty was remitted. The stamp duty of Rs. 97,000 was accordingly not paid.

It is further stated that there were no compelling circumstances justifying exemption from payment of the above stamp duty.

The State Government infers from the above, that Shri Patnaik committed breach of trust in respect of the amount of Rs. 97,000. Both Shri Patnaik and Shri Mitra are stated to have done a corrupt and improper act in the interest of the concern of Shri Patnaik and his relations.

In support of the above allegation, the State Government has filed the affidavits of Shri Muralidhar Pehura, Under-Secretary, Industries Department and Inspector Mohd. Haroonal Rashid.

Shri Patnaik in the course of his affidavit has stated that it was the policy of the State Government, even prior to 1961, to exempt all deeds and documents in connection with the assistance obtained by the Companies under the State Aid to Industries Act from payment of stamp duty. In almost all deeds of this nature, a clause was inserted whereby the State Government undertook to pay the stamp duty and thereby obtain an exemption for payment of stamp duty. Reference in this connection has been made to an official note, dated December 24, 1959, in connection with the aid to Kalinga Tubes and to the deed, dated February 6, 1960. It is further stated that when a draft of the deed, which is a subject matter of the allegation, was referred to the Law Department in March 1961, it contained a clause that the Government of Orissa would bear the stamp duty and registration charges. Although the Law Department corrected a portion of that clause it did not touch the portion relating to the payment of the stamp duty.

Shri Mitra in the course of the affidavit has denied the correctness of the allegation and insinuation made against him.

Shri R. Venkataraman, Secretary of Kalinga Tubes Ltd. too has filed his affidavit in respect of this allegation.

The charge contained in this allegation, in my opinion, has not been substantiated. The affidavit of Shri Patnaik shows that it has been the policy of the State Government even prior to 1961 to exempt all deeds and documents in connection with the assistance obtained by Companies under State Aid to Industries Act from payment of stamp duty. That such was the policy would also appear from the office note dated December 16, 1961. At the time when an earlier deed in respect of the guarantee given by the State Government for the raising of loan by Kalinga Tubes was to be executed, the following note was made on the official file on December 24, 1959 :—

“ This deed may provide a suitable clause to the effect that the Government will bear the stamp duty in order to save the Company from paying a huge amount as stamp duty on loan required specifically for acquisition of capital assets.”

A deed of guarantee regarding the payment of loan of 97 lakhs was executed by the Secretary of Industries Department on behalf of the Governor of Orissa and Shri Patnaik as

Managing Director of Kalinga Tubes on February 6, 1960. Clause 23 of the deed was to the following effect :—

“ The stamp duty on these presents as also on any deed or deeds of guarantee that may be executed under the terms hereof shall also be paid by the Government”.

Although the words of the above clause refer to ‘ deed or deeds of guarantee ’ the clause is indicative of the intention and agreement of the parties that it shall be the State Government which shall pay the stamp duty on the deed or deeds to be executed as a result of the guarantee given by the State Government. The tripartite deed of mortgage, which was executed by the State Government, the I. F. C. and Kalinga Tubes, was in pursuance of the guarantee of Rs. 97 lakhs given by the State Government as embodied in the deed of February 6, 1960. A draft of the mortgage deed was prepared and according to sub-clause (19) of clause 6 of that deed, “ the stamp duty on these presents and fees payable for registration of these presents shall be paid by the Government of Orissa”. The draft was sent by the I. F. C. to Orissa Government on February 8, 1961 more than four months before Shri Patnaik assumed office. The mortgage deed, which was ultimately executed, was in accordance with that draft. It would, therefore, appear that the clause in the mortgage deed about the payment of stamp duty and registration charges was in pursuance of an earlier agreement of the parties long before Shri Patnaik became Chief Minister. Shri Patnaik cannot consequently be said to have conferred undue favour on Kalinga Tubes in the matter of the payment of the stamp duty after assuming office of the Chief Minister. The object of the notification under section 9 of the Indian Stamp Act was not to favour Kalinga Tubes but to relieve the State Government of the liability, it had undertaken, to pay stamp duty. I therefore, hold that the charge of impropriety in respect of this allegation has not been proved.

CHAPTER 25

ALLEGATION No. 25

Re :

Business of Orissa Saw Mill and the alleged encroachment upon Government Land

Allegation No. 25 relates to the business of Orissa Saw Mill and the alleged encroachment upon the Government land. The respondents named in the allegation are Shri Patnaik and Shri Mitra.

According to the case set up by the Government in the particulars of allegations, the Ministry headed by Shri Patnaik came into power on June 23, 1961. Shri Mitra was then appointed Deputy Chief Minister. Shri Patnaik and Shri Mitra are close associates and according to Shri Patnaik he had put Shri Mitra into business. The concern "Orissa Agents" belongs to Shri Mitra and its business was carried on by him in the name of his wife Shrimati Easwamma Mitra. Orissa Agents started functioning about one or two years before Shri Mitra became Minister and became agent of several concerns like Kalinga Tubes Ltd., and Kalinga Industries Ltd., wherein Shri Patnaik was interested. Orissa Agents also did the business of timber but it had no Saw Mill of its own and had consequently to get its logs sawn by others on payment of sawing charges. Orissa Agents, accordingly started a Saw Mill of its own on Taldanda Canal Bridge at Jobra in Cuttack and applied for power installation for the Saw Mill in December, 1962. The Saw Mill was named as "Orissa Agents Saw Mill". Security money was deposited by Orissa Agents in this connection.

By April 1963, it is stated, allegations against Shri Patnaik and Shri Mitra and against their concerns had become a public scandal. A clever device was manipulated in April, 1963 to show that Orissa Agents were not associated with the Saw Mill. The Saw Mill was made to run under a different name, i.e., "Orissa Saw Mill". Shri S. C. Bose, Shri Rathindranath Mitra, Shrimati Krishna Mitra and Shrimati Nurun Nisha were shown to be the partners of Orissa Saw Mill. Shri Rathindranath Mitra is a close relation of Shri Biren Mitra and Shrimati Krishna Mitra is his cousin's wife. Shrimati Nurun Nisha was the wife of Shri Kefaitulla, who was Manager of Orissa Agents and who claimed to be the Private Secretary to Shri Mitra. The original security deposit by Orissa Agents for power installation was then

withdrawn and in place of that Shri S. C. Bose deposited the security money. Application was presented to the Municipal Committee, Cuttack in December 1962 on behalf of Orissa Saw Mill for sanction of a plan for construction of the mill premises and for other incidental purposes. Another application was filed before Municipal Committee, Cuttack in January 1963 with no objection certificate by Orissa Agents. Though the licence for the Mill was obtained under the Factories Act in August 1963, the record disclose that the factory did a booming business at the time Shri Patnaik and Shri Mitra came into power. According to the State Government, even after the change of the name of the Saw Mill, it was managed and controlled completely by Shri Mitra.

It is further stated that the area measuring about one acre occupied by the Orissa Saw Mill belongs to the Government and both the Department of Irrigation and the Department of Works were equally interested therein for the purpose of the supervision at Government level. As the Saw Mill was in unauthorised occupation for a long time and there was public criticism, cases under the Prevention of Land Encroachment Act were started for the ejectment of persons in unlawful occupation. Shri Mitra, however, got the cases stayed by his influence and interference. Permanent structures are stated to have been constructed on the site, and the Municipal Committee sanctioned the Plan without scrutiny and enquiry. The Department of Industry also made no enquiry about the ownership of the site while granting licence under the Factories Act. The same was the attitude of the Electricity Department while granting permission for supply of power connection.

The State Government concludes from the above that undue influence was exercised by Shri Patnaik and Shri Mitra and they were guilty of malfeasance, misfeasance and administrative impropriety in respect of properties of the State with a view to further the interest of themselves and persons in whom they were interested. They are also said to have interfered with the course of administration of justice.

In support of the above allegation the State Government has filed the affidavit of Inspector Hemkanta Sahu (Vigilance).

Shri Patnaik in the course of his affidavit has denied the allegation made by the State Government. According to him, encroachment of Government land by Shri K. C. Bose dated back to 1952. As soon as the matter was brought to the notice of the authorities, the Department concerned initiated necessary action in the matter. According further to Shri Patnaik, it is not clear as to how he comes into the picture.

Shri Mitra in the course of his affidavit has likewise denied the allegations made by the State Government. According to him, he was never put into any business by either Shri Patnaik or by any one else. Orissa Agents is said to have belonged to the wife of Shri Mitra and not to him. Shri Mitra denies having ever owned or managed or controlled any Saw Mill. He asserts that he did not show any favouritism either to Orissa Agents or to Orissa Saw Mills. It is also stated by Shri Mitra that he is not even aware of the various facts stated in the allegations regarding the affairs of Orissa Agents or Orissa Saw Mills as he was never involved in the affairs of either of them. As regards the alleged encroachments of Government land, it is stated, that the Revenue Department requested the Divisional Commissioner on November 7, 1963 to take immediate necessary action to prevent unauthorised occupation of the Government land. It was also decided that the case would be pursued till the site was vacated. As regards the actual occupant, it is stated that according to the Government admission Shri Bose came into occupation of this land under a lease granted to him on 1948-49. Thereafter, it appears, he continues to hold the land. No case was started against him till March 21, 1964. Shri Mitra denies having used any influence in the matter.

Shri S. C. Bose too has filed his affidavit in respect of this allegation. Agreement dated August 4, 1962 which was entered into by him with Shrimati Easwaramma Mitra, was summoned from him. A copy of that agreement has been retained on the file and has been marked GW. 2/1.

The charge contained in this allegation, in my opinion, has not been substantiated. According to the affidavit, filed on behalf of the State Government, Plot No. 253 measuring one acre was leased out to Shri S. C. Bose for installation of a Stone Crushing machine at an annual rent of Rs. 350 from the year 1948-49. Shri Bose then constructed a temporary shed over the Plot. The lease was renewed from time to time and it expired on March 31, 1952, after which date it was not renewed. In 1952 Shri Bose was asked to relinquish the land for widening of canal bank road but he did not surrender possession despite a number of reminders and notices issued to him. The above plot in occupation of Shri Bose was in the vicinity of Timber Mart of Orissa Agents. The agreement, copy of which is GW. 2/1, shows that as Shri S. C. Bose intended to start a Saw Mill on that plot and as Orissa Agents wanted to make arrangement for the sawing of timber for its Timber Mart, agreement dated August 4, 1962 was entered into by Shrimati Easwaramma Mitra and

Shri Bose about the advance of Rs. 1 lakh by Shrimati Easwaramma Mitra for purchase of machineries and erection of Saw Mill and about the sawing of timber in that Saw Mill. There is nothing on the record to indicate that Shri or Shrimati Mitra were aware of the fact at the time the above agreement was entered into, that the possession of Shri Bose on the Plot was unlawful. The plan to set-up Orissa Agents Saw Mill on the Plot in question was subsequently abandoned and another Saw Mill, under the name and style of Orissa Saw Mills, was installed on the Plot.

The gravamen of the charge levelled against Shri Mitra is that he used his influence to help Shri Bose for keeping unlawful possession of the Plot. There is no evidence in support of this charge. It is not shown that Shri Mitra passed any order or gave any oral direction in this respect. Shri Bose, as would appear from the above, was in unlawful occupation of the plot for more than nine years before the Ministry headed by Shri Patnaik came into power. Although notices are stated to have been issued to him to vacate the plot, no legal proceedings were taken to evict him. When the unlawful possession of Shri Bose came to the notice of the Revenue Department of the Government in October 1963, in the context of a proposal made by the Executive Engineer for the transfer of the Plot to Shri Bose for Rs. 1,65,000, a direction was issued to the Revenue Commissioner to take legal steps for the eviction of Shri Bose. A case was thereafter started on March 21, 1964 under the Orissa Prevention of Land Encroachment Act against Shri Bose and on October 14, 1965 an order was made for the removal of the encroachment. Shri Bose filed an appeal against that order on February 23, 1966 and obtained a stay order. The appeal was stated to be still pending when affidavits on behalf of the State Government, during the proceedings before this Commission, were filed. It would, therefore, follow that though no steps were taken for the eviction of Shri Bose in spite of his unlawful possession for a number of years before the coming into power of Shri Mitra, legal proceedings against Shri Bose were started and an order for his eviction was obtained after Shri Mitra became the Chief Minister of Orissa. These facts, in my opinion, militate against the inference that Shri Mitra was helping Shri Bose to retain unlawful possession of the plot in question.

So far as Shri Patnaik is concerned, nothing has been brought out against him in this allegation.

I, therefore, hold that the charge contained in this allegation has not been proved.

CHAPTER 26

ALLEGATION No. 26

Re :

Water-supply in Bolangir Town

Allegation No. 26 relates to the water-supply in Bolangir town and the respondents named in the allegation are Shri Patnaik and Shri Mitra.

According to the case set up in the particulars of allegation proposals for laying down water pipes in Bolangir town started in 1958. Further proposals and counter-proposals were made and it was finally decided that Bolangir Water-supply Scheme should form a part of the National Water-supply Scheme, the estimated cost of which was Rs. 32.89 lakhs, out of which two-third was to be given by the Central Government as grant and the balance one-third was to be treated as loan to the Municipality to be repaid by it. No detailed plans or estimates were, however, prepared till 1961-62. In 1962, the State Government sanctioned Rs. 2 lakhs for urban water-supply but nothing substantial was done till April 1963. Shri Patnaik was to visit Bolangir on April 15, 1963 to open a new railway line. The Executive Engineer, Sambalpur Public Works Division, then wrote to the Collector, Bolangir that in connection with the arrival of Chief Minister on April 15, 1963, it was proposed to supply water to the Basti area Bolangir from the nearby Karangakata Tank as a temporary measure. Pipes were laid and water was supplied on April 14, 1963. As the water was unfit for consumption, the Executive Engineer directed the stoppage of the water-supply. The water was accordingly stopped on April 20, 1963 when the pipe-lines were taken out. The State Government alleges that this must have been under the instructions of Shri Patnaik with the sole motive of securing for himself as well as the Congress Party a political benefit.

It is further alleged that in 1963 there was some agitation in Bolangir for water-supply for the town. In the Municipal elections the candidates set-up by the Congress Party had come-out successful in Ward Nos. 1, 10 and 11 only in Bolangir town. There was considerable gap between these Wards. On April 11, 1964, when Shri Mitra was the Chief Minister communication was addressed by the Chief Engineer, Public Health Department to the Executive Engineer to the effect that it had come to the notice of the Chief Minister

that water-supply in Ward Nos. 1, 10 and 11 had not been effected. Direction was given that pipe line should immediately be laid and the task be completed within the month. No other ward in the town had by that time received water-supply. Water was accordingly supplied to Ward Nos. 1, 10 and 11 only, whereas no water was supplied to the other wards. The State Government asserts that this was done apparently with a view to further the interest of the Congress Party.

In support of the above allegation, the State Government has relied upon the affidavit of Shri Raghunath Mohapatra, Under-Secretary, Department of Urban Development.

Shri Patnaik in the course of his affidavit has denied the correctness of the allegations made against him. According to him the withdrawal of Public Utility Services even for a good and justifiable cause is bound to result in adverse public criticism and in the circumstances the motive attributed to the act of providing temporary water-supply to Basti area does not stand to reason. The real reason for the discontinuation of the temporary water-supply was the discovery that water was unfit for consumption. Another reason was that the people of the locality were damaging the pipe lines by making holes in them with nails and it was apprehended by the people of the town that the tank, which was the source of the water, might dry up. It is further stated by Shri Patnaik that it appears that some over-enthusiastic officers wanted to get the water-supply scheme commissioned ahead of schedule and arranged for temporary water-supply from the Karangkata Tank on 14th April, with a view to continue the same till the main line for permanent water-supply from the Ranisagar Tank was laid. Due to some unforeseen difficulties, they had disconnect the temporary line on the 20th April, 1963.

Shri Mitra, too, in the course of his affidavit has denied the charges levelled against him in this allegation. According to him he has not done any act of impropriety with the motive of benefiting the Congress Party, as alleged.

Supplementary affidavits in respect of this allegation have been filed by Shri Raghunath Mohapatra on behalf of the State Government and Shri Mitra.

This allegation, as would appear from the above, consists of two parts, one relating to the temporary supply of water from Karangkata Tank in April, 1963; and the second

relating to the supply of water in Ward Nos. 1, 10 and 11 of Bolangir town in April, 1964.

So far as the first part of the allegation is concerned, it has been stated by the learned counsel for the State Government that it had been proposed to make permanent arrangement for supply of water to Bolangir from Sukhtel river. As the completion of the permanent arrangement was to take time, there was also a proposal for semi permanent arrangement for supply of water from Ranisagar Tank by the end of May, 1963. On May 10, 1963 the Executive Engineer, Sambalpur P. H. Division, addressed the following letter to the Collector.—

“ The original proposal to effect temporary water-supply to Town was from Ranisagar Tank and it was proposed to effect water-supply by end of May, 1963.

Since due to arrival of the Chief Minister on 15th April, 1963 for opening of the railway line, it was proposed to effect water-supply to the Basti area from the nearby Karangkata Tank. This arrangement of temporary water-supply was to continue till our permanent water-supply main from Ranisagar Tank is laid which is in progress and this temporary arrangement was done in consultation with the Chairman, Bolangir Municipality. But now the Executive Officer has written a letter (copy enclosed) not to pump water from the said tank. Moreover, the people of the locality are damaging the pipe line by making holes in the pipe line with nails and damaging the joints, as the line laid almost over ground. So, as per the instruction of the Executive Officer, Bolangir Municipality, the water-supply has been stopped since 20th April, 1963 with the reasons that the tank is getting dried. But we were pumping only about 2,000 gallons, i.e., about 300 cft. and thereby the water level will not go down more than $\frac{1}{4}$ th of an inch ”.

It would appear from the above letter that it was a decision of the local officials to effect water-supply to Basti area from Karangkata Tank on the occasion of the visit of the Chief Minister on April 15, 1963 for opening of the railway line. This arrangement was to continue till the completion of the steps for getting water from Ranisagar Tank. Subsequently, when people of the locality started damaging the joint and the pipe line by making holes and also complaints were received that the Karangkata Tank would dry up, the temporary water-supply from that tank was stopped. There is nothing to show that Shri Patnaik issued any direction for effecting temporary water from Karangkata Tank at the time of his visit, and I fail to understand as to how any charge of impropriety can be levelled against him on that account. I would, therefore, hold that so far as the charge contained in the first part of the allegation is concerned, it has not been proved.

Coming to the second part of the allegation, I find that the material on record shows that in the election to the Municipal Committee, Bolangir. Congress candidates were elected from three wards Nos. 1, 10 and 11 while candidates belonging to Swatantra Party were returned from nine wards. On April 11, 1964, the following letter was issued by the Chief Engineer, Public Health, to the Executive Engineer :—

“ It has come to the notice of the Chief Minister of Orissa that water-supply in wards, namely, 1, 10 and 11 has not been effected in Bolangir Town. Immediately laying of pipe line should be taken up and stand-posts provided in these wards. It seems that the Hospital is in one of these wards where water-supply has not been given. The matter is very urgent and Chief Minister desires that the work should be completed quickly preferably within a week's time.

Please intimate the action taken in the matter and report about progress after a week ”.

Shri Mitra, it would appear, decided to go to Bolangir on April 20, 1964 in connection with a Zonal Conference. Subsequently the programme was changed and he did not visit that town. On April 15, 1964 a letter was addressed by the Chief Engineer to the Superintending Engineer stating, *inter alia* :—

“ The pipe line previously ordered to be laid in Block Nos. 1, 10 and 11 should also be sufficiently progressed before the Chief Minister's arrival at Bolangir. Please make immediate arrangements and see that the works are started immediately if not done ”.

A progress report dated April 25, 1964 about the work in respect of the water connection was sent by the Sectional Officer to the Superintending Engineer. The material part of it reads as under :—

- “ (2) In ward No. 1, 500 Rft. of pipe line trenches excavated. Pipes not laid. The proposal was to lay 2,000 Rft. of 3" C. I. line. Now the work has been stopped due to non-availability of materials.
- (3) In ward No. 10, 2,000 Rft. of 4" pipe line work completed. The rest 500 Rft. of work not yet started. The proposal was to lay 2,000 Rft. of 4" C. I. line and 500 Rft. of 3" C. I. line. The work is in progress.
- (4) In ward No. 11, 1,400 Rft. 6" C. I. line have been laid. The proposal was to lay 3,500 Rft. of 6" C. I. line and 2,000 Rft. of 4" C. I. line. The work is in progress.”

It has been argued on behalf of the State Government that the order of Shri Mitra for water-supply in the three wards in Bolangir from which Congress candidates had been elected was discriminatory and based on partisan consideration. My attention has also been drawn to the fortnightly confidential report sent by the Collector in which he refers to the

complaint heard by him that water-supply was being arranged in locality inhabited by Congress-men. In this respect I find that no written order of Shri Mitra about the water-supply in respect of Ward Nos. 1, 10 and 11 has been produced. Assuming that the order of Shri Mitra, referred to in Chief Engineer's letter, was oral, we do not know under what circumstances and on the basis of what representation that order was made. There was nothing in the order that the water-supply in the other wards was to be neglected and the work on that account if carried on in those wards was to stop. According to a representation, dated June 26, 1964, made by a Municipal Councillor of Bolangir, the water-supply in those three wards had been neglected. According to another representation, dated February 25, 1966, those three wards were neglected in the matter of water-supply, because members elected from the wards were in minority in Municipal Committee. It is on the record that hospital was situated in one of those three wards, while Harijans lived in another of those wards and were experiencing great difficulty in getting water because of the absence of a well in the vicinity. In the circumstances, although a view can be taken that Shri Mitra made the order for water-supply in the three wards on partisan grounds, it cannot be said that that is the only view of the matter. It is equally possible that Shri Mitra might have felt satisfied about the urgent need of water-supply in those three wards because the Harijans, who were living there, were in dire need of water-supply and also because the hospital was situated in those wards. In the absence of what was represented to Shri Mitra, it is not possible to predicate about all the reasons which prevailed with him when he issued the impugned direction. As two views of the matter are possible and as the charge is of a *quasi* criminal nature, in accordance with established principles of law, the charge would be held to have not been proved.

I may state that normally it is always better for one in charge of administration to call for the report of the officer on the spot in respect of any representation, before passing an order thereon. Shri Mitra does not appear to have called any report of the local officials before issuing the impugned direction. He straight off issued the impugned direction. This might be an error or a procedural irregularity, but it cannot be equated with a *mala fide* act.

I would, therefore, hold that the second part of the charge has not been proved beyond reasonable doubt.

CHAPTER 27

ALLEGATION No. 27

Re :

Appointment of Public Prosecutor and Government Pleader for Sundargarh

Allegation No. 27 relates to the appointment of Shri Krupanidhi Naik as Public Prosecutor and Government Pleader in the district of Sundargarh in July, 1961. The respondents named in this allegation are Shri Patnaik and Shri Mitra.

According to the case set up by the State Government in the particulars of allegation, in July 1961 Shri Mitra, who was then Deputy Chief Minister, in collusion with Shri Patnaik appointed Shri Krupanidhi Naik as Public Prosecutor and Government Pleader, Sundargarh. Shri Krupanidhi Naik was a Congress candidate in the mid-term General Election of the State Legislative Assembly in 1961 and was defeated. He had not been practising at the Bar since 1952 when he was taken in as Deputy Minister in the Congress Ministry. Under the rules Shri Naik could not be appointed as a Public Prosecutor and a Government Pleader as he was required to undergo training for a period of six months under a senior lawyer before obtaining licence. Shri Naik's name was not recommended by the District Magistrate, the Sessions Judge, the Revenue Divisional Commissioner and the Legal Remembrancer. On receipt of the order Shri Naik was himself in a fix and had to request another gentleman to carry on the duties. When the matter was raised on the floor of the Assembly, Shri Mitra replied that the appointment was semi-political in nature.

The State Government concludes from the above that Shri Mitra and Shri Patnaik committed acts of impropriety and illegality to favour a party man in whom they were interested.

In support of the above allegation the State Government has filed the affidavits of Shri Krushna Chandra Mall, Under-Secretary, Law Department and Shri M. V. V. S. Rao, Assistant Chief Electoral Officer-cum-Assistant Secretary in the Home Department.

Shri Patnaik in the course of his affidavit has denied the correctness of the above allegations. According to him, Shri Krupanidhi Naik was an able man and had been a Deputy Minister in Shri Mahatab's Cabinet in 1952. He was a practising lawyer until he joined the Cabinet and had suspended practice during the period he was in the Ministry. The Minister of Law appointed him as Government Pleader and Public Prosecutor as the Government had confidence in him and he was considered fit and qualified for the job. Shri Patnaik concurred with the Minister. Shri Naik, it is further stated, assumed his post after renewing his practising licence.

Shri Mitra in the course of his affidavit has also denied the allegations made against him. According to him he appointed Shri Naik as Government Pleader and Public Prosecutor as he considered him suitable and competent. Shri Mitra adds that he was then under the impression that Shri Naik had already continued his practice at the Bar.

In connection with this allegation I find that Shri K. M. Behera, Advocate, was the Government Pleader and Public Prosecutor of Sundargarh district since 1954. On March 18 1960, Shri Behera submitted his resignation and desired that it should take effect from May 1, 1960. The District Magistrate of Sundargarh thereupon engaged Shri Mitrabhanu Panigrahi, a member of the local Bar with an experience of more than ten years, to conduct cases for a period of two months or till such time he was relieved by a Government Pleader. In the letter dated May 18, 1960, which was addressed by the Additional District Magistrate, Sundargarh to the Secretary to the Revenue Divisional Commissioner, Sambalpur, it was mentioned that the District and Sessions Judge, who had been approached in the matter, had also approved the appointment of Shri Panigrahi. A letter was thereafter addressed on May 28, 1960 by the office of the Revenue Divisional Commissioner to the Legal Remembrancer about the appointment of Shri Panigrahi to the office of Government Pleader and Public Prosecutor for a period of two months in place of Shri Behera. Request was made that Government orders might be communicated. On June 18, 1960 the Legal Remembrancer sent a letter to the Revenue Divisional Commissioner, Sambalpur, about the appointment by the Government of Shri Panigrahi to the post of Government Pleader and Public Prosecutor temporarily for a period of two months with effect from May 1, 1960 or till such time

as he was relieved by the Government Pleader duly appointed in place of Shri Behera. On June 21, 1960 the District Magistrate, Sundargarh, addressed a letter to the Secretary to the Revenue Divisional Commissioner, Sambalpur, recommending that the Government might be moved to appoint Shri Mitrabhanu Panigrahi as Government Pleader and Public Prosecutor for Sundargarh district for a period of one year with effect from July 1, 1960. It was mentioned in the letter that both the District and Sessions Judge as well as the Superintendent of Police had been consulted and both of them had recommended the name of Shri Panigrahi. Shri Panigrahi was stated to have practised for ten years and to be the next senior member of the Bar. Enclosed with the letter were the recommendations of the Superintendent of Police and the District and Sessions Judge. On June 28, 1960 a letter was addressed by the office of the Revenue Divisional Commissioner to the Legal Remembrancer supporting the recommendation of District Magistrate, Sundargarh, for the appointment of Shri Panigrahi as Government Pleader and Public Prosecutor for a period of one year with effect from July 1, 1960. It was also mentioned that Shri Panigrahi was being allowed to continue as Government Pleader in anticipation of the Government orders. A note was thereafter recorded in the Law Department about the proposal of the District Magistrate and the Revenue Divisional Commissioner, regarding the appointment of Shri Panigrahi as Government Pleader and Public Prosecutor for one year with effect from July 1, 1960, and this proposal was approved by the Minister of Law Department on July 7, 1960 and the Chief Minister, Dr. Mahatab, on July 8, 1960. Letter dated July 12, 1960 was then sent to the Revenue Divisional Commissioner about the appointment of Shri Panigrahi as Government Pleader and Public Prosecutor for one year with effect from July 1, 1960.

As the term of Shri Panigrahi as Government Pleader and Public Prosecutor was due to expire on July 1, 1961, letter dated May 19, 1961 was addressed by the Legal Remembrancer to the District Magistrate, Sundargarh, asking the latter to send through Revenue Divisional Commissioner a panel of 4 or 5 experienced lawyers in consultation with the District and Sessions Judge for appointment as Government Pleader and Public Prosecutor. On June 29, 1961 the District Magistrate, Sundargarh, addressed a letter to the Revenue Divisional Commissioner recommending that Shri Panigrahi be appointed Government Pleader and Public Prosecutor for a further

period of three years with effect from July 1, 1961. It was mentioned in the letter that the District and Sessions Judge, Sambalpur and Sundargarh, as well as the Superintendent of Police, Sundargarh, had been consulted in the matter. The District and Sessions Judge had expressed the opinion that Shri Panigrahi was satisfactorily discharging his duties as Government Pleader and had recommended that he be granted an extension for a further period of three years. The Superintendent of Police, however, did not think so highly of Shri Panigrahi. On receipt of the letter of the District Magistrate, the Revenue Divisional Commissioner addressed a letter dated July 5, 1961 to the Legal Remembrancer recommending that the term of Shri Panigrahi as Government Pleader and Public Prosecutor might be extended for a period of three years with effect from July 1, 1961. The Legal Remembrancer on receipt of the above letter addressed a note to the Minister of Law on July 7, 1961 wherein he referred to the recommendation to the District Magistrate, the District and Sessions Judge and the Revenue Divisional Commissioner for appointment of Shri Panigrahi as Government Pleader and Public Prosecutor for a period of three years with effect from July 1, 1961. The Legal Remembrancer stated that in view of the pendency of the question of reorganisation of the Law Officer's machinery at district level, the reappointment of Shri Panigrahi as Government Pleader and Public Prosecutor might be made for a period of one year with effect from July 1, 1961. When the above note was put up before Shri Mitra, he passed the following order:—

“Krupanidhi Naik, B. A., B. L., is appointed as G. P. and P. P.

Biren Mitra

13-7-61.”

Below the above note, Shri Patnaik recorded the following note on July 15, 1961:—

“I agree with Minister, Law”

On July 24, 1961 a letter was addressed by the Legal Remembrancer to the Revenue Divisional Commissioner regarding the appointment of Shri Krupanidhi Naik to the office of Government Pleader and Public Prosecutor in the district of Sundargarh for a period of one year with effect from the date he assumed charge of the office.

At this stage we may advert to the carrier and qualifications of Shri Krupanidhi Naik. These are apparent from a letter addressed by him on November 18, 1961 to the Additional District Magistrate, Sundargarh. Shri Panigrahi passed Law Part I in 1939 and Law Part II in 1941. During those days he used to work as a teacher. He continued to work as a teacher till 1945. In 1945-46 Shri Naik was the Second Officer and 2nd Class Magistrate in Gangpur State. In 1947, Shri Naik was Treasury Officer and 1st Class Magistrate. In 1948, Shri Naik was taken as a Deputy Collector by the Public Service Commission. He thereafter worked as a Deputy Collector and 1st Class Magistrate till July, 1949 when he gave up his job. Shri Naik then applied to Orissa High Court for licence as a Pleader. He was enrolled as a Pleader in June, 1950 and practised as such till March, 1952 when he became a Deputy Minister in the Government of Orissa. Shri Naik was Deputy Minister till 1957. He contested in 1957 and 1961 elections as Congress Candidate but lost on both the occasions. When Shri Naik accepted office as Deputy Minister in 1952, he applied to the High Court for the suspension of his Pleadership licence. The High Court suspended the licence and directed that he would be required to abide by the conditions imposed by it, if he did not resume practice as a Pleader within three years from the date of suspension. In 1957 Shri Naik applied to the High Court for renewal of his licence. The High Court then asked Shri Naik to furnish two certificates of his character and also asked him to undergo training for six months. During this period Shri Naik's mother became ill and he became busy in other domestic matters. He sent character certificates from two Ministers. He also completed his training for more than six months by June, 1961. The High Court was then moved and the High Court sent intimation in July, 1961 to Shri Naik to take his pleadership licence. The intimation from the High Court was received after the appointment of Shri Naik as Government Pleader and Public Prosecutor. As Shri Naik had not been allowed by the High Court to take his Pleadership licence by the time he was appointed Government Pleader and Public Prosecutor, Shri Naik was in a fix and so he requested his predecessor Shri Panigrahi to carry on as Government Pleader. Shri Naik thereafter obtained his licence from the office of District, and Sessions Judge, Sambalpur, on September 11, 1961 and joined the Sundargarh Bar on September 13, 1961. There was some illness in the family

and Shri Naik took over as Government Pleader and Public Prosecutor on November 1, 1961.

The appointment of Shri Krupanidhi Naik as Government Pleader and Public Prosecutor was the subject of a number of questions and answers in Orissa Legislative Assembly on September 26, 1961. When it was pointed out by Shri R. N. Singh Deo that Shri Naik had practised for only two years till 1952 and had no practice thereafter, Shri Mitra stated:

"Sir, legal profession, as you know from long experience, is based on common-sense. It is a fact that Shri Krupanidhi Naik had practised as a Lawyer for 2½ years but his experience as a Minister for the last 5 years gave him additional experience."

It was then pointed out that Shri Naik had not been a Law Minister. Shri Mitra thereupon replied that Shri Naik had also been a Magistrate, 1st Class and a Treasury Officer. A number of questions were thereafter put to Shri Mitra and in answer to one of the questions he stated:

"I have said he has been appointed by Government, no Collector, no Police Sahab or District Judge. It is the absolute discretion of Government who has appointed Shri Krupanidhi Naik."

In answer to a further question Shri Mitra stated :—

"After all Government may decide to follow any practice or rules and this Government is not bound to follow the practices of the previous Government. After all these are semi-political appointments and incumbent should be such as could be trusted by Government."

Rule 139 of the Bihar and Orissa Practice and Procedure Manual of 1930 prescribes the procedure about the appointment of Public Prosecutor and Government Pleader on the expiry of his term, and reads as under :—

"All appointments to the post of Public Prosecutor or Government Pleader or to the combined post of Public Prosecutor and Government Pleader shall ordinarily be for a term of three years. Two months prior to the expiry of the term, the District Officer shall after consultation with the Sessions Judge submit his recommendation through the Commissioner to the Legal Remembrancer for the orders of Government. In such cases, applications for the appointment will not ordinarily be invited. The previous incumbent will be eligible for reappointment."

I have heard the learned counsel for the parties, and have given the matter my earnest consideration, and am of the opinion that the appointment of Shri Krupanidhi Naik as a Government Pleader and Public Prosecutor of Sundargarh by Shri Mitra with concurrence of Shri Patnaik is a clear act of favouritism. It would appear from the resume of facts given above that by July, 1961 Shri Panigrahi had already worked as Government Pleader and Public Prosecutor of Sundargarh for more than a year and his work was reported by the District and Sessions Judge to be satisfactory. The District and Sessions Judge, the District Magistrate, the Revenue Divisional Commissioner and the Legal Remembrancer had all recommended the appointment of Shri Panigrahi for a further period. The recommendation of the District and Sessions Judge, the District Magistrate and the Revenue Divisional Commissioner was that the further term should be for three years. The Legal Remembrancer, however, recommended that in view of the pendency of reorganization of the Law Officers machinery at district level, the reappointment might be made for a period of one year. The name of Shri Krupanidhi Naik nowhere figured in the recommendation of any of the officers for the post. It was Shri Mitra who came out with the name of Shri Naik and he straight off passed the orders for his appointment for a period of one year. Shri Patnaik apparently did not want to record a note of disagreement with his Deputy Chief Minister and accordingly gave his concurrence. It is also clear from the material referred to above that Shri Naik had practised at the Bar for a period of less than two years and that after 1952 he had not practised till his appointment as Government Pleader and Public Prosecutor in 1961. Even the High Court order about the issue of a licence in favour of Shri Naik was received after an order about the appointment of Shri Naik as Public Prosecutor had been issued on July 24, 1961. Shri Naik obtained his licence as a Pleader on September 11, 1961, more than 1½ months after the order of his appointment as Government Pleader-cum-Public Prosecutor. He joined the Bar thereafter, and started working as a Government Pleader and Public Prosecutor on November 1, 1961.

Public Prosecutors are appointed under section 492 of the Code of Criminal Procedure by the State Government. The Public Prosecutor is entitled to plead in all Courts in cases under his charge without any written authority. The Public Prosecutor can also with the consent of the Court withdraw from prosecution and the effect of that withdrawal

is that if it is made before a charge has been framed the accused shall be discharged and if it is made after a charge has been framed the accused shall be acquitted. The Public Prosecutor and Government Pleader plays a vital role in the administration of justice at the district level. The Public Prosecutor represents the State in all Sessions cases before the Court of Session. He also represents the State in the Court of Sessions Judge in all criminal appeals filed by persons convicted by the lower Courts. As Government Pleader, he represents the State Government in civil cases. In view of the importance of the duties and functions of the Public Prosecutor in the administration of justice it is essential that he should be competent, well-versed in law and procedure and have good experience at the Bar. A person, who has practised for less than two years at the Bar and who is out of touch with the profession for more than nine years, can hardly be considered fit for appointment as a Government Pleader-cum-Public Prosecutor. No reasonably prudent man, in my opinion, would give charge of important cases to a counsel of that standing.

The appointment of Shri Naik in supersession of the unanimous recommendation, of the District Magistrate, District and Sessions Judge, the Revenue Divisional Commissioner and the Legal Remembrancer, was not only arbitrary, it smacked of favouritism in its naked and unabashed form. The object seems to have been to give employment to Shri Naik after he had been defeated as Congress candidate in the elections of 1957 and 1961. What effect the appointment would have on the administration of justice in Sundargarh and the fate of cases, appears to have been lost sight of altogether. It was not borne in mind that the job of a Public Prosecutor is to some extent of a specialised nature for efficient handling of which one requires good experience at the Bar. The fact that Shri Mitra did not want any past practice to fetter his discretion, is clear from his statement in the Assembly that the Government was not bound to follow the practice of the previous Government and whatever might be the recommendation of the District Judge or the Collector, the appointment was in the absolute discretion of the Government. The statement thus gave clear indication of the uninhabited arbitrariness of the appointment. Shri Mitra even went to the extent of saying that the appointment was semi-political in nature.

Argument has been advanced that Shri Naik had experience as a Magistrate in the Princely State of Gangpur and

or about one year after his selection as Deputy Collector. It is, however, clear that Shri Naik was not exclusively working as a Magistrate but was vested with those powers in addition to his other duties. His experience as such being of a limited nature could hardly equip him with the requisite experience and qualification for the post of Government Pleader-cum-Public Prosecutor of a district. It has also been argued on behalf of the respondents, named in the allegation, that the appointment of Shri Naik was at the best a case of error of judgement, and not a deliberate act of favouritism. In this respect I am of the view that the facts of the case are so patent and glaring that the only reasonable inference that can be drawn is that the appointment of Shri Naik was not the result of a mere error of judgement but a deliberate, conscious act of favouritism.

I, therefore, hold that the charge of impropriety contained in this allegation has been substantiated.

My findings in respect of this allegation are as under:—

- (i) The District and Sessions Judge, the District Magistrate, the Revenue Divisional Commissioner and the Legal Remembrancer all recommended the extension of the term of Shri M. Panigrahi as Government Pleader-cum-Public Prosecutor, Sundargarh, with effect from July 1, 1961.
- (ii) In supersession of the above recommendation Shri Mitra appointed Krupanidhi Naik as Government Pleader-cum-Public Prosecutor, Sundargarh. Subsequently, Shri Patnaik gave his concurrence to the above appointment. Shri Naik had been Deputy Minister from 1952 to 1957, and was Congress candidate in 1957 and 1961 Assembly Elections but was defeated.
- (iii) Shri Naik was not even a practising lawyer at the time of his appointment. He practised for less than two years from 1950 to 1952, and was out of touch for nine years with the profession before his appointment. His pleadership licence was issued after his appointment as Government Pleader-cum-Public Prosecutor.
- (iv) The appointment of Shri Naik as Government Pleader-cum-Public Prosecutor was arbitrary and clear act of favouritism.

CHAPTER 28

ALLEGATION No. 28

Re :

Premium and rent of Government Land leased out to Orissa Textile Mills, Ltd.

Allegation No. 28 relates to the premium and rent of Government land which was leased in favour of Orissa Textile Mills, Ltd. The respondents named in the allegation are Shri Patnaik and Shri Tripathy.

According to the case set up by the State Government in the particulars of allegations, Orissa Textile Mills is a concern in which Shri Patnaik, his family members and friends have a great interest. It was Shri Patnaik who developed this company. Another company, B. Patnaik & Co., Private, Limited, was the Managing Agents of Orissa Textile Mills, Ltd., B. Patnaik & Co., Private, Limited, is a concern in which Shri Patnaik, his family members, relations and intimate friends only have shares. About 90.63 acres of Government land was in unlawful possession of Orissa Textile Mills since 1946-47. The aforesaid land was previously under the Irrigation Department but subsequently it was transferred to the Revenue Department. When the question of the lease of the land was taken up, the Revenue Divisional Commissioner recommended the lease to the Orissa Textile Mills for 90 years at a premium of Rs. 400 per acre and annual rent of Rs. 19/8/6 per acre. The land consisted of 9.49 acres of cultivated land and 81.16 acres of fallow land. As the Under-Secretary of the Revenue Department was of the view that the rate suggested by the Commissioner appeared to be below, the matter was referred to the Member, Board of Revenue. The Member, Board of Revenue, suggested that the premium should be fixed on the basis of the price existing at the time of occupation, i.e., 1946-47. He accordingly suggested rate of Rs. 150 per acre for Anabadi land and Rs. 450 per acre for cultivable land. Thus the amount payable according to the recommendation of the Commissioner was Rs. 36,262 and according to the recommendation of the Member, Board of Revenue, was Rs. 17,997. Shri H. K. Ghosh, Secretary of the Revenue Department, recommended that the premium might be charged at the rate of Rs. 200 per acre for fallow land and Rs. 350 per acre for cultivable waste land. He further recommended 4 per cent

of the value as annual rent. The Finance Department when asked for its concurrence recommended that the rate suggested by the Revenue Divisional Commissioner should be charged. The file was then submitted to the Government for orders. The rate suggested by the Commissioner was finally approved by the Government and orders were communicated on August 18, 1960, to the Revenue Divisional Commissioner for the lease of 90.63 acres of land on payment of market value at flat rate of Rs. 400 per acre and annual rent of 5 per cent of the market value. A copy of this order was sent to the Orissa Textile Mills.

Orissa Textile Mills, it is stated, was satisfied with this order and sent application to the Revenue Divisional Commissioner on February 6, 1961, with copy endorsed to the Revenue Department, for getting the land remeasured. Two months after that, on April 12, 1961 the Orissa Textile Mills sent a reminder reiterating its willingness to pay the sum as fixed by the Revenue Department. On June 23, 1961 Shri Patnaik assumed the office of Chief Minister. Within two or three months after that, Orissa Textile Mills, it is stated, started suddenly agitating about the rate of premium and rent. On August 29, 1961 B. Patnaik & Co., Private, Limited, Managing Agent of Orissa Textile Mills addressed a letter for the purpose to the Revenue Minister, Shri Sadasiva Tripathy. Shri Tripathy passed on the papers to the department for examination. The Deputy Secretary and the Secretary of the Revenue Department suggested that further enquiries be made about the rates of similar lands in 1947 and 1949 and as to whether the adjoining lands were transferred at Rs. 30 per acre in 1947. Shri Tripathy agreed to that and accordingly further enquiries were made. On April 14, 1962 Shri Tripathy passed an order that Orissa Textile Mills should be given a hearing by the Secretary. The Secretary then recommended that the premium should be fixed at Rs. 100 per acre and rent at Rs. 5 per acre. When the file went to the Finance Department, Shri H. K. Ghose, the Finance Secretary, who had been previously working as Revenue Secretary agreed to the proposal and suggested that the premium should be fixed at Rs. 100 per acre. On August 14, 1962, Shri Tripathy approved this suggestion and on August 16, 1962, the Chief Minister, Shri Patnaik, saw the file. The premium of the land was thus reduced from Rs. 400 to Rs. 100 per acre.

As per application, dated August 26, 1961, Orissa Textile Mills, Ltd., applied for a further lease of 12.20 acres of land.

The Tahsildar recommended rate of Rs. 500 but the Sub-divisional Officer raised it to Rs. 1,000 per acre. The Collector recommended the same and Commissioner accepted it as suggested by the Subdivisional Officer. Finally, the Revenue Minister, Shri Tripathy passed an order for leasing the land at the rate of Rs. 1,000 per acre and annual rent of Rs. 122. According the State Government, the above rate of Rs. 1,000 was grossly low and was fixed only to show favour to Shri Patnaik.

The State Government concludes from the above that there was corrupt motive in the above transactions.

In support of this allegation the State Government has filed the affidavits of Shri Iswar Chandra Dora, Under-Secretary, Revenue Department and Inspector Mohammad Haroonal Rasid (Vigilance).

Shri Patnaik in the course of his affidavit has denied the correctness of this allegations. According to him, Orissa Textile Mills, Ltd., is a Public Limited Company with a paid-up capital of Rs. 75 lakhs. The State Government holds 17 per cent shares of the Company while Shri Patnaik and his family members hold a total of 3 per cent shares. The Government of Orissa, it is stated, desired to transfer 90.63 acres of land to Orissa Textile Mills, Ltd., in 1946 as per notification dated August 7, 1946. On August 29, 1961 the Orissa Textile Mills, Ltd., preferred an appeal to the Revenue Minister for revision of the rate of premium and annual rent. Earlier than that the Company had represented to the State Government to fix the rate of premium at Rs. 100 per acre. On May 14, 1962 the Revenue Secretary heard the case and on May 17, 1962 suggested fixation of rate of premium at Rs. 100 per acre as recommended by the Collector on the basis of the prevailing market value in 1946-47 for similar category of adjacent lands. On August 11, 1962 the Finance Secretary recommended approval of the above proposal to the Revenue Minister and also suggested perusal by the Chief Minister. The Revenue Minister approved the same on August 14, 1962, and the file was put up before Shri Patnaik as Chief Minister for his formal approval. Shri Patnaik's formal approval was necessary in accordance with rules of procedure, because the earlier order conveyed in letter dated August 18, 1960 had been made by the Chief Minister. Shri Patnaik asserts that the matter was correctly decided by the State Government in the Revenue Department and was approved by the Revenue Minister. As regards the valuation of 12.20 acres of land,

which was leased by the State Government to Orissa Textile Mills, Shri Patnaik states that the State Government had acquired 6.26 acres of land from that Company during the relevant period at the rate of Rs. 900 per acre even though that land had been developed at the Company's cost.

Shri Tripathy in the course of his affidavit has denied the charge and insinuations made against him. According to him the possession of 90.63 acres of land was delivered to the Company in question in 1946. When the Company came up with an appeal, the Secretary put up a note as to whether the Minister or the Secretary should hear the case. Shri Tripathy then ordered that the Secretary should hear the case. The case was accordingly heard by the Secretary who passed appellate order dated May 17, 1962 and sent it for approval to the Finance Department and Shri Tripathy. The note dated May 17, 1962 made it clear that the adjoining land had been purchased in 1947 and 1948 for Rs. 30 per acre. The Collector and the Commissioner too had reported that the price of cultivated land could not have been more than Rs. 100 per acre. Shri Tripathy adds that as the Government had desired to acquire the land in question at the expense of the Company in 1946, he found the rates suggested by the Revenue Secretary in accordance with the prevailing market value in 1946-47 for similar category of land to be quite fair and just. Shri Tripathy affirms that his decision was not influenced by any one.

Affidavit of Shri Samarendra Nath Sarma, Chief Accountant and Shri Govind Chandra Misra, Law Officer and Assistant to the Chief Administrative Officer of Orissa Textile Mills, have also been filed in respect of this allegation. Supplementary affidavits of Shri Iswar Chandra Dora on behalf of the State Government and Shri Patnaik too have been filed.

It would appear from the above that this allegation consists of two parts one relating to the reduction of premium and rent in respect of 90.63 acres of land and the other relating to the fixation of premium and rent for 12.20 acres of land which was leased to Orissa Textile Mills in 1963. I shall first take up the second part of this allegation. In respect of this part of the allegation, I find that the Orissa Textile Mills made a request that 12.20 acres of Government land be leased to it for establishing a second Mill. Initially the request was for six acres of land, but subsequently the area was increased to 12.20 acres. The Tahsildar in his report stated that the

market value of the land was Rs. 500 per acre. The Sub-divisional Officer raised the amount to Rs. 1,000 per acre. The Collector recommended the acceptance of that rate and the Commissioner agreed with the recommendation. He accordingly sent letter, dated January 18, 1963 to the Revenue Department for leasing 12.20 acres of land to Orissa Textile Mills with a premium at the rate of Rs. 1,000 per acre and rent at the rate of 5 per cent of that amount. Shri Tripathy, as per order dated March 30, 1963 accepted the recommendation. I find nothing improper in the rate of the premium and rent for 12.20 acres of land. The material on record shows that in 1962 the Government of Orissa acquired from Orissa Textile Mills 6.26 acres of land which had already been developed by the Company at its own cost. In respect of that land the Government paid compensation at the rate of Rs. 900 per acre. It cannot, therefore, be said that the premium of Rs. 1,000 per acre, which was charged by the Government from Orissa Textile Mills in respect of 12.20 acres, was low. No impropriety can consequently be spelt out from this part of the allegation.

Coming to the first part of the allegation, I find that Orissa Textile Mills, Ltd., was incorporated in Orissa in the year 1946 for the purpose of establishing Cotton Textile Mills at Choudwar in Cuttack district and was the first industrial venture in that area. The paid-up capital of the Company is Rs. 73,45,950 divided into 485,570 Equity Shares of Rs. 10 each, and about 25,000 Preference Shares of Rs. 100 each. Shri Patnaik had promoted the above Company and he and his wife and children held 19,935 Equity Shares and 175 Preference Shares, amounting to about 3 per cent of the paid-up share capital of the Company. The Government of Orissa held shares of the value of 17 per cent of the total paid-up capital of the Company. B. Patnaik & Co., Ltd., was the Managing Agent of Orissa Textile Mills, Ltd., Shri Patnaik had financial interest in that Company also and the Company seems to have been named after him. The Government of Orissa gave licence for about 40,000 spindles and 1,000 looms to Orissa Textile Mills, Ltd., and also agreed to assist the Company by providing suitable land for the construction of the Cotton Textile Mill, Power Plant, Labour Colonies, Railway sidings, hospital and school. The Company required about 600 acres of land. On an application made by the Company, notification, dated August 7, 1946 was issued under section 4 of the Land Acquisition Act by the Revenue Department of the Government of Orissa for the acquisition of a total area of

316.17 acres of land for the Company. The notification also covered 90.63 acres of land which was vested in the PWD Irrigation Department. As this land measuring 90.63 acres, which is the main subject of the present allegation, was already vested in the Government, land acquisition proceedings in respect of it were dropped. Possession of the land in question measuring 90.63 acres was, however, delivered to Orissa Textile Mills near about the years 1946 or 1948. According to the affidavit of Shri Tripathy as well as the note recorded by Shri H. K. Ghosh on May 17, 1962, the possession was delivered in 1946, while according to the letter, dated January 15, 1965 of Shri Patnaik to the Prime Minister, Shri Lal Bahadur Sastri, the possession was delivered in 1948. The land acquisition proceedings in respect of the other lands were over by May, 1949 and the Government transferred land measuring 54.51 acres with trees and construction for Rs. 26,340/7/10 in favour of the Company by a registered deed of conveyance, dated May 26, 1949 free of rent. Another area of 48.62 acres of land was transferred to the Company on February 23, 1954 for Rs. 6,420/15/9 free of rent.

In the meantime, on August 25, 1952 Orissa Textile Mills, Ltd., executed a mortgage in favour of the Governor of Orissa in respect of a loan of Rs. 30 lakhs granted to the Company. The properties mortgaged included the land in question measuring 90.63 acres. Earlier than that also in two mortgage deeds dated June 30, 1949 and March 30, 1950 the Company had included 90.63 acres of land in the list of properties mortgaged.

In 1956, the Public Works Department transferred the land in question measuring 90.63 acres to the Revenue Department. Orissa Textile Mills, Ltd., thereafter addressed letters to the Revenue Department to transfer the land to the Company keeping in view the 1946 prices. In 1957 the Board of Revenue decided tentatively that the land in question should be given on a long term of 90 years to Orissa Textile Mills. As regards the premium the Board of Revenue decided that the premium for the land and the rent should not be lower than what was fixed for the lands already acquired for the Company, but the same should be fixed taking into account the ruling price of similar land at the time of actual occupation by the Company. On November 7, 1958 the Revenue Divisional Commissioner recommended that 90.63 acres of land in question be leased to Orissa Textile Mills for a period of 90 years on a premium at the flat rate of Rs. 400 per acre and a special rent of Rs. 19/8/6 per acre. The matter

was thereafter referred to the Board of Revenue. On March 23, 1960 the Board of Revenue reported that the premium should be fixed at the rate of Rs. 150 for fallow land and Rs. 450 for cultivable waste land. The matter was the subject of further notings on the file and ultimately the flat rate of premium of Rs. 400 per acre was accepted by the Chief Minister as per order dated August 6, 1960. On August 18, 1960, a letter was addressed by the Revenue Department to the Revenue Divisional Commissioner, the material part of which reads under —

“I am directed to convey the sanction of Government to the lease of 90.63 acres of land in mouzas Chhatisa and Choudwar in the district of Cuttack as per the schedule enclosed, to the Orissa Textile Mills, Ltd., for location of their factory buildings, staff quarters, etc., for a period of ninety years from the date of permission given to the Company to occupy the lands on payment of the market value at a flat rate of Rs. 400 (Rupees four hundred only) per acre and annual rent at the rate of five per cent of the market value of the land, subject to revision at the end of every fifteenth year, provided that the rent to be enhanced should not be more than fifty per cent of rent in the previous year.”

Copy of the above letter was sent to the Chief Administrative Officer, Orissa Textile Mills. On February 6, 1961 the Chief Administrative Officer of Orissa Textile Mills addressed the following letter to the Revenue Divisional Commissioner :—

“Subject : Lease of 90.63 acres of land in Mouza Chhatisa and Choudwar in the district of Cuttack to the O. T. Mills, Ltd.

Ref. :—Government letter No. G. E. (C)-52/60—35988-R., dated 18-8-1960.

We have the pleasure for inviting your kind attention to the sanction of the Government in the Revenue Department conveyed to you in the above mentioned letter, for the lease of 90 and odd acres of land in our favour.

We are anxiously waiting for your benign orders all these months.

The lands in question may now be remeasured, demarcated and formal possession may kindly be made over to us at your earliest convenience pending execution of the agreement that may be entered into by us in this connection.

The Collector, Cuttack, may kindly be directed accordingly. Awaiting eagerly your early action and reply”.

On April 12, 1961, the Chief Administrative Officer, Orissa Textile Mills addressed the following letter to Collector, Cuttack:

"Subject : Transfer of 90.63 acres of land in Mouza Chhatisa and Choudwar in the district of Cuttack to the O. T. Mills Ltd.

REFERENCE—Government in Revenue Department letter No. 35989, dated 18-8-1960 and R.D.C., Central Division, Cuttack, letter No. 1209, dated 4-3-1961.

In inviting your kind reference to the letter cited above, we have to state that the transfer of both *De facto* and *De jure* be kindly effected as soon as possible as the matter has been dragging on for finalization for the last 14 years and deserves to be expeditiously disposed of.

Kindly depute the Tahsildar, Cuttack or any other suitable Revenue Officer for demarcating the land and for making us its delivery of possession free from any encroachments, if any on the lands in question.

We are ready to pay the sum determined by the Revenue Department as the consideration for the transfer of land and execute the agreement in the lines suggested by Government.

We would further request you for executing a deed of conveyance in respect of the lands for 99 years as per direction of the Government.

Yours early reply will be highly honoured".

On June 23, 1961 Shri Patnaik became the Chief Minister of Orissa. Shri Tripathy was taken as a Minister and was allocated the business of Revenue Department. On August 29, 1961 a representation was made by Shri Partap Singh, Director, B. Patnaik & Co. (P) Ltd., Managing Agent of Orissa Textile Mills Ltd. to the Revenue Minister, Orissa to reconsider the rate of premium and rent for the land in question measuring 90.63 acres. It was pointed out that though the land in question had been included in the lands notified for acquisition in 1946, *de jure* transfer did not take place for a long time for no fault of the Company. Request was accordingly made for reduction of the premium and exemption of the land from payment of rent. On receipt of the above representation, Shri Tripathy issued a direction that the office should examine the matter. On October 28, 1961 Shri Tripathy wanted to know the price of land in 1946 and the justification for fixing the premium at a rate prevailing 12

years after the date of transfer. Report of the Revenue Divisional Commissioner was also thereafter called. On April 9, 1962 Shri H. K. Ghosh, Revenue Secretary, addressed a note to the Revenue Minister stating that the facts, which had come to light, showed that the flat rate of Rs. 400 per acre appeared rather high. Shri Tripathy thereupon passed an order on April 14, 1962 that the representative of the Company be sent for to represent the case. On May 4, 1962 Shri Ghosh wanted the order of the Revenue Minister on the point as to whether the Minister would hear the case himself or would like the Revenue Secretary to do so. Shri Tripathy thereupon directed on May 5, 1962 that the Revenue Secretary should hear the case. Shri H. K. Ghosh, Revenue Secretary, heard the matter and on May 17, 1962 he recorded the following note:—

“Heard the representative of the O. T. Mills. Briefly stated, their case appears to be as follows:

1. 4(1) notification in gazette notification No. 5023 I-A., dated 7-8-1946 acquisition of private land for the purpose of setting up the Orissa Textile Mills was issued. The total area sought to be acquired was 550 acres of which 90.63 acres was Government land and the details of the same was shown in a schedule to the above notification. I am informed that in respect of private lands which were acquired, compensation has been paid and lands transferred to the Company. But in respect of Government land, the land though transferred to the Company had not yet been formally leased out to the Company.

2. The question now is what should be the *salami* and rent for the Government land to the extent of 90.63 acres. It is contended by the Company that since this land was included in the schedule of the 4(1) notification in respect of private lands to be acquired in the year 1946, the *salami* for the Government land should be based on the current prices as existing in the year 1946 for similar kind of lands. It is urged that the lease of the Government land has been delayed so far for no fault of the Company and hence the Company should not be made liable to pay higher *salami* for the same though prices of the land in question have increased considerably by now.

3. According to the Company's representative, the adjoining lands of the above Government land were purchased in the year 1947 and 1948 at Rs. 30 per acre. They have given the particulars of the lands in their letter at pages 74-75/C.

I checked up the relevant documents and the details furnished are correct. From the copy of the map left by the Company's representative it appears that the land in question of which the prices have been quoted in the above letter are adjacent to the Government land and are of similar nature. It is especially urged by the representative of the company that plot No. 55 of village Chatisa with an area of 56.75 acres which is classed as old fallow was purchased from Shri S. M. Bose, Zamindar at Rs. 30 per acre. This land is adjoining to the Government land in question as may be seen from the map furnished by the Company. It was, therefore, urged by the Company's representative that *salami* should be fixed at the market rate then prevailing, i.e., at Rs. 30 per acre and rent at Rs. 1-8-0 which is the average rent of similar land during the period.

4. On further scrutiny I found that not whole of the Government land of 90.63 acres is old fallow or similar other waste land type. Some of these lands are agricultural land. The total area of agricultural land is 10.69 acres. The Company's representative could not produce any evidence before me as to the then prevailing market rate of the agricultural land. He also admitted that some particular bit of private land was acquired by the Company at a very high rate as the local people concerned were not willing to part with their land. In fact, in 1954, 49 acres of land was acquired for Rs. 6,420, i.e., at the rate of Rs. 131 per acre. Earlier in 1949, 55 acres of land was acquired at Rs. 26,340, i.e., at the rate of Rs. 478 per acre. These rates though higher yet relate to the year 1949 and later. The Government land in question were notified much earlier, i.e., in 1946.

5. The R. D. C. reported that the price of land acquired in the year 1947 in the area is Rs. 346 per acre, both in respect of old fallow and cultivable waste. He has at the same time reported that the price of such land in 1949 was Rs. 107 per acre and on another occasion Rs. 181 per acre. It is not understood how prices could vary so much if they relate to same category of land and in the same area. Further clarification was sought in the matter and Board's relevant file was looked into in this connection. The above sale prices relate to June, 1947, January 1949 and January, 1952. In the Board's file the particular of the cases was not available. It was explained that these figures are based on the land acquisition records which are based on the data supplied by the local Kanungo. It may be noted, however,

that the land in question was made over to the Company in 1946, i.e., earlier than any of the above transactions. It may further be noted that the Collector had reported the R. D. C. that the price of cultivable lands in the vicinity in the year, 1947 and 1948 was Rs. 506 and Rs. 619 per acre. This price had steep rise in 1952 and 1953. In this connection, it is relevant to note that the Collector, Cuttack in his D. O. No. 2357, dated the 23-9-1958 has reported to the Commissioner that the price of cultivated land during the year 1946-47 would not have been more than Rs. 100. The Collector, it appears from the above D. O. letter, had a discussion in the matter with the Managing Director of the Company and suggested a premium at a flat rate of Rs. 100 per acre. The Collector had taken note of the fact that the Company's financial position is not very sound and so he had recommended that it would be fair and equitable to charge the above rate considering all the facts and circumstances of the case. I may mention that it has also been represented by the Company's representative that the Company even now has no sound financial position and has not been able to declare any bonus.

6. In any case as recently decided by Government premium for the land should be fixed on the basis of the market value of the land at the time the lease was applied for (notified) and the rent thereof should be fixed at 5 per cent of the premium. On the above basis, I think, the premium should be fixed at Rs. 100 per acre as recommended by the Collector and the rent should be Rs. 5 per acre. F. D. may see their previous endorsement at page 25/N and Minister, Revenue's Minutes at page 39/N. They may now reconsider the matter and agree with the proposal as stated above.

This may kindly be treated as urgent.

H. K. Ghosh
17th May, 1962."

The above note was forwarded to the Minister, Revenue by the Additional Chief Secretary on August, 11, 1962 with the recommendation that the proposal might be approved and the papers might also be seen by the Chief Minister. On August 14, 1962 Shri Tripathy made the following order:—

"Approved."

Shri Patnaik thereafter appended his signatures under the orders of Shri Tripathy on August 16, 1962.

It would appear from the above resume of facts that the premium of the land in question was fixed at Rs. 400 per

acre on August 18, 1960, on the basis of the recommendation of the Revenue Divisional Commissioner. The annual rent was fixed at 5 per cent of the premium. On February 6, 1961 the Chief Administrative Officer of Orissa Textile Mills addressed a letter to the Commissioner asking for the demarcation of the land in accordance with the order dated August 18, 1960 of the Government. On April 12, 1961 the Chief Administrative Officer of Orissa Textile Mills sent letter to the Collector, Cuttack, expressing readiness of the Company to pay the sum determined by the Revenue Department. Request was accordingly made to depute a Revenue Officer for delivering possession of the land. A commitment was thus made on behalf of the Company to the acceptance of the rate of premium fixed by the Revenue Department. The above commitment was not adhered to after Shri Patnaik became Chief Minister of Orissa in June, 1961, and on August 29, 1961 a representation was made by B. Patnaik & Co. (P) Ltd., Managing Agent of Orissa Textile Mills for reconsideration of the rate of premium and rent of the land in question. The Revenue Secretary gave a hearing to a representative of the Company in respect of that representation and on May 17, 1962, he recommended that the premium should be fixed at Rs. 100 per acre and the rent at Rs. 5 per acre. This recommendation was accepted by Shri Tripathy and Shri Patnaik. Shri Patnaik thus became a party to the order of reduction of the premium payable by the Company in which he had an interest, even though the rate of premium earlier fixed had been accepted on behalf of that Company.

It has been argued on behalf of Shri Patnaik that the rate of premium fixed on August 18, 1960 was excessive. In this connection my attention has been invited to the affidavit of Shri Samarendra Nath Sen Sarma, according to which the Company acquired about 400 acres of land as per deeds dated September 5, 1947, October 12, 1947, October 10, 1947 and May 1, 1948 from different parties at the rate of Rs. 30 per acre. My attention has also been invited to the letter dated September 23, 1958 addressed by the Collector Cuttack, wherein he stated that the Company should not suffer because the matter had been under correspondence for 12 years after delivery of possession of the land to the Company. Recommendation was accordingly made by the Collector that the premium should be charged at the rate of Rs. 100 per acre. Reference has also been made to the fact that the Board of Revenue suggested a premium at the rate of Rs. 150 per acre for fallow land and Rs. 450

for cultivable waste land. The total premium payable for the land in question according to the Board of Revenue was Rs. 17,982.50 paise (the figure is also described as Rs. 17,997). The Revenue Department, it is further pointed out, fixed the premium at the uniform rate of Rs. 400 per acre in accordance with the recommendation of the Commissioner, because it found that the rate suggested by the Commissioner was higher than that suggested by the Board of Revenue.

I have given the matter my consideration and am of the view that the facts relied upon on behalf of Shri Patnaik at the best would show that the rate of premium of Rs. 400 was excessive. This fact does not materially improve the position from the point of view of Shri Patnaik because the fact remains that rightly or wrongly, an order was made on August 18, 1960 fixing the rate of premium of the land in question at Rs. 400 per acre and that rate was accepted on behalf of Orissa Textile Mills. The reduction of that rate by Shri Patnaik on his becoming the Chief Minister after it had been accepted on behalf of the company, in my opinion, was an act of administrative impropriety.

An attempt has been made to show that the letters dated February 6, 1961 and April 12, 1961, which were sent by the Chief Administrative Officer regarding the demarcation of the land in question and the acceptance of the rate of premium, were without the authority of the management of Orissa Textile Mills Ltd. Affidavit of Shri Govind Chandra Misra has been filed to the effect that at the time the above two letters were sent by the Chief Administrative Officer, notice was not taken of the note dated September 26, 1960 of the Chief Accountant of the Company stating that an appeal should be preferred to the Government asking for reduction of premium and rent. In this respect I find that the material on record shows that it was the Chief Administrative Officer of Orissa Textile Mills who used to address communications to the Government in connection with the transfer of the land in question measuring 90.63 acres. Some of the letters, which were addressed by him in this connection are dated September 3, 1959, September 11, 1959 and July 26, 1960. The letters dated February 6, 1961 and April 12, 1961 were thus in continuation of a series of letters addressed by the Chief Administrative Officer. When the order dated August 18, 1960 fixing the rate of premium was issued, a copy of the same was addressed to the Chief Administrative Officer, Orissa Textile Mills. It would, thus, follow that it was the Chief

Administrative Officer who was dealing on behalf of the Company with the transfer of 90.63 acres of land to Orissa Textile Mills. It is difficult to believe that the aforesaid Officer, who had been all through dealing on behalf of the Company for the transfer of the land in question, would send letters dated February 6, 1961 and April 12, 1961 without the approval and consent of the management of the Company.

It has next been argued on behalf of Shri Patnaik that he was not aware of the acceptance of the rate of premium of Rs. 400 by the Orissa Textile Mills when he approved the reduction of premium. In this respect I find that no such plea was taken by Shri Patnaik in his affidavit. Apart from that, I find that Shri Patnaik in his plaint dated August 17, 1964 in a suit filed against Express Newspapers Ltd., stated that he had promoted or founded or had been responsible for the development of a number of Industries including Orissa Textile Mills Ltd., and that he had ceased to be in the management of the said companies from the time he became Chief Minister. It is also in evidence that Shri Patnaik has interest in B. Patnaik & Co. (P) Ltd., and the same Company is the Managing Agent of Orissa Textile Mills. In the circumstances, I find it difficult to accept the contention that Shri Patnaik was not aware of the acceptance of the rate of premium by Orissa Textile Mills.

It has also been argued that the reduction of premium was to the extent of about Rs. 27,000 and the pecuniary advantage derived by Shri Patnaik and the members of his family as a result of the reduction was less than Rs. 1,000. The fact that the amount of pecuniary advantage derived by Shri Patnaik and the members of his family was of a small amount, may be a mitigating circumstance, it would not altogether efface and completely undo the administrative impropriety involved in the reduction.

So far as Shri Tripathy is concerned, it has been argued on his behalf that he was not aware of the acceptance of the rate of premium by Orissa Textile Mills when he gave his approval on August 14, 1962 to the note of the Revenue Secretary and Additional Chief Secretary recommending reduction of the premium to Rs. 100 per acre. There appears to be force in this contention because in none of the notes which were put up before Shri Tripathy in this connection was there any reference to the letters of Chief Administrative Officer of Orissa Textile Mills agreeing to the rate of premium. It is nobody's case that Shri Tripathy had any interest in Orissa

Textile Mills or was to derive any pecuniary benefit as a result of reduction of the premium. I, therefore, exonerate Shri Tripathy of the charge of impropriety.

My findings on the different matters arising in this allegation are :—

1. Shri Patnaik promoted Orissa Textile Mills. He and the members of his family had financial interest in the Mills. B. Patnaik & Co. (P.) Ltd., in which also Shri Patnaik had interest was the Managing Agent of Orissa Textile Mills.
2. Premium for 90.63 acres of land transferred by the Revenue Department of Orissa Government to Orissa Textile Mills was fixed as per letter dated August 18, 1960 at Rs. 400 per acre.
3. The Chief Administrative Officer of Orissa Textile Mills as per letters dated February 6, 1961 and April 12, 1961 accepted the premium fixed by the State Government and asked for demarcation of the land.
4. After Shri Patnaik became Chief Minister of Orissa on June 23, 1961 on a representation made by the Managing Agent of Orissa Textile Mills, an order was made by Shri Tripathy on August 14, 1962 and Shri Patnaik on August 16, 1962 reducing the premium of the land to Rs. 100 per acre.
5. The reduction of the premium by Shri Patnaik was an act of administrative impropriety. The fact that the pecuniary benefit derived by Shri Patnaik and the members of his family as a result of reduction was less than Rs. 1,000 would be a mitigating circumstance, but would not completely efface or undo the act of administrative impropriety.
6. Shri Tripathy is exonerated of the charge of impropriety, because the circumstances of the case show that he was not aware of the acceptance of the rate of premium by Orissa Textile Mills. He had also no pecuniary interest in the matter.
7. No impropriety was involved in the fixation of premium at the rate of Rs. 1,000 per acre for 12.20 acres of land leased to Orissa Textile Mills in 1963.

CHAPTER 29

ALLEGATION No. 29

Re:

Favour to Orissa Cement Limited, Rajgangpur in the matter of Cement Transport

Allegation No. 29. relates to undue favour alleged to have been shown to Orissa Cement, Rajgangpur by allowing the Company to transport cement, through its own contractors Dinanath & Company and Konark Transport. The respondents named in the allegation are Shri Patnaik and Shri Routray.

According to the case of the State Government, the State Trading Corporation controls the supply and sale of cement from different factories to various States. The quota of cement for Orissa was supplied mostly from the factory at Chaibasa in Bihar and that of Orissa Cement Limited at Rajgangpur in the district of Sundargarh in Orissa. The rates fixed for cement are F. O. R. destination and the normal supplies are made from the factory by rail or through its consignees' road conveyance. Transport by road being more expensive than by rail, transport by rail was mostly resorted to in preference to road. The road transport was used as a supplement to rail transport whenever necessary. On September 21, 1961, it is alleged, the then Chief Minister Shri Patnaik stated on the floor of the Assembly that Orissa Cement Limited had donated a sum of Rs. 25,000 to Utkal Pradesh Congress Committee for their election fund on the eve of the mid-term election in Orissa. In February 1962, Shri Patnaik passed an order for stepping up movement by trucks in a systematic way for supply of cement from the factories. On October 9, 1962 Orissa Cement Limited represented its difficulties to the Government with regard to the movement of cement quota to different parts of the State by rail. It was suggested that those difficulties could be eliminated if the company was allowed to transport cement to different consignees in the Orissa State through its own transport contractors who has fleet of trucks and who could undertake supply of cement at reasonable rates. Although the office notes were not favourable to the above representation of the Company and it was pointed out that cement companies were more keen to transport by road than

by rail, the Supply Department which was under Shri Routray, approved the proposal. It was decided that the Company would supply and transport cement to different consignees in the State of Orissa through their approved transport contractor Messrs. Dinanath & Company and subsequently Konark Transport at the rate of 20 Paise per mile per ton up to 100 miles and 21 Paise per mile per ton for a distance beyond 100 miles. The aforesaid order was received on January 18, 1963. Taking advantage of the situation, it is stated, Orissa Cement Limited did not allow the stockists at various places to lift their quotas of cement through their own trucks or their contractor's trucks, but to lift it only through the Company's approved contractors. The matter was brought to the notice of the Government but no action was taken. On March 18, 1963 on the representation of the Company for increase in the transport charges the rates were revised as under :—

28 Paise per mile per ton up to 50 miles.

25 Paise per mile per ton from 51 to 100 miles.

23 Paise per mile per ton for distances beyond 100 miles.

The above rates came into force on April 1, 1963. Two other parties offered to transport cement at cheaper rate but their offers were not accepted.

The State Government further alleges that in view of the above order the Orissa Cement Limited did not place indents for adequate supply of wagons for the loading of cement. Most of the available wagons were used for supply of Central quota and the West Bengal quota of cement. So far as Orissa was concerned, 2/3rd of the allotted quota was carried by road and only 1/3rd by rail. This was so in spite of the matters having been discussed in the cement meetings, i. e. in meetings between the representatives of the Government and the representatives of the Cement factories. Even when a suggestion was made that the supply position of wagons had improved, no steps were taken to stop transport of cement by road.

Complaints, it is stated, were also received that the company was indulging in black market by resorting to road transport of cement. The audit report of 1964 revealed that certain divisions of the Delta Irrigation and Highway Scheme had to cancel the work orders based on competitive tenders for

the transport of cement at comparatively lower rates and had to enter into fresh contracts with the approved contractors of Orissa Cement Limited for transport of cement at the rates fixed by the Government. An extra expenditure of Rs. 20,263 was incurred in this connection.

The State Government concludes from the above that Shri Patnaik and Shri Routray are responsible for the above act of favouritism and encouragement to corruption.

In support of the above allegation, the State Government has filed the affidavits of Shri Lokanath Saran Panda, Under-Secretary, Supply Department and Inspector Mohammad Haroonal Rasid (Vigilance).

Shri Patnaik in the course of his affidavit has denied the charge made against him. According to him the whole matter was discussed, decided and implemented at official level. Reference in this connection is also made to the note of the Deputy Secretary of the Supply Department wherein he remarked that it was prudent to lay emphasis on the road transport in order to be sure of the supplies. The rates of Dinanath & Company, it is stated, were approved after proper verification from various Chief Engineers and District Collectors. No monopoly right was given to Orissa Cement Limited. Shri Patnaik adds that there was no need nor occasion for Minister to take any steps or issue any orders in the matter as the matter was entirely dealt with at the official level.

Shri Routray too in his affidavit has stated that whatever was done was done *bona fide* in the normal course of administration.

Supplementary affidavits in respect of this allegation have been filed by Shri L. S. Panda on behalf of the State Government, Shri Patnaik and Shri Routray.

The charge of impropriety contained in this allegation against Shri Patnaik and Shri Routray, in my opinion, is without any substance. So far as Shri Patnaik is concerned, all that has been brought out against him is that he made two orders dated the February 8, 1962 and July 23, 1963. As regards the order dated February 8, 1962 the material on

Record shows that on February 2, 1962 the Chief Minister enquired:

"In the meantime what is happening about cement. Every work is closed down. Do something and discuss."

Office notes were then recorded by the Deputy Secretary and Secretary of the Supply Department and it was stated that there was "great clamour for cement from almost all districts." An idea was also put forth about the transport arrangement by road and the extra cost involved. Shri Patnaik thereupon passed an order on February 8, 1962:—

"Better step up movement by trucks in a systematic way and keep it going."

The facts given above would show that the order dated February 8, 1962 was made by Shri Patnaik because he found that the different works were closing down on account of the difficulty in transport and supply of cement. In order to overcome that difficulty, he gave the direction for stepping up the movement by trucks. It was nowhere stated that the cement was to be transported by trucks, even if railway wagon was available. Indeed, the whole position was made clear in the letter which was issued by the Supply Department to the Manager of Orissa Cement Ltd. on December 13, 1962. Para. 2 of that letter reads as under:—

"(2) That you shall indent for the full requirement of wagons on the allotted days and that road transport shall be resorted to, to the extent necessary only in the event of failure of Railways to supply adequate number of wagons, and the wagons supplied on any day for Orissa destinations shall not ordinarily be rejected but fully utilised."

The second order dated July 23, 1963 made by Shri Patnaik reads as under:—

"We may also bring the public quota by trucks and offer it to the consumers or dealers at the proper (at cost) rates. Otherwise public suffer. If this cannot be done, then there is no need now for a monopolist from Bihar. Orissa Transport firms may also have a go at it."

Sd. B. Patnaik

23/7 "

The above order was made in the context of an application by Interdominion Road ways seeking monopoly of transport of cement from the cement factory at Chaibasa in Bihar. The order had nothing to do with Orissa Cement Ltd. and I fail to understand as to how it can be construed to be conferring any benefit on that company. Indeed, the object of the order seems to have been that the transport company from Bihar should not have the monopoly of transporting cement from Chaibasa and that transport companies of Orissa, too, should go in for that business. I find nothing objectionable in the two orders, referred to above, of Shri Patnaik.

As regards Shri Routray, it has not been shown that he made any order from which an inference of impropriety can be drawn against him. The question as to whether the officials of the Department or whether the Management of Orissa Cement Ltd. were guilty of any lapses need not be gone into because what we are concerned with in these proceedings is the lapse or impropriety of the respondents and not of third parties.

As a result of the above, I hold that the charge of impropriety levelled against Shri Patnaik and Shri Routray has not been substantiated.

CHAPTER 30

ALLEGATION No. 30

Re:

Construction of Bridge over River Thelia on Jharsuguda-Kolabira Road.

Allegation No. 30 relates to the acceptance of the tender of Shri C.R. Pani, brother of Shri Bijoy Kumar Pani, President of the Pradesh Congress Committee, for the construction of a bridge over river Thelia on Jharsuguda-Kolabira Road and the actual commencement of the construction before the grant of administrative approval. The respondents named in the allegation are Shri Patnaik and Shri Routray.

According to the case set up by the State Government in the particulars of allegations, tenders, as desired by Shri Patnaik, Chief Minister, were invited in 1963 for the construction of the above-mentioned bridge, even before the administrative approval of the Government was sought or received for the purpose. This was contrary to the rules. The tender of Shri C. R. Pani was recommended for acceptance. Before the Chief Engineer could accord his approval, the execution of the work relating to the bridge was in full progress and liability to the extent of Rs. 1.50 lakhs had already been incurred by August 3, 1963. By that date, it is stated, the plans, estimates and the tender papers had not even reached the Chief Engineer for approval. As better quality of rubble stone was not available nearby, suggestion was made to adopt plum concrete for speedy execution of the work. The order of the Chief Engineer that the plums should be limited to 15% instead of 20% was not complied with. Although the Works Department of the Government in letter dated October 24, 1964 stated that the work should be stopped, the Department had to give way when told that the work was already in progress and accordingly gave a direction to go ahead. The tender of Shri Pani for an amount of Rs. 6,25,420 had consequently to be accepted and an agreement was executed to regularize matters. The vigilance authorities after holding secret enquiries in the matter sought Government order to make a full-fledged enquiry but the then Deputy Chief Minister, Shri Routray, passed an order on September 14, 1965 that the officers should not be made to suffer and put to difficulties for carrying out instructions of the Chief Minister. It was added by Shri Routray that this was a case

where whatever irregularities had been committed or deviation from the rules had been made were due to the desire of the then Chief Minister to get the work done immediately. Further enquiry was accordingly ordered to be stopped.

The State Government concludes from the above that Shri Patnaik misused the funds of the State in collusion with Shri Routray. Shri Routray was further stated to have obstructed legal proceedings.

In support of the above allegation the State Government has filed the affidavit of Shri Gour Chandra Mohanty, Accounts Officer, and D. S. P. Harihar Dash (Vigilance).

Shri Patnaik in the course of his affidavit has denied the correctness of the allegations. According to him he had ordered for this work to be taken up on a priority basis as it was considered essential to connect Publabira and Laikera P.-S. (Police-Station) with Jharsuguda in Sambalpur district. The importance of the project was apparent from the fact that it was placed in Road work estimate for "improvement to Jharsuguda-Kolabira-Samasingha and Kuchinda Road" which finds place in the draft outline of the Third Five-Year Plan as mentioned in the letter dated April 10, 1964 from the Executive Engineer to the Superintending Engineer. As regards the justification for taking up the work, Shri Patnaik has referred to the remarks column in the statement enclosed with the letter dated August 3, 1963 from the Executive Engineer wherein it is stated :

"The position of the road was in a horrible condition. The road survey has since been made as the road was not even motorable. The Collector, Sambalpur is frequently pressing for the improvement of this road."

The Chief Secretary also impressed upon the Secretary, Works on September 10, 1963 about the desirability of sanctioning the construction of the bridge in question. It is further stated by Shri Patnaik that three tenders were received in response to the tender notice and it was found that the tender of Shri C. R. Pani was the lowest. As the department considered that the rates quoted by the tenderers were high, they started negotiation with the lowest tenderer Shri C. R. Pani, and he reduced his rates which were then accepted by the Government. There was no question of any favouritism to Shri Pani because his tender was accepted on merits.

Shri Routray too in his affidavit has denied the charge levelled against him, and has stated that he was never in

charge of the Works Department and as such had no connection with the execution of the work relating to the bridge in question. As regards the order made by him for not holding an enquiry, Shri Routray states that there was nothing wrong or improper in the order and he passed it in exercise of his discretion. The notings on the file showed justification of his order. There was no question of any legal proceeding at that time but only one of the enquiry.

In respect of this allegation the State Government has not produced any order made by Shri Patnaik. It has, however, relied upon letter dated September 7, 1963, addressed by the Superintending Engineer, Northern Circle, to the Chief Engineer (Roads & Building). There is reference in that letter to the direction of the Chief Minister. The letter reads as under :—

“I am submitting herewith the detailed working plan and estimate letter amounting to Rs. 7,39,670 for the above noted bridge for favour of your technical sanction.

An improvement estimate amounting to Rs. 35,00,700 for the whole project has already been submitted by T. O. letter No. 3647, dated 3-4-1963 for according administrative approval of the Government. There is a lump sum provision for the above noted bridge in running foot basis in the improvement estimate. The estimate has been prepared at the lowest tender rates of contractor basing on approved plan. The necessity of the work has been explained in the report prefacing the estimate. As desired by the Chief Minister, the tender was invited to take up the work immediately. In response to tender call notices, three tenders have been received from Shri C. R. Pani, Shri U. C. J. Private Ltd., and Shri Pannal Agarwalla, all ‘A’ class contractors, and works out 31.55 per cent, 35.45 per cent and 38.63 per cent excess over the Schedule respectively. Further the lowest tenderer Shri C. R. Pani has given alternate quotation for item No. 4 and No. 5 using plum concrete and his rates stand 32.18 per cent excess. Due to high rates, the lowest tenderer was called for negotiation but he was unwilling to reduce his rates further except the item No. 5 considering plum concrete stone and his rates

stand 29.94 per cent excess over the schedule considering plum stone after negotiation. Better quality of coursed rubble stones are not available nearby. For speedy execution of work it is preferable to adapt plum concrete instead of coursed rubble masonry. In the above circumstances, the lowest tender of Shri C. R. Pani is recommended for acceptance at his negotiated rates using plum concrete. The lowest tenderer has deposited earnest money amounting to Rs. 5,000 in shape of N. D. C. and the balance amount will be obtained from the tenderer before drawing the agreement. Early action may kindly be taken to accept the tender in order to regularise the matter."

The case of the State Government is that the direction of Shri Patnaik, as contained in the above letter, was intended to confer benefit in violation of the rules upon Shri C. R. Pani who is a brother of Shri Bijoy Pani, the then President of Pradesh Congress Committee. The stand of the State Government in this respect, in my opinion, is not well-founded. All that Shri Patnaik as Chief Minister directed was that tenders be invited to take up the work immediately. There is nothing to show that there was any direction that the work be entrusted to Shri C. R. Pani. On the contrary, the stress was on the invitation of the tenders. It is further clear from the above letter that in response to the tender call notice, three tenders were received from 'A' class contractors and the tender of Shri Pani was found to be the lowest. Even the lowest tender of Shri Pani was not accepted and negotiations were entered into with him which resulted in further reduction of his rate.

Argument has been advanced on behalf of the State Government that according to Rule 132 of the Orissa Public Works Department Code, no work should commence without administrative approval. It is pointed out that no administrative approval had been accorded by the Government by the time the tenders were invited. This may be a technical breach of the Rule, but in my opinion, no inference of any *mala fide* or dishonest intention can be drawn on that score. The material on record shows that the work on the bridge in question was to be taken up on a priority basis as it was considered essential to connect Publabira, Laikera police-station with Jharsuguda in Sambalpur district. The construction of the bridge was included in the Road work estimate for improvement to Jharsuguda, Kulabira, Samasingha, Kuchinda

Road and the same found mention in the draft outline of the Third Five-Year Plan. The above road was in a horrible condition; it was not motorable and the Collector of Sambalpur had frequently pressed for its improvement. The Chief Secretary in view of that addressed a note on September 10, 1963 to the Secretary, Works, stating :

“ If I remember right, I asked you to issue Government orders sanctioning construction of an important bridge on Laikera Jharsuguda Road a few months ago. The Superintending Engineer was also asked to go ahead with the work.....”

It appears that the construction of the bridge was taken up before the allotment of any money for the purpose by the Government or even the formal acceptance of the tender. When the matter came to the notice of the Government, a direction was issued by the Under-Secretary to the Chief Engineer to stop the work of construction. The Chief Engineer, as per letter, dated November 9, 1964, sent back the reply that it would not be desirable to allow the bridge to remain incomplete and to stop the work at the then stage of construction. On December 23, 1964 a letter was sent by the Under-Secretary in the Works and Transport Department to the Chief Engineer stating that the Government was pleased to authorise him to go ahead with the work on the construction of the bridge.

An allegation was then made by someone that the Superintending Engineer and the Executive Engineer had shown undue favour in the award of the contract to Shri Pani. A note was thereafter recorded by Additional Secretary, Vigilance, on July 1, 1965, the material part of which reads as under :—

“ The preliminary report is at pp. 3-9/c and the S. P.'s summary is at pp. 10-11/C. From these reports it would appear *prima facie* that the entire procedure adopted to grant the contract to this particular contractor has been unusual. The Superintendent of Police, Vigilance, says that so far no instance of corruption has been unearthed and chances are also remote. What he means is that there is nothing to indicate that these favours and unusual procedures are result of any money that the contractor might have paid to the officers. It is of course impossible to get any evidence with reference to any such monetary considerations. From the administrative angle, however, it would certainly look very suspicious in that the officers of the status of Executive Engineers and Superintending Engineers who are expected to be well conversant with the procedures relating to the sanctions and work orders of such works, adopted a procedure contrary to such orders. The motivation has to be left only to reasonable inference and cannot meet the tests of legal proof

As further enquiries at the office of the Superintending Engineer would mean enquiries against an officer of the status of Head of the Department, orders of Government are requested for continuing the enquiry and for taking charge of records from Superintending Engineer's office. ”

The above note was forwarded to Shri Routray by Shri A. K. Barren with the remark that it was a case of grave suspicion and an enquiry might be ordered. Shri Routray thereupon made the following order :—

“ Officers should not be made to suffer and put to difficulties for carrying out instructions of the Chief Minister. This is a case where whatever irregularities have been committed or deviation from rules made, have been due to the desire of the then Chief Minister to get the work done immediately. I know the circumstances in which the then Chief Minister ordered immediate execution of this particular work. The S. P. (Vigilance) has also indicated this in his report. In the circumstances, a further enquiry is not called for. ”

The above order has been assailed on behalf of the State Government as being improper. I have given the matter my consideration and am of the view that there is nothing in the above order to warrant the inference that it was made with an ulterior motive. The Superintendent of Police (Vigilance) had reported that no instance of corruption had been unearthed and the chances of doing so were remote. Shri Routray took into account the fact that the work in question had been undertaken under the instruction of the Chief Minister. He was also of the view that the officers of the Department should not suffer because of carrying out the wishes of the Chief Minister. The view taken by Shri Routray in this respect cannot be taken to be unreasonable and, in my opinion, it is difficult to hold that the order made by Shri Routray in this respect was vitiated by any impropriety.

I would, therefore, hold that the charge of impropriety as contained in this allegation has not been proved against Shri Patnaik and Shri Routray.

CHAPTER 31

ALLEGATION No. 31

Re:

Favouritism in contract for construction of Daya Bridge

Allegation No. 31 relates to the favouritism alleged to have been shown to Shri G. C. Kanungo, contractor in the matter of contract for construction of a high level bridge over river Daya on Pipli-Jatni Road (hereinafter referred to as the Daya Bridge). The respondents named in the allegation are Shri Patnaik and Shri Mardaraj.

According to the case set up by the State Government in the particulars of allegations, Shri Mardaraj, Raja of Khandpara, entered political field in 1952 when he was elected as an independent member of the Orissa Legislative Assembly. He joined the Congress Party and was elected to the Assembly in the elections of 1957 and 1961. Both Shri Mardaraj and Shri Patnaik had special interest in flying. In the Ministry formed by Shri Patnaik, Shri Mardaraj was sworn in as Minister and was allocated the business of Roads and Buildings Branch of the Works Department.

The construction of Daya Bridge, it is stated, was sanctioned for Rs. 6,80,000. Tenders were invited for the work and four parties submitted their tenders. One of the tenders was cancelled as it contained special condition which could not be accepted. The lowest tender was of Shri Uttam Singh who offered to do the work for Rs. 9,13,443. Subsequently, he revised his rates and enhanced the amount to Rs. 9,27,443. The second lowest tender was of Burma Construction Company who offered to do the work for Rs. 9,56,611. The highest tender was of Shri G. Choudhury who offered to do the work for Rs. 9,78,606. After the opening of the tenders, Shri Mardaraj instructed the Superintending Engineer to obtain quotation from Shri G. C. Kanungo of Cuttack for the work. Although Shri Kanungo had not submitted any tender, negotiations with Shri Kanungo were carried on and on calculation it was found that he had offered to do the work for Rs. 10,63,711-83 Paise. After receipt of the tender papers and comparative statements, Shri Mardaraj gave some verbal instructions and accordingly the Chief Engineer submitted a

fresh comparative statement. Shri Mardaraj then asked the Chief Engineer to submit a revised estimate. After the revision of the estimate, the negotiated tender of Shri Kanungo was found to be for Rs. 10,71,880, while the lowest tender of Shri Uttam Singh was found to be for an amount of Rs. 9,00,543. Shri Mardaraj then observed that Shri Uttam Singh had no experience in bridge work and this would be evident from the rates given by him compared to those of Burma Construction Company and Shri G. Choudhury. Order was made by Shri Mardaraj that the work be given to Shri G. C. Kanungo at Rs. 10 lakhs exclusive of the cost of Roller Bearings which were to be supplied by the Department. The Chief Engineer then forwarded the papers to the Works Department. The Joint Secretary then made a note that the tender should be forwarded to the Contract Committee in order to avoid audit objection. On matter being referred to the Finance Department, the said Department raised serious objection to the peculiar procedure. The Chief Secretary also made a note that there was bound to be serious criticism by the Public Accounts Committee, as a person who had not even tendered, was being suggested for negotiated contract at rates higher than those actually tendered.

In spite of the above objections, it is stated, Shri Patnaik, who was Chief Minister and in charge of the Finance Department, observed on September, 13, 1962, that he was aware of the contract and the Minister and the Chief Engineer had discussed it with him. Shri Patnaik further observed that the lowest tender had neither experience nor equipment and Shri Kanungo was the next lowest. The Chief Engineer, after bargaining with him, had brought down the rates and Shri Patnaik concurred with that. Shri Patnaik, accordingly, gave the requisite sanction. A note was thereafter made on the file by the Department that the tender of Shri Kanungo was not the next lowest. Shri Patnaik then asked Shri Mardaraj to examine the matter. Shri Mardaraj thereupon recorded a note that Shri Kanungo might be asked if he was prepared to take up the work at the second lowest tender rate and that otherwise the contractor, who had quoted the second lowest rate should be given the work. This proposal was approved by Shri Patnaik who observed that he had earlier got mixed up in the two names 'Gokuli Kanungo' and 'Gokuli Jena'. The Works Department, accordingly as per letter, dated, October 17, 1963 issued orders to the Chief Engineer to entrust the work to Shri G. C. Kanungo at the rates quoted by Burma Construction Company if he

so desired and otherwise to entrust the work to Burma Construction Company.

The State Government concludes from the above that favouritism was shown in this case to Shri Kanungo in violation of all financial rules resulting in loss to the Government to the extent of Rs. 52,158. It is also added by the Government that Shri Mitra was interested in Shri Kanungo and the two had been showing favour to each other.

In support of the above allegation the State Government has filed the affidavit of Shri Prafulla Kumar Das, Under-Secretary, Works and Transport Department.

Shri Patnaik in the course of his affidavit has denied the correctness of the allegations made against him. According to him he concurred with the Minister, Works in the decision to award the contract to Shri G. C. Kanungo, with whom the rate had been settled on negotiation, after being informed by the Minister and Chief Engineer that the lowest tenderer had no experience in bridge work and Shri. G. C. Kanungo was the second lowest. The Department of Works subsequently pointed out that Shri Patnaik had not been correctly informed and that the tender of Shri Kanungo was in fact the highest and not the second lowest. Shri Patnaik then indicated that in case Shri Kanungo's tender was not the second lowest, the order should be cancelled. Subsequently, the Minister, Works clarified that there was a mistake in fixing the tender amount and suggested that Shri Kanungo might be asked if he was prepared to accept at the second lowest tender rate. In the alternative, the suggestion was that the contractor, who had quoted the second lowest rate, should be given the work. Shri Patnaik approved the suggestion. It is further stated by Shri Patnaik that Shri Gokuli Jena is another 'A' class contractor and he confused him with Shri G. C. Kanungo though none of them was personally known to Shri Patnaik. It is denied by Shri Patnaik that he showed any favour or caused avoidable expenditure.

Shri Mardaraj in the course of his affidavit has also denied the allegations of favouritism levelled against him. According to Shri Mardaraj, the quotation of Shri Uttam Singh (Shri Uttam Singh) was not taken into consideration, because he had not taken up any major bridge works before. Shri Uttam Singh also did not have the necessary equipment. Shri G. C. Kanungo approached the Chief Minister to

give him some work and it was the Chief Minister who called Shri Mardaraj and the Chief Engineer and gave instructions to allot the work to Shri Kanungo. At that time the other two tenderers had already been allotted other bridges and their hands were full. Shri Mardaraj accordingly took into consideration the work load and the capacity of the contractor to stick to the time schedule. Shri Mardaraj thereafter gave instructions to the Chief Engineer to allot the work to Shri Kanungo in order to keep to the wishes of the Chief Minister. As regards the tender, Shri Mardaraj states, though it is desirable to call the tenders it does not debar the departmental head to look into other aspects and allot the work to the best man in the interest of the State. Shri G. C. Kanungo, according to Shri Mardaraj, was a perfect stranger to him. He has also referred to the affidavit of Shri Kanungo to show that when tenders were invited for construction of Kusumi bridge the tender of Shri Kanungo though lowest was not accepted by Shri Mardaraj. Shri Kanungo then approached the Chief Minister but Shri Mardaraj on that occasion held to his decision.

Shri Gokul Chandra Kanungo has also filed his affidavit in connection with this allegation. According to him he had given tender for the construction of Kusumi bridge for a sum of Rs. 22 lakhs in 1962-63 and though his tender was the lowest he was not given work. On his protest he was asked to quote rates for the construction of Daya bridge which was a much more difficult work. The rates quoted by him were drastically reduced by negotiations and even the negotiated rates were not adhered to and Shri Kanungo was asked to accept the rates of Burma Construction Company to which he reluctantly agreed.

Supplementary affidavit in respect of this allegations has been filed by Shri Patnaik wherein he has denied that Shri G. C. Kanungo was known to him or ever approached him to give him work. As regards the discussion, Shri Patnaik states that Shri Mardaraj came along with Chief Engineer to discuss the matter. The discussion was at the initiative of Shri Mardaraj and not of Shri Patnaik.

In respect of this allegation I find that on April 28, 1962 the Chief Engineer, Roads and Buildings, addressed a letter to the Secretary, Works Department, stating that estimate of the Project of Daya Bridge had been technically sanctioned at Rs. 9,54,000. Tenders were invited for the above work

and in response to that four tenders were received on March 8, 1961. Out of the four tenders received, the tender of Shri G. Choudhury worked out to be the lowest with certain unacceptable special conditions. On asking for clarification, the contractor demanded still higher rates. The tenders were, therefore, cancelled and fresh tenders were invited. In response to that, three tenders were received—one from Shri Uttam Singh, the other from Messrs. Burma Construction Co., and the third from Shri G. Choudhury. After the tenders had been opened, Shri Mardaraj, Minister (Works) instructed the Superintending Engineer to obtain quotation from Shri G. C. Kanungo for the said work. The position in respect of the tenders as it emerged then was that the tender of Shri Uttam Singh was the lowest. His tendered amount worked out to be Rs. 9,27,443. The second lowest tender was that of Burma Construction Co. and the same worked out to be for an amount of Rs. 9,56,611. The tender of Shri G. Choudhury worked out to be for an amount of Rs. 9,78,606. The tender of Shri G. C. Kanungo was found to be the highest and worked out to be for an amount of Rs. 10,63,711-83 P. Shri Kanungo also laid down the condition that the work about the centering and shuttering for the bridge was to be done by the Department and the cost in respect thereof was to be recovered from his bills. As per verbal orders of Shri Mardaraj, a fresh comparative statement of the tenders of Daya bridge was prepared and it was pointed out that the tender of Shri Kanungo worked out to be Rs. 10,71,880 which was in excess of 57.6 per cent of the corresponding estimated amount of Rs. 6,80,090. It was also mentioned that the lowest tendered amount worked out to be Rs. 9,00,543. On May 30, 1962 Shri Mardaraj addressed the following note to the Chief Engineer—

“While taking into consideration of the rates for sinking wells of Kusumi I find that the estimate for the Daya bridge is rather defective in the sense that the rate for sinking twin wells is very low compared to the rates quoted for single well on Kusumi or other bridges. As such, it is not correct assess (sic) that the quotation of Shri Kanungo is 57.6 per cent over the estimated cost. Will you please examine this point and send me your revised estimate by the 5th June positively. I also understand that the specification of the bridge on Birupa is identical to the proposed bridge on Daya, so I would like to know the rates received for the Birupa bridge.”

Note, dated June 3, 1962 was thereafter addressed by the Chief Engineer to the Minister (Works). It was pointed out

in this note that the tendered amount of Shri Kanungo worked out to be Rs. 10,71,880, while the tender of the lowest tenderer, Shri Uttam Singh, worked out to be for Rs. 9,00,543. Shri Mardaraj then passed the following order:—

“As I had observed before the rate given by Uttam Singh has been low due to his inexperience in Bridge work. This is evident when the rates cited by other two contractors, i. e., Govind Choudhury and Burma Construction Co., who have been really experienced in Bridge Works (sic).

The work be given to Shri G. C. Kanungo at Rs. 10,90,000 exclusive of the cost of Roller bearings which is going to be supplied by the Department.

Sd. Mardaraj

17-6-1962”

When the order of Shri Mardaraj came to the notice of the Departmental officials, a note was recorded that the contract should be dealt with by the Contract Committee as the negotiated amount was for Rs. 10 lakhs. The Secretary thereupon recorded a note on July 31, 1962 to the effect that as Minister had already passed final orders, there would be no use submitting the matter to the Contract Committee. A note was then made on the file that the acceptance of the tender of Shri Kanungo involved financial matter and the concurrence of the Finance Department was necessary in order to avoid audit objection. The matter was thereafter referred to the Finance Department. The Finance Secretary addressed a note to the Chief Secretary on September 10, 1962, the material part of which reads as under:—

“Works Department have not taken any steps to refer this matter to the Contract Committee before finalising as to who should be given the contract. As the matter stands, the Department is recommending for giving the contract to Shri G. C. Kanungo who has quoted 56.3 per cent in excess of the estimates. Shri Kanungo had not tendered for the work earlier but later after the tenders were opened he has submitted a negotiated tender. The other contractors who tendered have quoted much lower than him and no satisfactory reasons have been given as to why the tenders of Sardar Uttam Singh, Messrs. Burma Construction Company and Shri Govinda Choudhury should not be accepted. Under such circumstances, F. D. can hardly agree to giving the contract to Shri G. C. Kanungo.

C. M. may see.”

On September 12, 1962 Shri Sivaraman addressed the following note to the Chief Minister:—

"I am drawing attention to the tendency on the part of the Secretaries to route file through the Chief Secretary whether under the Rules it is required to be seen by him or not. I have already mentioned to Chief Minister several times the demoralisation in our administration. Here is a case where the Secretary, Finance, has every right to tell the Minister in the department that very unhealthy practices have been followed and it is not desirable to concur in Finance. A person who has not even tendered is being suggested for negotiated contract at rates higher than those actually tendered. There is bound to be serious criticism from the Public Accounts Committee."

The Chief Minister, Shri Patnaik, who was also the Minister of Finance, made the following order on September 13, 1962 :—

"I am fully aware of this contract. The Minister (Works) and C. E. discussed this tender with me. Facts are slightly different what F. D. has stated.

The lowest tenderer has no experience of bridges and has no equipment for it.

Kanungo was next lowest. C. E. bargained with him and brought down the rates. This was done with my full concurrence.

The award is sanctioned in F. D. "

According to note dated September 17, 1962 when a doubt was expressed about Shri Kanungo's tender being the second lowest, the Chief Minister indicated that in the case Shri Kanungo's tender was not the second lowest, he would cancel the order. The Chief Minister also directed that the inquiry about the correct position might be made from the Chief Engineer. On September 19, 1962 the Chief Engineer addressed a note to the Secretary, Works Department saying that from the comparative statement it would be seen that the tendered amount of Shri Kanungo was the highest as compared with the tendered amounts of the other three contractors. The notings on the file thereafter read as under :—

"Chief Minister—Kindly refer to note of Deputy Secretary Finance, on page 16 *ante*. As desired by you, Works Department was asked to put on the file comparative statement of the quotations received from different contractors for tender or the bridge on Pipili-Jatni Road. The statement may kindly be seen at Pg. 'W' below. It would be seen from the

statement that the lowest tender was that of Shri Uttam Singh which was 6.80 per cent in excess over the estimate prepared at revised rates. The next higher tender was that of Messrs. Burma Construction Company which was 10.68 per cent excess. The next higher was that of Shri G. Choudhury (17.66 per cent excess) and the tender of Shri G. C. Kanungo was the highest (32.34 per cent excess). It would thus be seen that the tender of Shri Kanungo was the highest among the four tenderers and his tender was not the second lowest as presumed by Chief Minister in his note at page 15 *ante*. The file is submitted for orders.

Sd. K. Lalit

September 21, 1962

C. M. as desired

I have examined the rates of all the contractors. I do admit that there has been a slip-up while fixing the tender amount of Shri G. Kanungo. Since it is an admitted fact that the lowest tenderer Shri Uttam Singh has no previous experience, we may ask Shri G. Kanungo if he is prepared to take up this work at the second lowest tender rate, otherwise the contractor who had quoted the second lowest should be given this work.

Sd. Mardaraj

Minister (Works)

30-9-1962

As Proposed

I too got mixed up between 'Goakili Kanungo' and 'Gokuli Jena' only the common factor Gukuli remained in my mind. I am thankful to F. D. & Works Department for pointing out the error.

Sd. B. Patnaik

C. M.

3-10-1962

Letter dated October 17, 1962 was thereafter addressed by the Financial Adviser-cum-Deputy Secretary, Works Department to the Chief Engineer, that Shri Kanungo might be asked to take up the work of construction of Daya Bridge at the rate

quoted by Burma Construction Company if he so desired and that otherwise the work might be entrusted to Burma Construction Company. On January 8, 1964, the Executive Engineer addressed a communication to Shri G. C. Kanungo asking him to furnish a quotation as quoted by Burma Construction Co., for the work of Daya Bridge. On June 24, 1964 Shri G. C. Kanungo sent the requisite quotation.

The facts reproduced above, in my opinion, go to show that an abnormal and unusual course was adopted to entrust the work of the construction of Daya Bridge to Shri G. C. Kanungo. Only three persons had responded to the tender notice and Shri Kanungo was not one of them. The quotation of Shri Kanungo was invited, under the instruction of Shri Mardaraj, after the tenders of the other three contractors had been scrutinized. The quotation of Shri Kanungo was found to be the highest, Shri Mardaraj then passed order on June 17, 1962 whereby he ruled out of consideration Shri Uttam Singh on the ground that he lacked experience in bridge work. Normally one thought that the work in such a contingency would be entrusted to the second lowest contractor, v.z., Burma Construction Company, but Shri Mardaraj directed that the work be given to Shri Kanungo for an amount of Rs. 10 lakhs. This amount too was in excess of the quotations of all the three parties who had responded to the tender notice. When the matter was referred to the Finance Department, the Finance Secretary criticised the procedure adopted and forwarded the papers to the Chief Secretary. The Chief Secretary in his turn also animadverted upon the whole thing and pointed out that there was bound to be criticism from the Public Accounts Committee. When the papers were put up before Shri Patnaik, he gave the requisite sanction after observing that he was fully aware of the facts of the contract. Remark was also made that Shri Kanungo was the second lowest. Subsequently when it was pointed out that Shri Kanungo's quotation was the highest and not the second lowest, an order was made by Shri Mardaraj that Shri Kanungo might be asked to take up the work at the second lowest rate, and that otherwise the contract should be given to the contractor with the second lowest quotation. Shri Patnaik gave his concurrence to the said order. All the above facts, in my opinion, highlight the keenness exhibited by Shri Mardaraj and Shri Patnaik to give the contract for the construction of Daya bridge to Shri Kanungo.

On behalf of Shri Mardaraj it has been urged that he made the orders for entrusting the work to Shri Kanungo under the directions of Shri Patnaik. Shri Patnaik has denied

this fact. Be that as it may, this fact would constitute no justification for Shri Mardaraj for deviating from the normal procedure. Indeed, the material on record shows that both Shri Mardaraj and Shri Patnaik acted in unison in allotting the contract to Shri Kanungo.

Argument has also been advanced on behalf of the respondents that the contract for Daya bridge was given to Shri Kanungo, because in the matter of Kusumi bridge he had not been given the contract even though his tender was the lowest. There is no force in this contention because one wrong cannot be set right by another wrong.

Both Shri Patnaik and Shri Mardaraj have stated that Shri Kanungo was not known to them personally. If so, there is no cogent explanation as to why they went out of the way to favour Shri Kanungo with the contract in question. According to Shri Mardaraj, the one reason which prevailed with him was that the other two contractors had already been allotted work for construction of other bridges and their hands were full. Shri Mardaraj was consequently doubtful about the capacity of these two contractors to stick to the time schedule. This reason was, however, not given by Shri Mardaraj when he directed that the work be entrusted to Shri Kanungo. Another reason for his preference has been given by Shri G. C. Kanungo, according to whom his tender was not accepted for Kusumi bridge even though it was the lowest and on his protest he was told to quote for construction of Daya bridge. As against that, it has been argued on behalf of the State Government that the real reason for allotting the contract to Shri Kanungo is provided by the poster of Shri Biren Mitra. According to that poster a loan of Rs. 1,500 was taken from Shri Gokula Chandra Kanungo in connection with the construction of house by Shrimati Mitra. Be that as it may, the material on record indicates that no pecuniary loss was caused to the State because the contract was given to Shri Kanungo on the rate contained in the second lowest tender, viz., that of Burma Construction Company.

My findings in respect of this allegation are that:

- (1) Quotation was invited from Shri Kanungo for construction of Daya bridge, at the instance of Shri Mardaraj, after the tenders of three other contractors, namely, Shri Uttam Singh, Burma Construction Company and Shri G. Choudhury had been scrutinized.

- (2) Even though the tender of Shri Kanungo turned out to be the highest, direction was given by Shri Mardaraj to entrust the contract to him for an amount of Rs. 10 lakhs although this amount too was in excess of the amounts quoted in the other three tenders. The tender of Shri Uttam Singh, which was the lowest, was ruled out on the ground that he had no experience of bridge work.
- (3) When it was pointed out that the quotations of the other two contractors were lower, Shri Mardaraj passed the order that the work should be entrusted to Shri Kanungo at the rate contained in the second lowest tender.
- (4) Shri Patnaik concurred with the orders made by Shri Mardaraj and the former's note shows that he was fully cognizant of the matter.
- (5) The facts reveal that an abnormal and an unusual procedure was adopted by Shri Mardaraj with concurrence of Shri Patnaik to favour Shri Kanungo with the award of contract.

CHAPTER 32

ALLEGATION No. 32

At the instance of the Government of India, the State Government have decided that in the interest of security this chapter of the report of the Khanna Commission should not be published. The Commission has come to a finding that the charge under this item against Shri B. Patnaik is without any basis and that the charge against Shri H. S. Mardaraj too is not well-founded. For similar reasons, the enquiry into this allegation was held by the Commission *in camera*.

CHAPTER 33

ALLEGATION No. 33

Re :

Trunk Call Bills of Shri Mitra

Allegation No. 33 relates to the alleged payment of bills by the State Government in respect of trunk calls from telephone No. 302 at the Cuttack residence of Shri Mitra even though good many of those calls were for the business of Orissa Agents. The respondents named in the allegation are Shri Mitra and Shri Routray.

According to the case set up by the State Government in the particulars of allegation, Shri Mitra had telephone No. 302 at his Cuttack residence prior to his becoming a Minister in the Ministry headed by Shri Patnaik. The business concern "Orissa Agents", it is stated, was started in 1959 by Shri Mitra though it was shown to be the sole proprietary concern of his wife Shrimati Easwarama Mitra. The concern dealt in variety of articles. Shri Kefayatulla was mentioned as the Manager of the concern and carried on the business, while Shrimati Mitra remained a mere figurehead. On the letter-head of the Orissa Agents, the telephone number was printed as '302'. Orissa Agents became the sole distributor of all manufactured products of Kalinga Tubes and Kalinga Industries and entered into various business transactions with the State Government for supply of material after Shri Patnaik came into power and Shri Mitra became the Deputy Chief Minister. The business dealings of Orissa Agents, which were in the range of Rs. 3 lakhs annually before the assumption of office by Shri Mitra, suddenly jumped to Rs. 14 lakhs in 1961-62 and Rs. 42 lakhs in 1962-63. As the office of Orissa Agents was situated in the residence of Shri Mitra in Biharibag, Cuttack, telephone No. 302 was extensively used for the business of the concern even after Shri Mitra assumed office. A heavy amount was due in respect of trunk calls booked from telephone No. 302 and the Accounts Officer, Calcutta, wrote a letter dated March 12, 1962 to the Superintendent, Political & Services Department of the State Government, which was under the charge of Shri Mitra, that outstanding bills in respect of telephone No. 302 amounting to Rs. 3,197.95

Paise be accepted for book adjustment. On November 2, 1962 the Personal Assistant to Shri Mitra sent a note to the Superintendent that telephone No. 302, Cuttack was used for Government purpose and the Finance Department might, therefore, be informed to authorise payment for this telephone. Accordingly the Commerce Department, which was under the charge of Shri Routray, treated telephone No. 302 as a Government connection with retrospective effect from June 23, 1961, the date when Shri Mitra had assumed office. In December 1963, the Commerce Department accorded *post facto* sanction for the installation of extensions of telephone connection No. 302-A and No. 302-B at the residence of Shri Mitra, who was then the Chief Minister of Orissa. On October 8, 1963 the Accounts Officer, Telephone Revenue, informed the Secretary, Political & Services Department, that a large number of rent and trunk call bills in respect of telephone No. 302 had remained unpaid in spite of reminders. The details of those bills were also given. The total amount due for trunk calls from May, 1961 till October, 1963 was Rs. 11,280·15 Paise, while the amount due on account of the rent was Rs. 898·60 Paise. The aggregate of those amounts came to Rs. 12,178·75 Paise. As the Political & Services Department could not ascertain as to how much amount was due on account of official calls and how much was due on account of private calls from telephone No. 302, a note was addressed to the Assistant Private Secretary to Shri Mitra to certify the correctness of the Bills. It was also mentioned that consolidated bills were being passed for payment on account of the pressure of the Telephone Department. An amount of Rs. 12,805·82 Paise was thereafter paid by the State Government on account of the bills.

According to the State Government it was essential for Shri Mitra to have kept a note of the private calls and to have paid for those calls. It is further stated that extensive use was made of telephone No. 302 and its two extensions 302-A and 302-B for the business of Orissa Agents and this fact was admitted by Shri Routray in answer to a question in the Assembly. Shri Routray also gave the details of the amounts deposited by Shri Mitra in respect of the private calls from that telephone. It is the case of the State Government that the amount paid was very small compared to the actual number of private calls. The number of private calls, it is further stated, was not correctly shown. Telephone calls to the same number were sometimes shown official and at other times private.

The State Government concludes from the above that Government money was spent in making payment of huge amount on account of trunk calls in respect of the business transactions of Orissa Agents. The responsibility for that is attributed to Shri Mitra. Shri Routray is stated to have colluded with Shri Mitra.

In support of the above allegation, the State Government has filed the affidavits of Shri Gajendranath Tripathy, Under-Secretary, Political & Services Department and Inspector Hemakanta Sahu (Vigilance).

Shri Mitra in the course of his affidavit has denied the correctness of the allegations made against him. According to Shri Mitra, telephone No. 302 was his private telephone since 1951 and continues to be so till today. After his wife started independent business in the name and style of Orissa Agents on April 1, 1959, this telephone was also used by her concern. When Shri Mitra assumed office as a Minister, he was entitled to a Government telephone at Cuttack as he was staying there often and Cuttack was his constituency. Somehow the allotment of a Government phone to which he was entitled as a Minister escaped the notice of the officials concerned and when they became conscious of it they treated this private telephone as Government telephone with retrospective effect. So far as payment of charges for private trunk calls from this telephone was concerned, the entire amount was paid; still as a matter of abundant caution an additional amount of Rs. 1,000 was paid on January 29, 1965 before Shri Mitra left office in November, 1965 to cover up any contingency in the matter of payment of private trunk calls. Shri Mitra states that it is unfortunate that no adjustment has yet been made and nothing has been refunded. Nothing is due, according to Shri Mitra, from him for the private trunk call charges.

Shri Routray, too, has denied the charges levelled against him. In the course of his affidavit he has stated that the answers that he gave in the Assembly were on the basis of the information and records placed at his disposal. As regards the installation of telephones at the residence of the Ministers, Shri Routray states that these have always been considered as routine matters and are dealt with and disposed of at the level of the Under-Secretary or Secretary of the Department. As far as Shri Routray can recollect, the matters alleged were never put up before him as Commerce Minister. He was not even aware of the matters and came to know of them only when

some questions were asked. There was, according to Shri Routray, no question of collusion regarding a telephone connection.

Supplementary affidavits have been filed by Shri R. N. Patnaik, Under-Secretary in the Home Department, as well as by Shri Mitra.

In respect of this allegation, I find that on November 2, 1962, the Personal Assistant of Shri Mitra addressed the following note to the Superintendent, Political & Services Department.

"Phone No. 302, Cuttack is exclusively used for Government purpose. F. D. may, therefore, be immediately informed to authorise payment for this phone. The other connection 1082 in Dy. C. M's. Cuttack residence is not chargeable to Government Account. This is very immediate."

On November 10, 1962, the Under-Secretary, Commerce Department, addressed the following letter to the Sub-Divisional Officer, Phones, Cuttack :—

"I am directed to say that Government have been pleased to treat the installation of a telephone connection (CK—302) at the residence of the Minister, Political & Services at Cuttack as Government phone with effect from 23-6-1961.

Bills in respect of the said telephone connection from the above date may be sent to the Political & Services (Genl.) Department for acceptance and payment.

Any action required regarding shifting, repairing and disconnecting of the telephone connection will be taken up by the above said Department after issue of this order.

The telephone connection should exclusively be used by Minister or any officer authorised by him and should be surrendered when no longer required."

On September 13, 1963, the Accounts Officer, Telephone Revenue, addressed a letter to the Secretary, P. & S. Department, stating that a large number of rent and trunk call bills in respect of telephone No. 302 were outstanding and unless those bills were settled by October 25, 1963, the telephone connection would be disconnected. Another letter was addressed by the Accounts Officer to the Director of Posts and Telegraphs on December 2, 1963 stating that there had been no appreciable improvement in the position of telephone bills outstanding against Shri Mitra. No action appears to have been taken on letter dated November 10, 1962 from the Orissa Government to the Subdivisional Officer, Phones, for

treating telephone No. 302 as Government telephone, because on December 19, 1963, the Accounts Officer, Telephone Revenue, addressed letter to the Superintendent of Political & Services Department, that he was not aware that charges against telephone No. 302 were to be borne by Orissa Government from June 23, 1961 onwards. The Accounts Officer also pointed out that bills in respect of that telephone had already been forwarded. On December 23, 1963, the Superintendent of Political & Services Department addressed a note to the Assistant Private Secretary to Shri Mitra, who had in the meantime become Chief Minister, stating that the trunk call bills relating to telephone No. 302 had not been returned to the Department. It was pointed out that the Telephone Department had sent consolidated arrear payment bill of Rs. 7,692·86 Paise. Request was made to give the requisite certificate on the bill so that the matter might be settled. On February 7, 1964 the Assistant Private Secretary to Shri Mitra sent back the following reply :—

“ In spite of our best endeavours, we have not yet been able to get the copies of the bills for verification nor is it possible to state clearly whether all the calls are official or not. However, I am passing this consolidated bill as Telephone Department are pressing for payment. If subsequently it is found that some of the amounts, now paid, have already been paid, action should be taken to adjust the same. Since P. & S. Department are dealing with the papers, they are in possession of full facts and can be in a better position to tackle the issue.”

On October 1, 1964 Shri Routray stated in answer to a question in the Legislative Assembly that the proprietress of Orissa Agents (Shrimati Mitra) had by herself paid a sum of Rs. 7,819·43 Paise on account of private calls booked from telephone No. 302 as per challans dated September 13, 1963, September 21, 1963, September 7, 1964 and September 14, 1964. The details of those payments were not given by Shri Routray, but are as under—

September 13, 1963	.. Rs. 2,151·01 Paise
September 21, 1963	.. Rs. 837·20 Paise
September 7, 1964	.. Rs. 1,048·50 Paise
September 14, 1964	.. Rs. 3,782·63 Paise

The aggregate of these four payments comes to Rs. 7,819·34 Paise. On December 23, 1964 the Assistant Private Secretary to Shri Routray addressed the following note to the Superintendent of Political & Services Department :—

“In enclosing the telephone trunk call bills in respect of the telephone connection No. 302-CK., I am to state that the private calls of these bills as detailed in the enclosed list have already been deposited in the Finance (Accounts Section) Department vide chalan No. 1580, dated 13-9-1963, No. 947, dated 21-9-1963, No. 4342 (15), dated 5-9-1964 and No. 4342 (26) dated 12-9-1964. Now that the private calls have been paid in full, the accounts may be squared up with the telephone authorities immediately as they are pressing for payment from a pretty long time.”

Letter dated January 23/24, 1965 was addressed by the Assistant Private Secretary to the Superintendent of Political & Services Department, stating that the private party had till then paid a sum of Rs. 8,145·37 Paise towards private calls. The Assistant Private Secretary also referred to his demi official letter sent to the Accounts Officer and stated :—

“In my D. O. referred to above, I had stated that in the absence of the regular bills for the months of July and August, 1961, July to September, 1962, April and May, 1963, the private party has paid 50 per cent of the amount for the said months, i. e., Rs. 2,747·28 Paise for these months. This was paid rather on a liberal basis as our experience shows that the private calls generally stood at 30 per cent of the total cost of calls booked in a particular month. It would, therefore, be seen that even after meeting the cost of actual private calls booked in these months, the private party shows a fair chance of adjusting the payment for the month of June, 1963 papers for which are still not available to us.”

Request was accordingly made to call for the bills for the month of June, 1963 for final adjustment of accounts. On January 29, 1965 a further sum of Rs. 1,000 was paid on behalf of Shri Mitra to the Accountant, Finance Department, as per following receipt:—

“Received a sum of Rs. 1,000·00 (Rupees one thousand) only from Assistant Private Secretary to Chief Minister, Orissa for safe custody towards the adjustment to be made for private trunk-call charges booked from Phone No. CK-302.”

On February 20, 1965 a letter was addressed by the Assistant Private Secretary to Shri Mitra stating that a sum of Rs. 2,747·28 paise had been paid for the months of July and

August, 1961, July to September, 1962 and April and May, 1963 on the basis of 50 per cent of the bills as the detailed bills were not then available. Subsequently, according to that letter, the duplicate copies of the bills had been received and scrutinized, and it was found that the amount of private bills came to Rs. 1,918.17 Paise. Request was accordingly made to adjust the balance of Rs. 829.11 Paise in other bills.

The material on record further shows that the Orissa Agents, which is stated by Shri Mitra to be the concern of his wife, started its business on April 1, 1959 and closed its business on August 5, 1963. Orissa Agents mentioned on its letter-head its telephone number to be '302'.

From the above resume and the other material on record, a number of facts emerge to which reference would be made hereafter:

Although telephone No. 302 was being used for the business of Orissa Agents, the Personal Assistant to Shri Mitra addressed a note on November 2, 1962 to the Superintendent of Political & Services Department that the aforesaid telephone number was being exclusively used for Government purpose.

In the letter dated November 10, 1962 addressed by the Under-Secretary, Commerce Department, it was stated that telephone No. 302 should be treated as Government phone, with effect from June 23, 1961. It is also stated that the telephone should be exclusively used by the Minister or other officer authorised by him. Despite the contents of the above letter, telephone No. 302 continued to be used for the business affairs of Orissa Agents.

It has been argued on behalf of Shri Mitra that there is no bar to the family members of a Minister from using the official telephone installed at his residence for private trunk-calls. This may be correct, but the position which arises in the present case is rather unusual, as telephone No. 302 was not used by the members of the family of Shri Mitra for their personal affairs but for the business affairs of Orissa Agents which was a commercial concern. The material on record shows that there was another telephone No. 1082 at the Cuttack residence of Shri Mitra. This telephone was not treated as official. It is not clear as to why the aforesaid private telephone was not used for the business affairs of Orissa Agents and why trunk calls for Orissa Agents were booked from the official telephone.

No intimation appears to have been sent to any Department of the Government that telephone No. 302 was being used for the business affairs of Orissa Agents till August 5, 1963, when Orissa Agents closed its business. No payment for trunk calls was made by Orissa Agents till August 5, 1963. The first payment in respect of the trunk calls of Orissa Agents was made on September 13, 1963, more than a month after the closing down of that concern.

The material on the file indicates that no proper record used to be maintained by Orissa Agents for the trunk calls made from telephone No. 302. This would follow from the note dated February 7, 1964, reproduced above, addressed by the Assistant Private Secretary to Shri Mitra, in the course of which he stated:

"Nor is it possible to state clearly whether all the calls are official or not."

If a regular record had been maintained, there could have been no difficulty in specifying the number of trunk calls booked by Orissa Agents in each month. The fact that for the months of July and August, 1961, July, August and September 1962, and April and May, 1963, Orissa Agents made payment of the trunk call bills on 50 per cent basis also tends to show that no record of the calls had been maintained by the Orissa Agents. The material on record further indicates that the trunk call to the same number was sometimes treated as official and at other time private.

The exact amount of the trunk call bills for the period from June 23, 1961 till August 5, 1963 is not very clear on the record. The total bill for the period from July 1, 1961 till July 31, 1963, as given in Annexure 15 to the Government affidavit, came to Rs. 13,038-52 Paise. The figure is, however, considerably less if the statement enclosed with Annexure '5' to the Government affidavit were taken into account. In the absence of precise data, it is difficult to give a positive finding. It, however, seems that the payment of about Rs. 9,000 (the details of Rs. 8,819-34 Paise have already been given earlier while according to answer in State Legislative Assembly on April 5, 1965, the total payment was of Rs. 9,145-37 Paise) made by Shri Mitra before he left the office of Chief Minister, for the trunk calls made from telephone No. 302 was not less than what was due on account of the calls made by Orissa Agents. The material on record

also shows that no payment had been made by the Government for the trunk calls when payments on that account were made on behalf of Shri Mitra in September 1963.

So far as Shri Routray is concerned, nothing has been brought out against him at the time of arguments. I, therefore, find that the charge against him is without any basis.

My findings in respect of the different matters, which arise in this allegation, are as under:—

- (1) Although telephone No. 302 was being used for the business affairs of Orissa Agents, the Personal Assistant to Shri Mitra stated in his note dated November 2, 1962 that the aforesaid telephone was being used exclusively for Government purpose.
- (2) Despite the direction that telephone should be used exclusively by the Minister or other officer authorised by him, telephone No. 302 was used by Orissa Agents for its business affairs after the aforesaid telephone had been declared to be official.
- (3) No intimation appears to have been sent to any department of the Government regarding the use of telephone No. 302 for the business affairs of Orissa Agents till August 5, 1963, when the Orissa Agents closed its business. No payment was made by Orissa Agents on account of trunk calls till August 5, 1963. The material on record indicates that Orissa Agents did not maintain regular records about its trunk calls from telephone No. 302.
- (4) In the absence of precise data, it is difficult to give positive finding. It, however, seems that the amount deposited on behalf of Shri Mitra was not less than what was due from Orissa Agents on account of trunk calls.
- (5) The charge against Shri Routray is without any basis.

CHAPTER 34

ALLEGATION No. 34

Re:

Sayed Gaffar Ali, a Pakistani National

Allegation No. 34 relates to alleged interference in the administration of justice by shielding Sayed Gaffar Ali, a Pakistani national, withdrawing case against him and preventing his repatriation to Pakistan. The respondents named in the allegation are Shri Mitra and Shri Routray.

According to the case set up by the State Government in the particulars of allegation, Sayed Gaffar Ali, a Pakistani national, came with a Pakistan National Visa to stay in Orissa from February 15, 1962 to February 28, 1962. He applied for further extension of stay but his application was not granted. As his further stay was unauthorised, a case was started against him under section 14 of the Foreigners Act. During the investigation of the case Gaffar Ali absconded but later surrendered himself in the Court of Subdivisional Magistrate, Jajpur on November 20, 1962. A charge-sheet was submitted against him under section 14 of the Foreigners Act on January 5, 1963. The wife of Gaffar Ali made a petition to the then Home Minister, Shri Routray, to withdraw the prosecution. A petition was also submitted by Gaffar Ali to the District Magistrate, Cuttack, saying that he was in the employment of the then Deputy Chief Minister, Shri Mitra, for a long time. It is alleged that there was a collusion between Shri Mitra and Shri Routray and the case against Gaffar Ali was withdrawn. The Government of India requested the State Government to repatriate Gaffar Ali but this was not done. Gaffar Ali is further stated to have drawn his pay from Orissa Agents, which concern stood in the name of Shrimati Mitra.

The State Government concludes from the above that Shri Mitra and Shri Routray were guilty of impropriety by shielding a foreigner and preventing his repatriation. The act of the two respondents is further stated to have encouraged passing of information to spies.

In support of the above allegation, the State Government has filed the affidavit of Shri Gadadhar Misra, Under-Secretary, Home Department, and affidavit of Inspector Satchidananda Misra (Vigilance).

Shri Mitra in the course of his affidavit has denied the correctness of the allegations made against him. According to Shri Mitra, Gaffar Ali is a permanent resident of Bari in district of Cuttack. On May 16, 1963, the Superintendent of Police sent letter stating that Gaffar Ali had no interest in Pakistan and had his home, landed properties and family members in village Bari. It was further stated in that letter that Gaffar Ali had no relatives in Pakistan and his family consisting of his wife, three daughters, and one son, lived in village Bari. His parents, brother-father-in-law and maternal uncle, too, were Indian nationals. Gaffar Ali had also no property in Pakistan. A recommendation was accordingly made to the Central Government for Gaffar Ali and this recommendation was accepted by that Government. Shri Mitra has denied that there was any collusion between him and Shri Routray in the matter of Gaffar Ali. According to Shri Mitra he is not aware if Gaffar Ali ever drew his pay from Orissa Agents.

Shri Routray in the course of his affidavit has likewise denied the correctness of the allegation made against him. According to Shri Routray he was impressed with the case of Sayed Gaffar Ali and accordingly recommended to the Central Government to confer the Indian nationality on him. Shri Routray exercised his judgement uninfluenced by any extraneous consideration. Shri Mitra never influenced him. It is further stated that humanitarian consideration, distressing appeal of the family, the genuineness and merits of the case and police reports weighed with Shri Routray in the exercise of his judgement. Everything was brought by Shri Routray to the notice of the Home Ministry when he urged sympathetic consideration in the matter. Shri Routray has mentioned that the name of Gaffar Ali was borne on the Electoral Rolls and the local representatives, including the Grama Panchayat, and a very eminent social worker, Shrimati Rama Devi, wife of late Shri Gopa Bandhu Choudhury, had recommended Gaffar Ali's case for sympathetic consideration. According to police reports there was nothing on the record to show that Gaffar Ali had left India with the sole intention of residing permanently in Pakistan. Shri Routray has also referred to the Conference of Chief Ministers and Home Minister, wherein the then Prime Minister,

Shri Lal Bahadur Shastri, observed that there was bound to be some amount of humanitarian consideration in dealing with such questions.

Supplementary affidavits have been filed by Shri Gadadhar Misra and Inspector Satchidananda Misra on behalf of the State Government as well as by Shri Mitra and Shri Routray.

In respect of this allegation, I find that the material on record shows that Sayed Gaffar Ali was originally a resident of Bari in district Cuttack. Due to some domestic quarrel, he left Bari for Calcutta in 1947 in search of employment and some time thereafter he left Calcutta for East Pakistan. Gaffar Ali ran a betel shop at Nilphamri. He also served temporarily as a peon in the Agricultural Department in East Pakistan in a leave vacancy. He came to India on February 9, 1962 with Pakistan Passport and category 'C' visa to see his relatives. On his arrival in Orissa he was issued a regular residential permit by the Superintendent of Police and District Registration Officer, Cuttack, on February 15, 1962 authorising him to stay till February 28, 1962. He applied for extension of his stay but his application in this respect was rejected and an endorsement was made on his passport that he should leave India by April 27, 1962. As Gaffar Ali failed to comply with the Government direction in this respect, prosecution was launched against him under section 14 of the Foreigners Act. Gaffar Ali, however, could not be traced and was declared absconder. He thereafter surrendered himself in the Court of Jajpur Magistrate. On March 12, 1963, Gaffar Ali filed an application in the Court of the Additional District Magistrate, Cuttack, stating that he was a *bona fide* resident of Orissa for generations and had never desired to migrate to Pakistan. He added that he had been in the personal service of the Deputy Chief Minister for a long time. Prayer was made that the case against him might be withdrawn.

In the meantime, an application, dated July 29, 1962 was presented to the Home Minister, Shri Routray, by Shrimati Khairunane Bibi, wife of Gaffar Ali praying for permission to allow Gaffar Ali to stay at his native place. It was mentioned by Shrimati Khairunane Bibi that she was mother of four children, and she and her children had never visited Pakistan. It was also mentioned in the application that the local Sarpanch and Shrimati Rama Devi, widow of late Shri Gopabandhu Choudhury, famous Bhoodan leader of Orissa, would testify about Gaffar Ali being a *bona fide* citizen of India. Shri Routray thereupon addressed a note on August 2, 1962

to the Home Secretary to look into the matter with sympathy as earlier done in other case, of this nature. On April 2, 1963 the Joint Secretary, Home Department, addressed the following note to Shri Routray :—

"The position in regard to grant of permanent settlement facilities in India to Pak National has been explained in the preceding note. The petitioner has no case and therefore he was directed to leave India. As he did not comply with the orders he is being prosecuted under section 14 of the Foreigners Act, 1948. The case is *sub-judice*.

If on humanitarian grounds a reference is to be made to Government of India as they have conceded in 2 cases in the past, we have to obtain detailed information from the Special Branch, before such reference is made. In that case the prosecution against the petitioner may be withdrawn."

Shri Routray thereupon made the following order:—

"Yes, as proposed the prosecution may be withdrawn. We should made a reference to G/I. Information may be obtained from Special Branch as suggested. A suitable draft may be prepared to be addressed to Union Home Minister by me."

The criminal case against Gaffar Ali was thereafter withdrawn. On June 5, 1963 a letter was addressed by the Joint Secretary, Home Department, Orissa, to the Under-Secretary in the Ministry of Home Affairs, stating that the State Government felt that Gaffar Ali should not be debarred from permanent resettlement facilities in India because of his temporary stay in Pakistan. Request was made that Gaffar Ali might be granted extension of stay for one year in order to make him eligible for Indian Citizenship. A reply dated August 9, 1963 was then received from the Ministry of Home Affairs that the Government of India considered that Gaffar Ali had no case for grant of permanent resettlement facilities. Before, however, taking a final decision, the Government of India wanted the State Government to re-examine the matter and furnish its views. On August 24, 1963, the Joint Secretary, Home Department, recorded a note with regard to the reply received from the Government of India and stated that as the case of Gaffar Ali was hard and deserved sympathetic consideration, the State Government might stick to its earlier recommendation. The above note was approved by Shri Routray, who had earlier gone abroad, on April 23, 1964. After some further reports were called, the Secretary of the Home Department recorded a note on October 6, 1964 that

there was no need to revise the earlier stand taken in the matter. On February 12, 1965, Shri Routray passed the following order.

"The Pakistan nationals short duration of stay in Pakistan as a Government servant against a leave vacancy cannot perhaps be treated as his sole intention of making Pakistan his permanent abode. Moreover, he appears to be quite illiterate and, as such, he is not at all expected to be in the know of all complications involved in his taking up a short-term appointment in Pakistan against a leave vacancy.

Again his wife and four children are in India. If, under item 18 of Indo-Pakistan Agreement, 1953 they are advised to accompany him to Pakistan, it will perhaps be the most inhumanitarian step taken against a poor man and his family. Government of India may, therefore, be requested to reconsider their earlier decision."

Letter dated February 22, 1965 was thereafter addressed to the Home Ministry that the case of Gaffar Ali might be reconsidered from humanitarian point of view and he be allowed to stay in India on a year to year basis as Pak National. On May 5, 1965, the Government of India sent a reply regretting inability to accede to Gaffar Ali's request for permanent resettlement in India. The State Government was asked to give such time as might be considered necessary, to Gaffar Ali to make arrangements for leaving the country. Hostilities with Pakistan broke out in September, 1965 and instructions were issued by the Home Secretary to the Deputy Inspector-General on September 20, 1965 to keep watch and impose necessary restrictions on the movements of Gaffar Ali. On September 30, 1965 a letter was addressed by the Home Secretary of Orissa Government to the Ministry of Home Affairs that the case of Gaffar Ali was pending with the State Government for moving the Government of India for reconsideration of the latter Government's decision. In the meantime, hostilities had broken out with Pakistan and the borders had been closed. As such, according to the above letter, it had not been possible to deport Gaffar Ali to Pakistan. On November 9, 1966 Shri Routray addressed a letter to Shri Jaisukh Lal Hathi, Minister of State for Home Affairs, regarding Gaffar Ali. On January 2, 1967 Shri V. C. Shukla, Deputy Minister for Home Affairs, sent a reply to Shri Routray that since the latter felt very strongly that Gaffar Ali should not be compelled to return to Pakistan, Shri Shukla had no objection to his being allowed to stay in India as a Pakistani national on a year to year basis, subject to good behaviour.

The material on record also shows that Gaffar Ali was in the service of Orissa Agents of which Shrimati Easwarama Mitra, wife of Shri Biren Mitra, was shown to be the proprietor.

According to Shri Routray, he passed the various orders in respect of Gaffar Ali on humanitarian grounds and because of the distressing appeal of his family members. In my opinion, there was material before him on the basis of which Shri Routray could have taken that view. Gaffar Ali had a small area of land which he held jointly with his brother in Bari. His wife, son and three daughters, all lived in his house in village Bari. All near relatives of Gaffar Ali were Indian nationals and they all stayed in India during his stay in Pakistan. Gaffar Ali had neither any relative nor any property in Pakistan. During his stay in Pakistan, Gaffar Ali visited India eight times. The material part of the report of the Deputy Inspector-General of Police (Intelligence) which was called on the representation of Gaffar Ali, reads as under:—

“ Local enquiries by the Superintendent of Police, Cuttack from the villagers on this score revealed that due to domestic differences with his father, Gaffar Ali left home for Calcutta in 1947 and after staying at Calcutta for a considerable period he went over to Pakistan with his employer under whom he was serving as a bearer at Calcutta. But none could give even the approximate date as to when Ali actually went to Pakistan.

During his stay at Pakistan he used to visit his native village Bari at intervals to meet his wife and children and to look after other domestic affairs including repairs to his house which was then damaged by floods, Bari being in a flood affected area.

His wife and children have all along been living in India and have never been to Pakistan.

There is nothing on record to show that he had left India with the sole intention of residing permanently in Pakistan along with his wife and children. There is also nothing to show that he has any interest, assets and relations in Pakistan or that he has acquired any property in that country.”

The report also gave instances of other persons who had been allowed to stay in India on annual extension basis.

In view of the facts, referred to above, I see no cogent ground to question the statement of Shri Routray that he was moved by humanitarian grounds when he made the impugned orders in respect of Gaffar Ali. The fact that Gaffar Ali was in the service of Orissa Agents would not vitiate the orders

of Shri Routray if he felt that the case of Gaffar Ali deserved sympathetic consideration on humanitarian grounds. I may observe that nothing has been brought to my notice at the time of arguments which may show that Gaffar Ali was a spy or that he indulged in any anti-national activity.

So far as Shri Mitra is concerned, nothing has been brought out against him at the time of arguments.

I, therefore, hold that the charge of impropriety contained in this allegation has not been proved.

CHAPTER 35

ALLEGATION No. 35

Re :

Withdrawal of Criminal Cases against Iron Dealers of Cuttack

Allegation No. 35 relates to alleged impropriety in withdrawing five criminal cases against iron dealers of Cuttack. The respondents, named in the allegation are Shri Mitra and Shri Routray.

According to the case set up by the State Government in the particulars of allegations, five criminal cases were pending for violation of Iron and Steel (Control) Order, 1956 against important iron dealers of Cuttack in 1961 when Shri Routray became the Supply Minister in the Cabinet headed by Shri Patnaik. Those cases were against the proprietors or representatives of :—

- (1) Utkal Distributors,
- (2) Mishra and Partner,
- (3) Industry and Commerce Enterprisers.

It is stated, Shri S. C. Dhawan, who is proprietor of Industry and Commerce Enterprisers, wrote a letter to Shri Routray, who was then Supply Minister, to withdraw the aforesaid cases. Order was then passed by Shri Routray for the withdrawal of those cases.

The case of the State Government further is that Shri Patnaik and Shri Routray were interested in Utkal Distributors. Shri Patnaik, Shri Mitra and Shri Routray were stated to be shareholders in Utkal Distributors. Subsequently, the shares of those respondents and their relatives were transferred in favour of Shri Dhawan. Utkal Distributors, it is further stated gave iron material to Shri Mitra and Shri Routray for the construction of their houses at Cuttack.

The State Government concludes from the above that Shri Routray stifled the course of law for the pecuniary benefit of Shri Mitra and Shri Routray.

In support of the above allegation the State Government has filed the affidavit of Shri Lokanath Saran Panda and Inspector Mohammad Haroonal Rasid (Vigilance), Shri Mitra

and Shri Routray in the course of their affidavits have denied the correctness of the allegations made by the State Government against them.

According to Shri Routray, there was no prosecution against Utkal Distributors and the question of ordering withdrawal of a case against Utkal Distributors did not arise at all. Shri Routray denies that he was ever a shareholder of Utkal Distributors. As regards the criminal cases, it is stated that an order for the withdrawal of the cases against iron dealers was made by Dr. Mahatab, the then Chief Minister, on July 19, 1960. Shri Routray, who was then Supply Minister, thereafter passed an order that action might be taken in accordance with the order of the Chief Minister. On July 26, 1960 a letter was addressed by the Deputy Secretary, Supply Department to the District Magistrate, Cuttack for the withdrawal of the cases. As the cases were not withdrawn and some clarification was sought, Shri Routray reiterated on January 21, 1961 that the Collector should be instructed to withdraw cases and close the chapter once for all. After the coming into power of the Ministry headed by Shri Patnaik when it again came to the notice of Shri Routray that the cases had not been withdrawn, he referred to the earlier orders and directed the withdrawal of the cases. With respect to the material supplied by the Utkal Distributors for the construction of his house Shri Routray states that the amount has been paid off.

Shri Radhika Prasad Nanda, Managing Director of Utkal Distributors (P) Ltd., has filed an affidavit wherein he has stated that Shri Mitra and Shri Routray were never the shareholders of Utkal Distributors.

Supplementary affidavits of Shri L. S. Panda on behalf of the State Government and Shri Routray have been filed.

In respect of this allegation, I find that ten cases were started against iron dealers for the alleged violation of Iron & Steel (Control) Order. There was also one other case against Shri N. N. Soor, a P.W.D. Contractor, for violation of Iron & Steel (Control) Order. The case against Shri Soor was withdrawn under order dated February 1, 1960 of the then Chief Minister, Dr. Mahatab. On March 15, 1960 a representation was made by the President of Orissa Chamber of Commerce for the withdrawal of ten cases against the iron dealers. After the matter was examined at the official level, Shri Routray addressed a note to the Chief Minister on July 6, 1960 stating that the cases had been instituted without carefully examining the provisions of the Iron & Steel (Control) Order, and the

instructions from the Iron & Steel Controller. It was also pointed out that as these cases were instituted at a time when the Department was in the charge of another Minister, Shri Routray was submitting the file for consideration of the Chief Minister. It was also suggested that the Chief Minister might take legal opinion if he considered it necessary to do so. The opinion of the Law Secretary was thereafter taken and on July 19, 1960 Dr. Mahatab passed the following order:—

“Minister, Supply will please see. In view of what Secretary Law, says, the cases may be withdrawn and to satisfy the Court, the other points raised by Secretary, Law may be looked into.”

On July 20, 1960 Shri Routray directed that action might be taken in accordance with the order of the Chief Minister. In pursuance of the above order, cases against five iron dealers were withdrawn but the District Magistrate did not take steps to withdraw the other five cases and sought some clarification. On January 21, 1961 Shri Routray passed the following order:

“When we take a decision, it should be given effect to without inordinate delay. In dragging on a matter, sometimes the grace is lost. Law Secretary has given his views and has correctly found out the confusion created by the circulars of the Iron & Steel Controller relating to scrap iron and materials produced out of this scrap. He has clearly stated that Government may very legitimately allow the benefit of the confused state of affairs in favour of the persons proceeded against. The law Secretary examined this case a year after the prosecution was launched and therefore he was under the presumption that the trial must have progressed considerably and some evidence might have already been recorded. Therefore, he wanted that while applying for withdrawal of the cases in the Court, some convincing grounds might be stated for the satisfaction of the Court and to facilitate the withdrawal. Chief Minister's order is also clear. He has accepted the advice of the Law Secretary and wanted the cases to be withdrawn. It now appears that although more than two years have elapsed, no progress has been made in the Court and evidences have not been taken. So it is unnecessary to go to the Law Secretary again. We may instruct the Collector to take steps to withdraw all the cases and to close the chapter once for all.”

On January 8, 1962 a letter was received stating that despite the Government orders the cases were still pending. On January 10, 1962 Shri Routray addressed a note to the Secretary, Supply, stating that his impression was that all the cases had been withdrawn. The Secretary was asked to take necessary action. Subsequently, when it came to the

notice of Shri Routray that some of the cases were still pending he passed the following order on April 23, 1962:—

“The intention of Government was to withdraw all the cases but it appears, other cases have been withdrawn excepting the 4 cases mentioned at page 47/N. It is said that they come under a different category. Whatever that may be, Government's intention was to withdraw all the cases and to close the chapter once for all as may be seen from my order dated 21-1-1961 at page 43/N. In the meantime the iron & steel position has considerably improved and control on many iron materials has been relaxed. So it does not look nice to continue these cases after such long lapse of time, say about 3 years. Therefore, we need not proceed with the cases and take steps to withdraw them immediately.

(Sd. N. Routray, 23-4-62.”

The State Government has impugned the above order on the ground that it was actuated by ulterior consideration.

I have given the matter my earnest consideration and find that the basic orders for the withdrawal of the criminal cases were made by Dr. Mahatab on July 19, 1960 and Shri Routray on July 20, 1960. Whatever doubt might have been left in the matter was set at naught by the order dated January 21, 1961 of Shri Routray. The said order made it clear that the cases against the iron dealers for the alleged violation of Iron & Steel (Control) Order were to be withdrawn. The above orders having been made before June 23, 1961 cannot be assailed in these proceedings. According to the notification appointing this Commission of Inquiry, the Commission is concerned with the improprieties and other acts of misconduct committed only during the period from June 23, 1961 to March 8, 1967. As the above orders were made before June 23, 1961 the propriety of those orders cannot be questioned in these proceedings. The order of April 23, 1962 only sought an implementation of the earlier order. If the earlier orders enjoy immunity from attack in these proceedings, the order dated April 23, 1962, which merely sought an implementation of the earlier order, would not be open to attack. There can obviously be no impropriety in seeking the enforcement of an earlier order once it is made.

So far as Shri Mitra is concerned, nothing has been shown against him at the time of arguments. I therefore, hold that no charge of impropriety, as alleged, has been proved against Shri Mitra. Likewise, it has not been shown that Shri Routray did anything improper, as alleged, during the period with which this Commission is concerned, i.e., from June 23, 1961 till March 8, 1967.

CHAPTER 36
ALLEGATION No. 36

Re:

**Promotion of Shri S. P. Gabriel as District
Agriculture Officer**

Allegation No. 36 relates to the alleged favouritism shown to Shri S. P. Gabriel, brother of Shrimati Mitra, by promoting him as District Agriculture Officer. The respondents named in the allegation are Shri Mitra and Shri Mohanty.

According to the case set up by the State Government in the particulars of allegations, Shri S. P. Gabriel is the brother of Shrimati Easwaramma Mitra, wife of Shri Mitra. Shri Gabriel joined service as a Sardar at the Rice Research Sub-Station, Berhampur, and in 1949 he was appointed as Agriculture Overseer. Shri Gabriel is a non-Matriculate and has read up to 10th class.

In 1964, it is stated, there was a proposal for promotion of non-Gazetted Agricultural Officials to Class II of the Agriculture Service. The suggestion that the posts might be divided between direct recruits and promotees in the ratio of 50 and 50 was accepted by the Agriculture Minister Shri Mohanty subject to the rider that non-Matriculates should not be appointed as District Agriculture Officers. The Under-Secretary then prepared a list of persons eligible to be promoted and submitted it direct to the Minister Shri Mohanty on the ground that Secretary was on tour and the matter was urgent. Shri Mohanty then passed order appointing Shri Gabriel as District Agriculture Officer. A notification was issued about the appointment of Shri Gabriel for a period of six months pending concurrence of the Public Service Commission. The matter was however not referred to P.S.C. for concurrence in the first six months and the appointment was extended for a further period of six months on January 21, 1965. The matter was then referred to the Public Service Commission and the provisional appointment was extended till December 31, 1965. After some further extensions were given, the Public Service Commission in October 1967 declined to give its concurrence to the appointment.

The State Government concludes from the above that favouritism was practised by Shri Mohanty under the influence of Shri Mitra in the promotion of Shri Gabriel.

In support of the allegation, the State Government has filed the affidavit of Shri Debadutt Mohapatra, Under-Secretary in the Agriculture Department.

Shri Mitra in the course of his affidavit has denied the correctness of the allegation levelled against him and has stated that he had no concern in the matter and never influenced Shri Mohanty to pass any order in connection with the promotion of his brother-in-law, Shri Gabriel.

Shri Mohanty in the course of his affidavit has denied the charge levelled against him. According to Shri Mohanty, he had no knowledge that Shri Gabriel was a relation of Shri Mitra. It is stated that the Director of Agriculture recommended suitable persons for appointment as District Agriculture Officers. Shri Gabriel was in the list and on reminder the Department finalized the appointment. Shri Mohanty was guided by the proposal submitted by the Department and it was never brought to his notice that Shri Gabriel was a non-Matriculate. Shri Mohanty has further pointed out that the Government records show that three other non-Matriculates were also promoted along with Shri Gabriel because this was a normal procedure for promotion in the Department. The non-reference of the matter to the Public Service Commission, it is stated, was not deliberate but was due to the fact that the confidential character rolls of the officials concerned were not available. Shri Mohanty was in no way responsible for that. Shri Mohanty asserts that the promotion of Shri Gabriel was effected in due course on the advice of the Department and in consideration of his seniority and experience.

Supplementary affidavits have been filed by Shri Jagannath Panda, Under-Secretary, Agriculture Department, on behalf of the State Government as well as by Shri Mohanty. In his affidavit Shri Panda has stated that correction was made in the note dated February 29, 1964 of the Under-Secretary, whereby four non-Matriculate officials including Shri Gabriel were recommended for promotion although the earlier recommendation was that their cases be considered in the coming financial year. Shri Mohanty in his supplementary affidavit has stated that Shri Gabriel was never appointed as District Agriculture Officer during the period his order against the appointment to that post of non-Matriculates was in force. It is stated that Shri Gabriel was promoted to Class II Service which includes Farm Superintendent, Farm Manager of Sukinda, Instructor, Grama Sevak Talim Centre, District

Agriculture Officer and others. Shri Gabriel after his promotion was posted as Farm Superintendent, Gambharipalli Seed Farm in Sambalpur district.

In respect of this allegation, I find that the Director of Agriculture recommended the names of the following eight Agriculture Supervisors in order of seniority for promotion to Class II :—

- “ 1. Shri Lokanath Pradhan
2. Shri Jadumani Das
3. Shri S. P. Gabriel
4. Shri Biranchi Narayan Roy
5. Shri Bramarbar Das
6. Shri Brajasundar Patnaik
7. Shri Sashibhusan Misra
8. Shri Sadasib Das. „

Out of them, Shri Mohanty selected on February 29, 1964 first five for promotion in accordance with the recommendation of the Under-Secretary. The State Government has assailed the propriety of the above order on the ground that Shri Gabriel, whose name is at No. 3. was a non-Matriculate. It is urged that Shri Gabriel was the brother-in-law of Shri Mitra and was promoted in violation of the order made by Shri Mohanty on February 12, 1964. According to that order, non-Matriculates should not be posted as District Agriculture Officers. There is, in my opinion, no force in this contention. When the impugned order was made by Shri Mohanty on February 29, 1964, it was for the promotion of Shri Gabriel to Class II in Agriculture Service and not for his appointment as District Agriculture Officer. It is not disputed that there are a number of other posts in Class II apart from that of District Agriculture Officer. Indeed, the note dated July 27, 1964 of the Secretary of the Department makes it clear that the object of order dated February 12, 1964 was not to prevent the promotion of non-Matriculates to Class II if they were efficient in farming methods, but only to prevent them from functioning as District Agriculture Officers. It was observed that for the posts of District Agriculture Officers a knowledge of English was necessary but not so for efficiency in farming methods. Recommendation was also made by the Secretary that if a non-Matriculate possessed good knowledge of English, the restriction on his posting as District Agriculture Officer could also be waived. This recommendation was accepted by Shri Mohanty. It is significant that Shri Gabriel after his

promotion was posted as Farm Superintendent and was not posted as District Agriculture Officer as long as the ban on the posting of non-Matriculates as District Agriculture Officers was in force.

It may also be observed that apart from Shri Gabriel, three other persons were promoted to Class II even though they were non-Matriculates. In the circumstances, it cannot be said that Shri Gabriel was singled out for promotion in spite of his being a non-Matriculate. If Shri Gabriel was not entitled to any benefit because of his relationship with Shri Mitra, he should not also be made to suffer on that account.

As regards the delay in referring the case of the promoted persons to the Public Service Commission, the affidavit of Shri Mohanty shows that this was due to the non-availability of the character rolls of the officials concerned, and he was in no way responsible for that. Nothing has been brought to my notice at the time of arguments to show that Shri Mohanty did anything to delay the reference to the Public Service Commission.

Nothing has been brought out against Shri Mitra at the time of arguments.

I, therefore, hold that the charge contained in this allegation is without any substance.

CHAPTER 37

ALLEGATION No. 37

Re :

Admission of Shri Rabi Narayan Das to Ravenshaw College

Allegation No. 37 relates to the admission of Shri Rabi Narayan Das (hereinafter referred to as Shri Rabi Das) to the Post-Graduate Class in Ravenshaw College, Cuttack. The respondents named in the allegation are Shri Mitra and Shri Mohanty.

According to the case of the State Government, Shri Mitra was the Chief Minister and Shri Mohanty was the Minister of Education in Orissa in 1964. Shri Rabi Das was reading in 5th Year (Oriya) Class in 1963 in Ravenshaw College but he discontinued his studies. For 1964-65 Session, there were forty seats in the above College in M. A., English. Applications for admission were invited for those seats by June 24 1964, which date was subsequently extended to July 10, 1964 as the University results were published late. All the seats in M. A., English, were filled up by July 31, 1964. Shri Rabi Das applied for admission to the M. A. Class on August 5, 1964 long after the due date of making the application and the filling up of all the seats. As such, the question of this admission in the Post-Graduate Class did not arise.

Sometime on or before August 18, 1964, it is stated Shri Mitra asked the Education Secretary as to why Shri Rabi Das could not be admitted in the 5th Year (English) Class of Ravenshaw College in 1964. In compliance with the desire of Shri Mitra, the Education Secretary visited Ravenshaw College on August 18, 1964 saw the papers and submitted a note dated August 19, 1964 that Shri Rabi Das had applied for admission late when all the seats had been filled up. It was also pointed out that on the basis of his marks Shri Rabi Das could not have been admitted because the last student, who had been admitted, had secured more marks. It was further stated in the note:

“Seats in all other subjects have been filled up by now excepting only seat in Oriya. In view of the fact that Shri R. N. Das read Oriya M. A. last year and could not prosecute his studies further because of some reasons or other, if Government could be pleased to condone late submission of application to be made by him, his case could be considered by Principal and he can apply and can be admitted on the basis of his merit.”

The above portion of the note was approved by Shri Mitra on August 19, 1964. The Assistant Secretary on the basis of the above approval informed the Principal, Ravenshaw College, over phone about the contents of the order. As the Principal did not know the whereabouts of Shri Rabi Das, Special Officer attached to the Chief Minister was asked by the Assistant Secretary regarding the whereabouts of Shri Rabi Das. The Special Officer then promised to inform Shri Rabi Das to put in his application for admission in M. A. Class in Oriya. At this stage, it is stated, there was agitation in Ravenshaw College relating to the admission of Shri Rabi Das. The Chief Minister and Minister of Education there upon discussed the matter and they agreed that the order, which had been issued on August 19, 1964, should be cancelled in view of the students agitation against the admission of Shri Rabi Das because of his previous antecedents.

The case of the State Government further is that there was students unrest in Orissa and a Commission of Inquiry was appointed. Mr. Justice S. Barman constituted the Commission. In the course of the proceedings before the Commission, statements were filed by a number of persons that there had been interference by the Chief Minister to secure admission of Shri Rabi Das in Ravenshaw College even though he was not eligible for admission, and this had resulted in strike. An allegation was also made before the Commission that Shri Rabi Das, who had been the President of the Ravenshaw College Students' Union during 1964-65 Session, was the Chief Minister's candidate. In the draft counter affidavit this allegation was ignored as irrelevant even though the State Counsel and others pointed out that this would not be a correct attitude. Mr. Justice Barman in his Report did not give a finding on this aspect of the matter.

The State Government concludes from the above that Shri Mitra was guilty of impropriety. Liability is also sought to be fastened on Shri Mohanty on the ground that by his inaction he allowed the above irregularities and interference to take place.

In support of the above allegation, the State Government has filed the affidavit of Shri Ajaya Kumar Mohapatra, Under-Secretary in the Education Department.

Shri Mitra in the course of his affidavit has denied the correctness of the allegations made against him. According to him Shri Rabi Das made a representation to Shri Mitra

alleging that he had been refused admission to Ravenshaw College on political considerations although he was otherwise eligible for admission. Shri Mitra then referred the matter to the Education Secretary to look into the matter and submit a report. The Secretary, after necessary enquiry, submitted a report containing the portion reproduced earlier and Shri Mitra approved that portion of the Secretary's report. As there was some objection to the admission of Shri Rabi Das to the College on the ground that he was an undesirable element and as some students met Shri Mitra and apprised him of the entire situation, Shri Mitra assured them that Shri Rabi Das would not be admitted to the College. Shri Mitra denies that he showed any favour to Shri Rabi Das and asserts that he passed the order believing in good faith the representation of Shri Rabi Das to be true.

Shri Mohanty, in the course of his affidavit, has likewise denied the allegations of the State Government. He states that the order made by the Chief Minister on August 19, 1964, was not illegal as the last date prescribed by the University for admission into Oriya M. A. Class was September 8, 1964, although the Principal of the College had fixed an earlier date for the admission. It is added that the Principal had the power to condone the delay. As regards the enquiry held by Mr. Justice Barman, it is stated that the learned Judge found that the students' action was unreasonable. The matter having been enquired into before the aforesaid Commission of Inquiry, the same, it is said, cannot be agitated over again.

In respect of this allegation, I find that the affidavit of Shri Mitra shows that Shri Rabi Das made a representation to him that he had been refused admission to Ravenshaw College on political considerations although he was otherwise eligible for admission. Shri Mitra then referred the matter to the Education Secretary to look into the matter and submit a report. The Secretary, on August 19, 1964 submitted a note, copy of which is Annexure 'A' to the affidavit filed on behalf of the State Government. In that note the Secretary pointed out that there were 40 seats in M. A., English and Shri Rabi Das was not eligible for admission in M. A., English Class because his position would have been 60th in the Common Gradation List had he applied in time. As regards M. A., Oriya, the Secretary stated, Shri Rabi Das would have been eligible for admission had he applied in time because students with marks lower than him had been called for admission. It was also pointed out that there was a

vacancy in M. A., Oriya, Class. The last date for admission, it was stated, was September 8, 1964, though the Principal had prescribed the date for admission to be July 10, 1964. The further part of the note of the Secretary, relating to condonation of the delay in submission of the application by Shri Rabi Das, has been reproduced earlier. Shri Mitra approved the suggestion contained in that part of the note on August 19, 1964. An Intimation about the order of Shri Mitra was then sent to the College authorities and the Special Officer attached to Shri Mitra was asked to contact Shri Rabi Das for doing the needful.

When the other students of Ravenshaw College came to know of the order of Shri Mitra, they expressed their protest against the admission of Shri Rabi Das because of his previous antecedents. Shri Mitra thereupon cancelled the earlier order.

The order made by Shri Mitra on August 1964, in my opinion, cannot be deemed to be very proper, as it tended to interfere with the functions of the College authorities in the matter of admission. Shri Mitra, however, cancelled that order within three days of making it as soon as it came to his notice that the other students were protesting against the admission of Shri Rabi Das because of his antecedents. I would, therefore, hold that though Shri Mitra wanted to help Shri Rabi Das in seeking admission to Ravenshaw College, he retraced his steps as soon as he came to know that the other students were protesting against that because of the antecedents of Shri Rabi Das. As regards the contents of the affidavit filed during the course of the Inquiry conducted by Mr. Justice Barman, I am of the view that this was entirely a matter for the said Commission of Inquiry and, as such, it would not be proper for this Commission to express any opinion in respect of that.

So far as Shri Mohanty is concerned, no impropriety has shown to have been committed by him. I accordingly hold that the charge against him is without any basis.

CHAPTER 38

ALLEGATION No. 38

Re:

Dr. George Prasadnananda Patnaik

Allegation No. 38 relates to alleged favouritism shown to Dr. George Prasadnananda Patnaik (hereinafter referred to as Dr. Patnaik), Dental Surgeon. The respondents named in the allegation are Shri Mitra and Shri Jagannath Rao.

According to the case set up by the State Government, Dr. Patnaik, who is brother of Shri Biju Patnaik, passed his L. M. P. Examination in 1937. Thereafter he underwent a condensed course for a period of two years in Calcutta Dental College and obtained a diploma in Dental Science, namely, L. D. Sc. In 1942, Dr. Patnaik was appointed by the Government as a part-time Dentist in Medical College on a monthly honorarium of Rs. 100. In 1947 his honorarium was increased to Rs. 200 and Dr. Patnaik was treated as a member of the teaching staff of Orissa Medical College. In 1948, Dr. Patnaik was sent for training to United States of America. He attended classes in the Dental School of the North-Western University, Chicago, during the period from January 1948 to September 1948. Dr. Patnaik did not obtain any diploma or degree from the United States but merely obtained a certificate that he had attended the classes. The initial report regarding his work in United States was unfavourable but the subsequent reports showed that he had improved considerably and ultimately a certificate was issued stating that he had attended the classes from January to September 1948 in a satisfactory manner. Dr. Patnaik regained his part-time duty in Cuttack Medical College and Hospital in October 1948. On April 25, 1949, Dr. Patnaik's honorarium was increased from Rs. 200 to Rs. 400 per month with effect from October 21, 1948. During those days he was attending the hospital for three hours a day from 10 A. M. to 1 P. M. and was also delivering lectures for about 15 to 20 hours in a year. In April, 1958 Dr. Patnaik made a representation for being appointed as a whole time member of the staff of the Medical College with the status of a Professor and also prayed that he be given pensionary benefits with effect from 1942, when he was first attached to the Hospital and be governed by other conditions of Government servants. On May 7, 1959 an order was passed by the then Chief Minister that Dr. Patnaik might be appointed as Head of the Department and his representation for being made

a full-time officer and about his salary and allowances should be examined separately. The question of the enhancement of the honorarium of Dr. Patnaik was then taken up by the Health Department and it was suggested that it should be increased from Rs. 400 to Rs. 550 as part-time Dental Surgeon. When the matter was referred to the Finance Department, it turned down the proposal and an order to that effect was made by the then Finance Minister on December 2, 1959. The matter was again referred to the Finance Department for reconsideration but the Finance Department reiterated its earlier view.

In June 1961 the Ministry headed by Shri Patnaik came into power. After the resignation of Shri Patnaik, the Ministry headed by Shri Mitra came into power in October 1963. On October 18, 1963 the Secretary, Health Department, recorded a note that Dr. Patnaik had represented that although he had been functioning as a part-time Dental Surgeon for over twenty years, no rules had been laid down regarding the grant of leave and increase in his emoluments, and further he had been practically functioning as a whole-time Dental Surgeon but the honorarium had not been in proportion to the work attended to by him. The Secretary wanted the Deputy Secretary to examine the case and put up a proposal within a week. A communication was then addressed to the Director of Health Services for giving his views. The Director made recommendation for enhancement of Dr. Patnaik's honorarium to Rs. 650 per month with effect from March 1, 1963 on the ground that Dr. Patnaik although part-time worker had very often devoted much of his time in the Hospital and had long years of teaching experience. It was also recommended that Dr. Patnaik might continue as Head of the Department of Dentistry till he attained the age of 58. When the matter was examined by the Secretary, Health Department, he suggested that the appointment of Dr. Patnaik should be for a period of three years till he attained the age of 60. It was also recommended that the remuneration of Dr. Patnaik be fixed at Rs. 550 per month and he be given an allowance of Rs. 50 per month with retrospective effect after he had completed ten years of service and Rs. 100 per month after he had completed twenty years of service. The Additional Chief Secretary in his note said that though Dr. Patnaik was not fully qualified, his case merited consideration as he had been in part-time service for twenty-two years. The Chief Secretary in his note stated that Dr. Patnaik had done excellent work and had good

reputation. He suggested that the honorarium of Dr. Patnaik should be enhanced to Rs. 600 per month with effect from date Dr. Patnaik completed twenty years of his work for the Government. The Chief Secretary also suggested that some gratuity might be given on the basis of years of service at the time of retirement age be fixed at sixty years. Mention was also made of the fact that Indian Medical Council had throughout objected to Dr. Patnaik being made a Professor. When the case was considered in the Finance Department, the Secretary recommended that a contract should be entered into with Dr. Patnaik. After the matter was further examined by the Secretary, Health Department and the Chief Secretary, recommendation was made that the Government should enter into a contract with Dr. Patnaik, the material terms of which would be reproduced hereafter. A memorandum was then prepared on the basis of the recommendation of the Chief Secretary and the Finance Department and was approved by the Health Minister Shri Jagannath Rao and the Chief Minister Shri Mitra. The proposal was thereafter approved by the Cabinet. A draft agreement was then finalized and was executed on September 16, 1964. The salient conditions of the agreement were as under :—

- (1) Dr. Patnaik would continue as the Head of Department of Dentistry with the status of Class I officer for travelling allowance in addition to being Honorary Dental Surgeon and Lecturer.
- (2) Dr. Patnaik would be Adviser in Dentistry to advise Government about Dental Surgery in the State.
- (3) He would be allowed Rs. 600 per month from 1-4-1958 to be equated with the starting pay of the Civil Surgeon and the same would be subject to revision by the Government from time to time at par with the Civil Surgeons.
- (4) He would be allowed gratuity of one month's honorarium for every year of completed service subject to maximum of Rs. 24,000.
- (5) He would continue in service up to 60 years.
- (6) He would have the option to withdraw from service on giving 3 months' notice to the Government, in which case he would be entitled to half the gratuity.

As the agreement provided that Dr. Patnaik would draw an extra remuneration of Rs. 200 per month with effect from April 1, 1958, an amount of Rs. 16,600 was paid to him.

There was no post, it is stated, against which Dr. Patnaik was working as a part-time Dentist. When the Accountant-General pointed out this fact, the Government sanctioned one post of Dental Surgeon by letter dated January 14, 1966 and appointed Dr. Patnaik against the said post on an honorarium of Rs. 750 per month, as by that time the scale of the Civil Surgeon's had revised to Rs. 750 per month. On a further enquiry from the Accountant-General he was informed that Dr. Patnaik would hold the post of Dental Surgeon till the age of 60 and, thereafter the post would be abolished.

The State Government concludes from the above that favouritism was shown to Dr. Patnaik in violation of the rules because he was a brother of Shri Patnaik. Shri Mitra and Shri Rao, according to the State Government, committed the aforesaid impropriety.

In support of the above allegation, the State Government had filed the affidavit of Shri P. C. Roy Choudhury, Under-Secretary in the Health Department, and Inspector Hemakanta Sahu (Vigilance).

Shri Mitra in the course of his affidavit has denied the correctness of the allegation made against him. According to Shri Mitra, Dr. Patnaik was the first and the only Dentist available to the Government for discharging the responsibilities to the Public in the matter of Dental Surgery and it would be wrong to assess the worth of Dr. Patnaik by the qualifications obtained by persons for junior to him latter in life and to minimise his contribution to Dentistry in the State. There was no intention to show any favour to Dr. Patnaik. Orissa it is stated, has a tradition of dealing with its officers on a fair basis. Shri Mitra as a member of the Government felt that in all fairness to the position of Dr. Patnaik, he was entitled to the benefit of the contract which was given. The pay scales of Doctors, it is further stated, had been changing on many occasions but the benefit of those changes had not been passed on to Dr. Patnaik at any time. The Government, therefore, felt the justification of the terms given to Dr. Patnaik and took a Cabinet decision.

Shri Jagannath Rao in the course of his affidavit has likewise denied the correctness of the charge levelled against him.

Supplementary affidavits of Shri Lokanath Panda, Under-Secretary, Health Department and Inspector Hemakanta Sahu (Vigilance) have been filed on behalf of the State Government.

In respect of this allegation, I find that Dr. Patnaik made a representation to the Chief Minister praying that he might be appointed as a wholetime member of the staff of the Medical College, Cuttack, with the status of a Professor or Clinical Professor and be given pensionary benefits with effect from 1942, when he was attached to the General Hospital, Cuttack. Prayer was also made that he might be governed by other conditions of Government service. The then Health Minister of Orissa made the following note on March 6, 1959 on the qualifications of Dr. Patnaik :—

“ Dr. George Patnaik besides his medical qualification, graduated from the Dental College of Calcutta in March, 1939. He was deputed to USA for higher studies on Government of India scholarship in 1947. He obtained post-graduate qualification in Dentistry from the North-Western University, Chicago. The post-graduate qualification in Dentistry of the North-Western University, Chicago is a recognised qualification as per the schedules (Parts I and II) of the Dentist Act, 1948. In recognition of the contribution to the Arts and Science of Dentistry, he has been made a Fellow of International College of DENTISTS, USA. He is a registered teacher of the Utkal University as per Government order dated the 22nd May, 1947. The Inspectors of the Indian Medical Council who inspected the Medical College from time to time (before and after the recognition of the Medical College and on whose recommendations the Medical College received recognition) have never objected to his qualifications or his Department (Sic.). They have rather commended his standard of work.”

On May 7, 1959 Dr. Mahtab, Chief Minister, made the following order :—

“ Discussed with Health Minister.

About the qualification of Dr. Patnaik, it appears he has obtained a Certificate from the Dean of the Dental School. Although he did not obtain any post-graduate qualification, he has been working for the last 17 years in the Medical College. Obviously, he does not possess the requisite qualification for being appointed as Professor. Here the idea is not to appoint him as Professor. The idea is to appoint him as the Head of the Department although he is a part-time worker. I find in some other States part-time worker also have been appointed. I asked D. H. S. all about this and he agrees that if Government decides to appoint Dr. Patnaik as technical Head of the Department he would have no objection. Therefore, Dr. Patnaik may be appointed as the Head of the Department.

Regarding his representation to make him a full-time officer and about his salary and allowances, the matter may be examined separately.

Sd. H. Mahtab
7-5-1959"

In the meantime, letter dated April 2, 1959 was addressed by the Deputy Secretary, Health Department, to the Director of Health Services, stating that there was no justification to create a whole-time post of Professor or Assistant Professor in the Dentistry Department of the Medical College in view of the fact that only 15 lecturers in this speciality were given in a year to the final M.B., B.S. students of the College according to the recommendation of the Indian Medical Council. The representation of Dr. Patnaik in this respect was rejected. It was further stated in that letter:

" But in view of his Medical qualifications and post-graduate qualifications in Dentistry both in India and abroad and also in view of his long years of teaching experience, Government have decided to treat him as the Head of the Department of Dentistry in the S. C. B. Medical College, Cuttack. He should also continue as Honorary Dental Surgeon as before."

Dr. Patnaik, as would appear from the above, had also made a prayer in his representation for the enhancement of his honorarium. The Health Department suggested that the honorarium of Dr. Patnaik be increased from Rs. 400 to Rs. 550 per mensem for working as part-time Dental Surgeon. When the matter was examined in the Finance Department the Deputy Secretary in his note dated November 30, 1959 observed that permanent full-time employees of Government appointed during 1940 and 1942 were getting Rs. 460 and as such it would not be proper to give an honorarium of Rs. 550 to Dr. Patnaik, who was appointed only a part-time Assistant Surgeon in 1942. After discussing some other aspects, the Deputy Secretary observed that there seemed to be no justification for increasing the honorarium of Dr. Patnaik to Rs. 550 per mensem. The Finance Secretary agreed with the Deputy Secretary and as per order dated December 2, 1959, Shri R. N. Singh Deo, the then Finance Minister, expressed his agreement with the notes of Deputy Secretary and Secretary of the Finance Department.

On October 18, 1963 Shri A. L. Nair, Secretary, Health Department, recorded a note that Dr. Patnaik had represented

that although he had been functioning for over 20 years practically as a whole-time Dental Surgeon, his honorarium was not in proportion to the work attended to by him. The Deputy Secretary was asked to examine the matter and put up proposal if the above representation was correct. On November 9, 1963 Dr. G. S. Mohapatra, Director of Health Services, addressed a letter to the Secretary of Health Department stating that Dr. Patnaik had been working as part-time Dentist of the Medical College Hospital, Cuttack, with effect from July 22, 1942 and was also working as a teacher in the Dental Surgery in the Medical College since 1944. Dr. Patnaik was stated to have the following qualifications:—

- "(1) L. M. P.,
- (2) L. D. Sc. (Calcutta),
- (3) P. Gr. D. (North-Western USA), and
- (4) Fellow of International College of Dentists (USA)."

Dr. Patnaik, according to the letter, was declared Head of the Department of Dentistry of Medical College and Honorary Dental Surgeon of Medical College Hospital. It was pointed out that no tenure of Dr. Patnaik's appointment as part-time Dental Surgeon had been fixed and a recommendation was made that he should continue as Head of the Department of Dentistry and Honorary Dental Surgeon till he attained the age of 58. The other paragraphs of the letter read as under:

"As regards his emoluments, it may be mentioned that the honorarium of Rs. 400 which was fixed in the year 1948 needs revision in view of the fact that the pay scales of whole-time Government servants have been revised. Although he is a part-time Dental Surgeon, he has to very often devote much of his time in the Hospital. Moreover he is an experienced Dental Surgeon for the last 20 years, and has got long years of teaching experience. It is, therefore, recommended that the honorarium may be raised to Rs. 650 per month from 1-3-1963. The extra expenditure if sanctioned can be met from the appropriate head.

No leave concession is at present admissible to him. He may be allowed leave concession to the extent admissible to temporary Government servants in superior service. His status may be declared as a class I part-time Officer.

Regarding other service benefits, it may be stated that he is a part-time Officer and as such no pensionary benefits are admissible to him under Civil Service Regulations ; but since he has already served for the last 20 years on a part-time basis and he is likely to continue as such till his superannuation, it is desirable that he should have some retiring benefits in his old age in view of his long continuous service. I would,

therefore, strongly recommend his case to Government to grant him retiring benefits at the time of attaining age of superannuation as a special case. His work and conduct as a part-time Dental Surgeon have been highly satisfactory."

The matter thereafter became the subject of notings on the official files by the Under-Secretary, Deputy Secretary and Secretary of the Health Department, the Deputy Secretary, Additional Secretary and Secretary of the Finance Department as well as the Additional Chief Secretary and the Chief Secretary. All of them were unanimous on the point that in view of the long service of 22 years of Dr. Patnaik and also in view of the fact that the grades of other Doctors had been revised, Dr. Patnaik was entitled to an increase in honorarium and to other benefits on retirement. Various proposals were made with regard to the quantum of increase in honorarium and the retirement benefits. Chief Secretary in his note dated April 24, 1964 referred to the fact that Dr. Patnaik had been discharging the duties of the Head of the Department during the long years when the Government could not get better qualified persons. The Chief Secretary also mentioned that it was on record that Dr. Patnaik had done excellent service and had an excellent reputation. Ultimately, the following draft memorandum was prepared for consideration of the Cabinet :—

MEMORANDUM

Terms and conditions of service of Dr. George Patnaik, Honorary Dental Surgeon

The post Honorary Dental Surgeon exists in the S. C. B. Medical College, Hospital, Cuttack. Although Dr. George Patnaik has been functioning as the Honorary Dental Surgeon for the last 22 years, no rules have yet been laid down regarding his status, tenure of appointment, emoluments, terms of leave and other service benefits.

Dr. Patnaik was first appointed as Honorary Dental Surgeon of the General Hospital, Cuttack, in the year 1942 on an honorarium of Rs. 100 per month. In addition, from the year 1944 he was working as a Teacher in Dental Surgery in the S. C. B. Medical College and the honorarium allowed to him was increased to Rs. 200 per month from 1-4-1947. Dr. Patnaik besides his Medical qualification, obtained L. D. Sc. qualification from the Dental College of Calcutta. He was Deputed to the U. S. A. for higher studies on Government of India's scholarship in 1947 and he joined the North-Western University Chicago as a special Post-graduate student and was in regular full-time attendance from January 1948 to September 1948. In recognition of his contribution to the practice and science of Dentistry he has been made a fellow of International College of Dentists, U. S. A. He is also registered Teacher of the Utkal University. His standard of

work in his Department of Medical College has been commended by the Inspectors of the Indian Medical Council from time to time. The honorarium allowed to Dr. Patnaik was raised to Rs. 400 per month from 21-10-1948, i. e., the date he rejoined his duties on return to India after completion of his higher training abroad. In view of the fact that the pay scales of whole-time Government servants have since undergone revision and that Dr. Patnaik although a part-time Dental Surgeon has very often to devote much of his time in Hospital and in view of his long experience as a Dental Surgeon for over two decades and his long years of teaching experience, the D. H. S., Orissa has recommended that the honorarium allowed to Dr. Patnaik should be increased. The minimum of Civil Surgeons' pay scale is now Rs. 600. It would be fair to allow Rs. 600 to Dr. Patnaik as allowance from the date the Civil Surgeons were allowed this new scale. As and when the pay scale of Civil Surgeons is revised, his scale of honorarium may also be correspondingly increased from the date from which the scale is given to the Civil Surgeons.

Dr. G. Patnaik has served for nearly 22 years without any formal agreement as to the terms and conditions of service, and it is time that his services were availed of on certain fixed terms. It is, therefore, proposed to have a suitable contract with Dr. Patnaik for his services under the State Government containing the following terms :—

- (i) He shall continue to be the Head of the Department of Dentistry in the S. C. B. Medical College in the status of a Class I Officer for purposes of drawing the T. A. in addition to his being the Honorary Dental Surgeon and Lecturer in Dentistry in the said College.
- (ii) He shall be made the Adviser in Dentistry to advise Government about the proper Dental Surgery Organisation in this State for which purpose he may be directed to inspect the Dental Units in various parts of the State about equipments efficiency, etc.
- (iii) He will be allowed an honorarium of Rs. 600 per month with effect from 1-4-1958. This will be equated with the starting pay of the Civil Surgeons in the State as revised by Government from time to time.
- (iv) He will be allowed one month's pay for every completed year of service as Gratuity subject to a maximum of Rs. 24,000 on condition that a contract is signed subject to satisfactory conduct and performance. This benefit will accrue from the beginning of his service under Government. The honorarium he will be getting at the time of retirement should be the basis of Gratuity payable to him.
- (v) He will continue in service up to 60 years of age subject to satisfactory conduct and performance and health.
- (vi) He shall be subject to the relevant provisions (Rules 3, 4, 7, 8, 11, 16, 22, 23, 26, 32 and 33) of the Orissa Government Servants Conduct Rules, 1959.

- (vii) He shall be granted leave as per rules applicable to temporary Government servants. The leave salary shall be calculated on the basis of the monthly honorarium last drawn. The leave concession will be allowed to him from the date of execution of the contract.
 - (viii) He will be governed by the Rules governing Medical Attendance on Government servants in Orissa.
 - (ix) He will be allowed to withdraw from service on giving three months' notice to Government. In that event he will be given only half the gratuity suggested in sub-para. (iv) above.
 - (x) He will be entrusted with teaching work for 12 hours and hospital work for 24 hours a week.
 - (xi) He will be subject to disciplinary control as provided for in the Orissa Civil Service (Classification, Control and Appeal) Rule for the time being in force.
- The P. & S. and the Finance Departments have agreed to the above proposals.

The Memorandum is placed before the Cabinet for their approval to the aforesaid terms of contract to be executed by Dr. George Patnaik."

Shri A. K. Barren, Additional Chief Secretary, while forwarding the draft Memorandum to the Chief Secretary, stated in the course of his note—

"Even though he has been performing these functions since the year 1942 there is no agreement between Government and Dr. Patnaik and there are no fixed conditions of service except for the fact that an honorarium has been fixed. It is felt that because of Dr. Patnaik's continuous and devoted service particularly at a time when better qualified people were not available it is time to enter into a contract with Dr. Patnaik."

It was further stated in that note —

"The time has come to examine Dr. Patnaik's case. It is felt that in the interest of justice Dr. Patnaik should be given some fixed terms and conditions of service. It is felt that the following would be fair :—

Dr. Patnaik may be Head of the Department of Dentistry and continue to function as Honorary Dental Surgeon to Government. There was some doubt about whether it would be possible for him to be made Head of the Department of Dentistry as he does not possess any recognised Post-Graduate qualifications in Dentistry nor the requisite M. B., B. S. Degree. This was discussed informally by Secretary, Health with Secretary, Indian Medical Council. His advice was that even though Dr. Patnaik continues as an Honorary Dental Surgeon there would be no objection to appointing him as Head of the Dentistry Department though this may entail "persons with high qualifications having to work under him."

As regards gratuity and termination of service, Shri Barren stated—

"Dr. Patnaik has put in about 22 years of service as a part-time Government employee.

There are no rules under which gratuity or retirement benefits can be given to part-time Government employees but Dr. Patnaik's is an isolated and special case and as such should be given special treatment. It has, therefore, been suggested that he may be given a gratuity equivalent to one month's honorarium for each completed year of service. The gratuity to be calculated on the basis of the honorarium drawn on the date of retirement.

It is also proposed that the contract should provide that Dr. Patnaik should continue till the age of 60. He should also be allowed the option of withdrawing from the contract by giving 3 months' notice in which event, he will receive only half the gratuity. It is not considered necessary to make a provision for Government terminating Dr. Patnaik's contract with a notice of 3 months. Dr. Patnaik will be subjected to 'Discipline Control and Appeal Rules' and as such there seems to be no objection to not making such a provision."

The Additional Chief Secretary also gave reasons for reconsideration of the matter in spite of the previous rejection of the proposal by the Finance Department and observed—

"When Dr. Patnaik's honorarium was fixed at Rs. 400 F. D. utilised the Argument that as other Assistant Surgeons who were appointed at the same time as Dr. Patnaik were still not drawing Rs. 550 a month, Dr. Patnaik's honorarium should be limited. All these officers, as pointed out in Finance Secretary's note, have been promoted to the rank of Civil Surgeons. It would, therefore be fair to fix Dr. Patnaik's honorarium at the minimum of the scale of Civil Surgeon with effect from the date the scale was revised. This scale is likely to undergo an upward revision and it is proposed, that on each such revision Dr. Patnaik's honorarium be revised and equated with the minimum of the scale for Civil Surgeons."

The above note was forwarded by Shri B. Sivaraman, Chief Secretary, on August 20, 1964, to the Minister of Health. Shri P. V. Jagannath Rao approved the same on August 25, 1964. The note was signed by Shri Biren Mitra in token of his concurrence on August 28, 1964. The matter was thereafter put up in the meeting of the Cabinet held on September 8, 1964 and according to its Minutes the terms and conditions of service of Dr. Patnaik were approved with the modification that if death or medical disqualification prevented service up to 60 years, gratuity would be allowed up to the date of end of service. A draft agreement was thereafter prepared in consultation with the Law Department, Finance Department and Political & Services Department and was signed by Shri A. L. Nair, Secretary, Health Department and Dr. Patnaik on September 16, 1964. The agreement contained the conditions of

service as given in the Memorandum submitted to the Cabinet with the modification indicated by the Cabinet.

Rupees 16,600 were thereafter paid to Dr. Patnaik on account of increased honorarium with effect from April 1, 1958. On June 16, 1965, a letter was addressed by the Under-Secretary to the Accountant-General, Orissa that since the honorarium of Dr. Patnaik had been equated with the starting pay of Civil Surgeons and since the scale of pay of the Civil Surgeons had been revised to Rs. 750—1,150 with effect from January 1, 1965, Dr. Patnaik might be allowed an honorarium of Rs. 750 per mensem with effect from January 1, 1965. On January 14, 1966 the Government sanctioned the creation of a Gazetted post of Dental Surgeon and passed order for the appointment of Dr. Patnaik to that post on an honorarium of Rs. 750 per mensem. It was also mentioned that he would in addition be the Lecturer and Head of the Department of Dentistry in the Medical College and his status would be that of a Class I Officer for the purpose of drawing T. A. On March 15, 1966 the Under-Secretary in the Health Department addressed a letter to the Director of Health Services stating that Dr. Patnaik would function as Honorary Dental Surgeon up to August 23, 1971 when he would attain the age of 60 years. It was also stated that the permanent post of Dental Surgeon created in this connection would be abolished from August 24, 1971.

I have given the matter my earnest consideration and though it seems to me that the terms given to Dr. Patnaik, as per agreement dated September 16, 1964, were rather liberal, especially in the matter of payment of arrears amounting to Rs. 16,600 on account of increase in honorarium with effect from April 1, 1958, there are certain aspects of the matter of which note has to be taken.

Dr. Patnaik on his representation was made Head of the Department of the Dentistry in the Medical College, Cuttack, as per order dated May 7, 1959 of Dr. Mahatab, the then Chief Minister and the letter dated April 2, 1959 of Director of Health Services. This was long before Shri Patnaik became Minister. As regards the increase in Dr. Patnaik's honorarium, the Health Department recommended even in 1959 that his honorarium should be increased to Rs. 550 per mensem but the proposal was turned down by the Finance Department.

No attempt was made to raise the honorarium or confer any other benefit on Dr. Patnaik as long as his brother,

Shri Patnaik was Chief Minister. It was only after the resignation of Shri Patnaik as Chief Minister that a move was made to increase the honorarium and confer retirement benefit on Dr. Patnaik. The Director of Health Services, as per letter dated November 9, 1963, recommended increase of Dr. Patnaik's honorarium to Rs. 650 per mensem with effect from March 1, 1963. He also recommended retiring benefits and mentioned that Dr. Patnaik's work as part-time Dental Surgeon had been highly satisfactory. A number of officers including the Under-Secretary, the Deputy Secretary and Secretary of the Health Department, the Additional Chief Secretary and the Chief Secretary, the Deputy Secretary, the Additional Secretary and the Secretary of the Finance Department, all supported the proposal of enhanced honorarium and retirement benefits to Dr. Patnaik in view of his long service of 22 years. Ultimately, the proposal was put forward as contained in the draft Memorandum for consideration of the Cabinet. It was vetted by the Secretaries of Health, Finance and Political & Services Departments as well as by the Additional Chief Secretary and the Chief Secretary and had their support. The draft Memorandum was forwarded by the Additional Chief Secretary, and the Chief Secretary recommended that it be approved. Shri Jagannath Rao and Shri Mitra approved the draft Memorandum, and it was thereafter put up before the Cabinet. The Cabinet in its meeting dated September 8, 1964 approved the proposal as contained in the draft Memorandum with a very slight modification. It is, in my opinion, difficult to believe that though the matter was considered by a very large number of officers, each one of them hypothecated his conscience and surrendered his power of judging things objectively because of Dr. Patnaik being the brother of Shri Patnaik, even though Shri Patnaik had before that ceased to be Chief Minister. It is significant that the matter was vetted and the draft Memorandum was prepared before any note was recorded by Shri Jagannath Rao or Shri Mitra. Both of them came into the picture only in the context of approving the draft of the Memorandum submitted to the Cabinet. The Cabinet thereafter, as stated earlier, approved the proposal. The approval of the matter by the Cabinet gave a certain amount of sanctity to the whole thing and the same cannot be lightly brushed aside.

I would, therefore, hold that the charge of impropriety, as contained in this allegation, has not been proved.

CHAPTER 39

ALLEGATION No. 39

Re :

Purchase of land from Shri Brundaban Nayak and his Brother-in-law

Allegation No. 39 relates to the purchase of about 15 acres of land by the State Electricity Board from Shri Brundaban Nayak and his brother-in-law Shri Dibakar Panigrahi. The respondents names in the allegation are Shri Mitra and Shri Nayak.

According to the case set up by the State Government, the Orissa State Electricity Board came into existence on February 23, 1961 and Shri P. K. Kapila, I.A.S., who was about to relinquish charge of the office of the Member, Board of Revenue, was appointed Chairman of the State Electricity Board for the period from April 2, 1962 to March 31, 1963. By a Cabinet decision the service of Shri Kapila as Chairman was extended from March 31, 1963 to March 31, 1964. Later a decision was taken to extend his service till December 10, 1964 when Shri Kapila attained the age of 58.

As land, it is stated, was required for the construction of the staff quarters and Subdivisional Office of the Electricity Department at Berhampur, notification dated March 16, 1962 was issued for acquisition of 6.69 acres of land in village Gailundi in Taluq Berhampur. In the meantime, Shri Brundaban Nayak offered to sell his land near the Engineering School at Rs. 15,000 per acre saying that the rate would hold good till July 1963, Shri Nayak also deposited the plan of the land with the Tahasildar, Berhampur. It is stated that the average value per acre of this land had been calculated for acquisition purposes at Rs. 9,433.61 Paise. Shri Nayak offered to sell not only his own land measuring about 13 acres but also the land measuring 2 acres belonging to his brother-in-law Shri Dibakar Panigrahi, which was adjacent to his land.

The State Government alleges that the State Electricity Board did not need 15 acres of land but was compelled to

purchase about 15 acres, i.e., about 13 acres belonging to Shri Nayak and 2 acres belonging to his brother-in-law at the rate of Rs. 15,000 per acre. The Chairman, State Electricity Board, directed that all the 15 acres might be purchased so that the excess land might be used for future necessity. It is alleged that the Chairman of the Board showed that favour because he had been re-employed after his retirement. All the 15 acres of the land were accordingly purchased as per sale deed dated 2-11-1963.

The State Government is further stated to have spent Rs. 8,085.02 Paise for the stamp paper and Rs. 1,230 for registration charges. An excess amount of Rs. 75,000 is stated to have been paid in the purchase of the above 15 acres of land.

The State Government concludes from the above that Shri Nayak abused his position as a Minister in collusion with Shri Mitra.

In support of the above allegation, the State Government has filed the affidavit of Shri Pratap Chandra Misra, Assistant Engineer in the State Electricity Board.

Shri Mitra in the course of his affidavit has denied the allegation made against him and has stated that he never colluded with Shri Nayak for acquisition of land by the Electricity Board. As a matter of fact, according to Shri Mitra, he had nothing to do in the matter and passed no orders in connection with the acquisition of the aforesaid land.

Shri Nayak has filed a detailed affidavit denying the correctness of the various allegations against him. According to Shri Nayak, he did not volunteer to sell the land in question, which is situated in village Goilundi, Khodasingi and Ankuli within Berhampur Municipal area, but it was the Superintending Engineer of the Electricity Board who approached him to purchase the land and wanted its price to be quoted. Shri Nayak had before that deposited the plan and the registered documents with the Tahasildar, Berhampur, for demarcation of the land. Shri Nayak has denied that he exercised any influence or pressure on the State Electricity Board or any of its officers to purchase the 15 acres of land. Shri Nayak did nothing beyond quoting the price and other terms which is usually done in negotiating such transactions.

The decision to purchase the land was purely that of the Electricity Board and Shri Nayak had no hand in the matter. Shri Nayak adds that he did not show any favour to Shri Kapila in the matter of his appointment. Shri Nayak was not even a Minister at the time Shri Kapila was appointed Chairman, Electricity Board on April 2, 1962. Shri Nayak became a Deputy Minister on July 29, 1962, and a Cabinet Minister on October 2, 1963, by which time extension had already been granted to Shri Kapila from March 31, 1963. As regards the value of the land, Shri Nayak states that it was worth much more than Rs. 15,000 per acre at that time. Shri Nayak has enclosed with his affidavit a number of annexures to show that the value of the land in the locality was more than Rs. 15,000 per acre at or about the time of the sale to the State Electricity Board. As regards the area to be purchased, Shri Nayak states that he gave an option to the Board to purchase either all the 15 acres of land or to purchase 10 acres of Shri Nayak's land leaving with him in front an area of about three acres to avoid any blocking of the passage to the two acres field of his brother-in-law.

An affidavit of Shri Antarijyami Patnaik, retired Head Draftsman, has also been filed on behalf of Shri Nayak to show the market value of the land in the locality.

Supplementary affidavits have been filed by Shri Pratap Chandra Misra on behalf of the State Government as well as by Shri Nayak.

In respect of this allegation, I find that on March 16, 1962 notification under section 4 of the Land Acquisition Act was issued for acquiring 6.69 acres of land for the construction of staff quarters and Subdivisional Office of the Electricity Department in Taluq Berhampur. Before the preliminaries for the acquisition of the land could be completed, the State Electricity Board was formed and it took over the functions of the Electricity Department. The Law Department then advised that owing to change of circumstances fresh notification would have to be issued for the acquisition of the land for the State Electricity Board. On January 22, 1963, a letter was addressed by the Under-Secretary, Irrigation & Power Department, to the Superintending Engineer, Electricity Circle, Berhampur, that fresh proceedings under the Land Acquisition Act, would have to be started for acquisition of land for the State Electricity Board. On May 9, 1963, the Chief Engineer, Electricity addressed a letter to the Superintending Engineer

asking the latter if the land, which was originally sought to be acquired, could not be acquired by private negotiations. On May 31, 1963, the Superintending Engineer addressed the following letter to Shri Nayak :—

“ It is understood that you want to dispose of some of your land at Berhampur. I want to purchase near about 10 acres of land for construction of staff quarters of the State Electricity Board at Berhampur. If the above fact is correct, kindly let me know the location of the land together with the cost per acre so that I can move the State Electricity Board for purchase of this land.”

Shri Nayak sent the following reply on June 10, 1963, to the Superintending Engineer :—

“ Please refer to your D. O. No. 5013, dated the 21st May 1963. I had a talk with you at Berhampur regarding the disposal of my lands. You were telling me that you had already seen my lands at my Lanjipalji garden which is about five acres. This will be Rs. 20,000 per acre. I have another fifteen acres adjoining the Engineering School and facing the National Highway. The plan of this land is with the Tahasildar, Berhampur. This will be Rs. 15,000 per acre if you take the entire plot. You know the rate is galloping day by day due to the establishment of the Medical College very close to my lands and Industrial Estates, etc. The above rates hold good till the end of July 1963.”

An approach was then made by the Superintending Engineer to the Collector to spare some land for the Electricity Board out of the land acquired for the Medical College. The Collector then told the Superintending Engineer that more land was needed for the Medical College and it would not be possible to spare any land for the Electricity Board out of the land already acquired for the Medical College. The Superintending Engineer gave details of his talk with the Collector in his letter, dated July 17, 1963, to Shri Kapila, Chairman, Electricity Board. The Superintending Engineer also referred to the letter from Shri Nayak and requested Shri Kapila to convey early decision for taking over one of the sites on private negotiation from Shri Nayak as otherwise those plots might not also be available on account of the demand for such land by other Departments. On August 14, 1963, the Chairman of the Electricity Board recorded a note, relevant part of which reads as under :—

“ Originally five acres of land were required for staff quarters but this will not be sufficient even with double-storeyed quarters. It is, therefore, best that action is taken to acquire or purchase

about 10 acres of land. There is about 15 acres of land belonging to Shri Brundaban Nayak and he has made an offer at Rs. 15,000 per acre. Land in the neighbourhood was sold by him for about Rs. 10,000 per acre over two years ago. But this land is slightly lower than the land now offered and price of land has risen. The Collector's representatives are of the opinion that the value of the land in the neighbourhood would be to the tune of nearly Rs. 15,000 per acre. They are agreeable to give us the correct figures as soon as a reference is made to them."

On September 12, 1963, the Assistant to the Chief Engineer addressed the following note to the Chairman, Electricity Board :—

"Discussed with Shri B. Nayak this afternoon. He said that his offer at Rs. 15,000 per acre was up to July 1963. Now that land price has gone higher in the locality, he expects better price. However, he has agreed to give 10 acres of land of our requirement at the offered rate, provided this land is not taken on the road side (N. H. Way), but in the interior, thus leaving about 3 acres by the N. H. Way.

During discussion, it came out that one Shri Panigrahi, relative of Shri B. Nayak, has about 2 acres of land adjacent to his, marked 'Q' in the Blue-print at Flag 'B'. Shri Nayak is interested in sale of this land and will get that land at the same rate.

For entrance into these plots, Shri Nayak has agreed to provide a road space of 30 ft. width at his cost.

Since, Shri Nayak has agreed to give the land at Rs. 15,000 per acre, i. e., about 4,000 less per acre according to the present rate in the locality it is desirable to go for all the 15 acres (13 acres of Shri B. Nayak plus 2 acres of Shri Panigrahi) in view of future developments at Berhampur."

On September 18, 1963 the Chairman, Electricity Board, addressed a note to the Chief Engineer in the course of which he observed :—

"I had a discussion with Shri B. Nayak today. He has informed me that in addition to the 13.02 acres there is another 2 acres of land belonging to his brother-in-law making a total of 15.02 acres which they want to dispose of. This 2 acres piece of land belonging to his brother-in-law is near the neck of the present 13.02 acres of land. If the Board is not willing to take all these lands, namely, 15.02 acres, then Shri B. Nayak suggests that the Board should take only 10 acres leaving the frontage to the road of 3.02 acres for them. He will give a road of 30 feet wide to this 10 acres of land. He is making this suggestion for the simple reason that if we take away all the 13.02 acres of land his brother-in-law will have no approach to his land of 2 acres. If, however, we want 15 acres as appears from the statement of the S. E.,

Berhampur then he is willing to hand over the total area, namely, 13.02 acres of his own land and 2 acres of his brother-in-law's land. You may kindly decide whether we want 15.02 acres or 10 acres. This 30 feet of road-land which is mentioned above will of course be free of charge by Shri B. Nayak and will be exclusive of the 10 acres which he will sell to us."

In the meantime, on September 17, 1963 the Superintending Engineer addressed a letter to the Chief Engineer stating that all the 15 acres of land were required for the construction of staff quarters and the Subdivisional Office at Berhampur. On September 19, 1963 the Chief Engineer addressed a note to the Chairman asking for the purchase of the entire land measuring 15.02 acres. On September 21, 1963 Shri Nayak addressed a letter to the Superintending Engineer stating that he (Shri Nayak) had been informed by the Chairman, Electricity Board, regarding the decision to purchase 13 acres of land belonging to Shri Nayak and 2 acres belonging to his brother-in-law at the rate of Rs. 15,000 per acre. Shri Nayak stated that he was accepting the offer provided the sale-deed was executed within ten days. Shri Nayak also asked the Superintending Engineer to obtain a non-encumbrance certificate from the Sub-Registrar's office regarding the land or if the latter so desired Shri Nayak could give an affidavit to the effect that he had not mortgaged his lands to anybody since the purchase. On October 14, 1963 a letter was addressed by the Superintending Engineer to the Secretary, Electricity Board, stating that the Government Pleader after studying the relevant document had found that Shri Nayak possessed 13.02 acres of land and his brother-in-law, Shri Panigrahi, possessed 1.95 acres of land. The total area of the land was mentioned to be 14.97 acres. It was further mentioned that the price of the land would be Rs. 2,24,550. Besides that, money would be needed for stamp paper, registration charges and other miscellaneous expenses. The draft sale-deed was prepared on November 2, 1963. Stamp paper worth Rs. 8,085.02 Paise was purchased and Rs. 12.30 Paise were spent on registration. Two sale-deeds, one on behalf of Shri Nayak and the other on behalf of Shri Panigrahi, were registered on November 5, 1963.

It would appear from the above that the proceedings about the acquisition of land in respect of which notification under section 4 of the Land Acquisition Act had been issued on March 16, 1962, were not pursued subsequently because the Law Department advised that there had been a change of circumstances on account of the coming into existence of the

Electricity Board and as such proceedings would have to be started *de novo*. Notification, dated March 16, 1962, as well as another notification dated March 17, 1962 show that the need of the land for construction of staff quarters and Subdivisional Office was urgent. In view of the urgency of the matter, the Chief Engineer suggested to the Superintending Engineer to acquire the land by private negotiations from the persons whose land had been earlier notified for acquisition. Nothing, however, came of that. An effort was also made by the Superintending Engineer to take some land out of the land acquired for the Medical College, but the Superintending Engineer was told that no area could be spared out of that land. The Superintending Engineer thereafter approached Shri Nayak. Shri Nayak sent the reply dated June 10, 1963, reproduced earlier. The note dated September 18, 1963 of the Chairman, Electricity Board, makes it clear that Shri Nayak was not insisting upon the purchase of the entire land measuring about 15 acres but was prepared to part with 10 acres of land on the back side with a 30 feet wide passage. The passage was to be provided by Shri Nayak free of charge. The Chairman then asked the Chief Engineer to intimate whether 10 acres of the land would be needed or 15 acres. Both the Superintending Engineer as well as the Chief Engineer then stated that the entire land measuring about 15 acres should be purchased. The total area of the land was ultimately found to be 14.97 acres and the same was purchased by means of two sale-deeds.

The facts mentioned above, in my opinion, reveal that nothing objectionable was done by Shri Nayak in the transfer of the land to the State Electricity Board. The Board was in urgent need of the land and the effort made on its behalf by the Superintending Engineer to secure a portion of the land acquired for the Medical College did not evoke favourable response. The Superintending Engineer in the above circumstances asked Shri Nayak to sell 10 acres of land. Although the demand at that time was of 10 acres the Engineers of the Electricity Board considered it better to go in for purchase of all the 15 acres, as by doing so they were getting a site adjoining the National Highway. It was also felt that bigger area would be more useful for additional buildings. So far as Shri Nayak was concerned, he gave the option to the Board to purchase either 10 acres on the back with exclusive right of 30 feet wide passage or the entire area measuring about 15 acres. It was a straight and above board transaction, especially when it is kept in view that the rate of

Rs. 15,000 per acre at which the land in question was sold by Shri Nayak, was fair and reasonable, as would be clear from the discussion which follows hereafter. There is nothing to show that Shri Nayak exerted any pressure and, in my opinion, it is difficult to spell out an inference of impropriety against him. It is also obvious that if the Electricity Board had resorted to acquisition of land in accordance with the provision of Land Acquisition Act and not to negotiate purchase, the formalities of acquisition would have taken time and the Board would have had to pay 15 per cent extra on the cost of the land. The time factor, on account of the urgency, as well as the saving of extra 15 per cent, indicates, if anything the prudent nature of the transaction from the point of view of the Board.

An attempt has been made on behalf of the State Government to show that Shri Kapila, Chairman of Electricity Board, agreed to the purchase of land from Shri Nayak and his brother-in-law because Shri Nayak as a Minister would have a say in the matter at the time the Cabinet went into the question of grant of 'extension of' Shri Kapila. In this respect, I find that Shri Kapila was appointed as Chairman of the Electricity Board long before Shri Nayak became a Minister or Deputy Minister. The decision of Shri Kapila for the purchase of the land of Shri Nayak was taken on August 14, 1963, when Shri Nayak was only a Deputy Minister and not a Minister of the Cabinet rank. The material on record also shows that Shri Kapila took his decision on the basis of and in accordance with the suggestion of the Superintending Engineer and the Chief Engineer. None of those two officers is shown to have any interest in Shri Nayak. Shri Nayak was in charge of Community Development and Panchayati Raj and the officers of the State Electricity Board were not under his administrative control. In the circumstances, the argument advanced on behalf of the State Government that Shri Kapila was influenced by the consideration of the extension of his service while agreeing to the purchase of land from Shri Naik does not appear to be well founded. I may state that a contract by the State Electricity Board to purchase land from a State Minister would to some extent be looked upon with suspicion. I have kept this fact in view and subjected the transaction of purchase of the land of Shri Nayak and his brother-in-law by the State Electricity Board to very close scrutiny, and am of the opinion that the transaction was above board and involved no impropriety on the part of Shri Nayak.

Coming to the price of the land, I find that the note, dated August 14, 1963 of the Chairman shows that the Collector's representatives were of the opinion that the price of the land in the neighbourhood was to the tune of about Rs. 15,000 per acre and would send the correct figure latter. The correct figure was given in the letter, dated September 6, 1963 from the Executive Engineer, according to whom the Additional District Magistrate had reported that the value of the land worked out to be Rs. 18,875 per acre. Even at the time proposal was made to acquire the land a valuation data was prepared by the Sub-Collector, and according to that data average value of rain fed land, which in 1959 was Rs. 6,923·07p. per acre, went up to Rs. 13, 888,88 Paise per acre in 1961. Regarding the dry lands, the data showed that the average value per acre went up from Rs. 17,230·77 Paise in 1959 to Rs. 22, 409·09 Paise in 1961. This would show that the prices were going up in the locality due to the establishment of a number of offices and a College there. Shri Nayak has placed on record number of documents which show that the rate of Rs. 15,000 per acre charged by him was by no means excessive. According to sale-deed dated April 10, 1962, the State Government purchased 2·50 acres of land for construction of Commercial Tax Offices for Rs. 53, 165 at the rate of Rs. 21,266 per acre. Another area of 1·18 acres on the back of the above land was purchased by the State Government for the Commercial Tax Offices for Rs. 24,800. Three plots of land were acquired by the State Government for the construction of the offices of the Revenue Divisional Commissioner, as per notification published on March 24, 1961. The Land Acquisition Officer fixed the compensation in respect of those plots at the rate of Rs. 20,732·03 Paise per acre as per award, dated March 13, 1962. The claimants not being satisfied with the compensation awarded, got the matter referred to the Civil Court. The Civil Court, as per Judgment, dated January 4, 1963, held that the claimants were entitled to payment at the rate of Rs. 30,000 per acre towards price of the land besides 15 per cent statutory allowance. Plots of land were also acquired for the office and staff quarters of the Deputy Inspector-General of Police, as per notification dated February 22, 1962. The Land Acquisition Officer, as per award, dated January 4, 1964, directed payment of compensation to the land owners at Rs 23,000 to Rs. 24,000 per acre. The claimants have now got the matter referred to the Civil Court. The above-mentioned plots were not far from the land in dispute.

Judged in the light of the above material, the price of Rs. 15,000 per acre of the land in question in my opinion, should be considered to be very reasonable and fair and by no means excessive. It may also be mentioned that the land in dispute abuts on National Highway No. 5 and a number of Government offices are situated close to it.

Shri Nayak has also placed on file documents to show the rates at which some other plots near the land in question were sold during the years 1963 to 1966. One of those plots was sold at as high a rate as Rs. 1 lakh an acre and another at the rate of Rs. 90,000 per acre. These plots were of very small area and as such I have excluded them from consideration in assessing the market value of the land in dispute. Likewise, the State Government, in my opinion, can derive no help from sale of land by Shri Nayak to Missionary Organisation at the rate of Rupees 10,000 per acre. The said sale took place more than two years before the impugned sale to Electricity Board and the material on record shows that there was considerable rise in prices during this interval.

Reference has been made on behalf of the State Government to the fact that the stamp duty and registration charges were paid by the State Electricity Board. This seems to have been mutually agreed to by the parties. It may be observed that according to Section 29 (c) of the Indian Stamp Act the expense of providing the proper stamp in the absence of an agreement to the contrary, shall be borne by the purchaser of the property. The argument advanced on behalf of the State Government in this respect must, therefore, fail.

So far as Shri Mitra is concerned, nothing has been brought out against him.

I, therefore, find that the charge of impropriety as contained in this allegation has not been proved.

CHAPTER 40

ALLEGATION No. 40

Re :

Purchase of a Second-hand Drilling Machine from Modern Traders

Allegation No. 40 relates to the purchase of a second-hand drilling machine from Modern Traders, Cuttack. The respondents named in the allegation are Shri Mitra and Shri Mallik.

According to the case set up by the State Government Modern Traders, Cuttack, is a proprietary concern of Shri Debendra Kumar Patnaik, a brother of Shri Gopal Patnaik. Shri Gopal Patnaik had business associations with Shri Biju Patnaik, Shri Mitra, Shri Routray and their relatives and as such the concerns of Shri Gopal Patnaik were favoured with many advances and purchase orders by the Orissa Government.

The purchase of drilling machines for irrigation from Messrs. Reliable Water-Supply Service, Lucknow, it is stated, was under the active consideration of the Government of Orissa in January, 1964. At this stage, Modern Traders made an offer to supply a second-hand drilling machine at Rs. 77,500 ex-godown, Calcutta. The offer was followed by another letter wherein Modern Traders offered to supply two used over-hauled drilling rigs. The price quoted for one type was Rs. 1,75,000 and for the other Rs. 2,25,000. In the meantime, the Lucknow firm, which had been addressed, offered to reduce the price. The offer of the Lucknow firm was rejected on the ground that Modern Traders would deliver the drilling rig quickly. Order for purchase of rig worth Rs. 2,25,000 was placed with Modern Traders on May 8, 1964 and in July 1964 the aforesaid concern intimated that the drilling machine was ready for despatch. Demand of 90 % of the price was made at the time of despatch. The State Government sent an officer to Calcutta and 90 per cent of the price was paid before despatch and inspection of the rig.

The State Government infers from the above that favouritism was shown to Modern Traders by the Minister and Deputy Minister in charge of the Department.

In support of the above allegation, the State Government has filed the affidavits of Shri Honuman Prasad Roy, Personal Assistant to Director of Lift Irrigation and Inspector Madhusudan Das (Vigilance).

Shri Mitra in the course of his affidavit has denied the allegation against him. According to him he had no interest either in Shri Gopal Patnaik or in any of his family members nor were they his business associates. Shri Mitra has also repelled the accusation about the misuse, wastage and unnecessary expenditure of public funds.

Shri Mallik in the course of his affidavit has denied the correctness of the charge levelled against him. Supplementary affidavit has been filed by Inspector Md. Haroonal Rashid (Vigilance) on behalf of the State Government. Shri Debendra Kumar Patnaik too has filed his affidavit.

Nothing has been brought out at the time of arguments against Shri Mitra and Shri Mallik in respect of this allegation and it has not been shown that they did anything in the matter. I would, therefore, hold that the charge against the above-mentioned two respondents, as contained in this allegation, is wholly misconceived and without any basis.

CHAPTER 41
ALLEGATION No. 41
Re :

Advance of Rs. 24,90,225 to Vijaya Commercial Corporation

Allegation No. 41 relates to the alleged loss to the State Government by payment of Rs. 24,90,225 as advance to Vijaya Commercial Corporation for purchase of 12 Crawler Tractors. The respondents named in the allegation are Shri Tripathy and Shri Mallik.

According to the case set up by the State Government the Irrigation & Power Department of the Government of Orissa invited tenders in 1964 for purchase of 8 Crawler Tractors. Amongst others, the following two concerns submitted their tenders :—

(a) Mahanwi Corporation (P) Ltd.

(b) Vijaya Commercial Corporation with Head Office at Vijayawada and Branch Office at Cuttack.

Shri V. K. P. Sunkavalli was described as the Managing Partner of Vijaya Commercial Corporation.

The rate quoted by Mahanwi Corporation (P) Ltd. on April 6, 1964 was Rs. 1,58,000 and that quoted by Vijaya Commercial Corporation on April 4, 1964 was Rs. 1,62,200 per unit. Mahanwi Corporation was indicated to be the principal concern of which Vijaya Commercial Corporation claimed to be the agent. The above two concerns stated that they could supply the tractors on the basis of actual user's licence with a letter of authority in their favour. Subsequently, on August 28, 1964, Mahanwi Corporation (P) Ltd. intimated the State Government that it would not be possible for that company to supply the equipment at the price quoted in view of the changes in the rates of custom and excise duty. On July 2, 1964 Vijaya Commercial Corporation addressed a letter to Additional Chief Engineer indicating that the offer made by the aforesaid firm, which expired on June 30, 1964 was being kept valid up to July 31, 1964. It was also indicated in that letter that 90 per cent of value would have to be paid against delivery to authorised representative at Bombay or in the alternative 90 per cent of the total invoice price would have to be paid as advance on a bank guarantee of the amount. On September 16, 1964, the Additional Chief Engineer placed an order with the said firm for the supply of

seven tractors. Shri Sunkavalli then intimated that he was arranging to send papers to the Orissa Government for the user's licence. As the firm subsequently sent papers to the Orissa Government for obtaining the import licence instead of user's licence, the Additional Chief Engineer on December 31, 1964 cancelled the order. Vijaya Commercial Corporation sent a letter on January 8 1965 that the form for import licence had been sent by mistake instead of the form for actual user's licence. The Additional Chief Engineer after receipt of that letter submitted a proposal on June 1, 1965 to the Irrigation & Power Department for approving purchase of seven Crawler Tractors from Vijaya Commercial Corporation at a cost of Rs. 1,62,200 per unit. This proposal for purchase of seven tractors was subsequently dropped on the ground that those tractors were no longer necessary.

On February 7, 1966, it is stated, Vijaya Commercial Corporation addressed a letter to the Additional Chief Engineer stating that the firm was in a position to offer twenty new Crawler Tractors out of ready stock at Calcutta and requested for early orders for supply. On February 25, 1966 Shri Sunkavalli on behalf of the firm offered 10 units of T. G. 90 Crawler Tractors and mentioned that the price, terms, conditions offered on April 4, 1964, remained unchanged. On receipt of this letter, the Additional Chief Engineer, invited the attention of the Government in Irrigation & Power Department to his earlier proposal dated June 1, 1965 for approving purchase of seven Crawler Tractors. The Additional Chief Engineer this time suggested the purchase of ten numbers of Crawler Tractors from this firm. On April 15, 1966 the Deputy Secretary wanted a clear proposal from the Additional Chief Engineer regarding purchase of Crawler Tractors with Bull-dozer attachment for M. I. Project. The Additional Chief Engineer was also told to attend meeting on April 21, 1966 with necessary data. On May 10, 1966, Vijaya Commercial Corporation intimated to the Secretary and the Additional Chief Engineer that the firm had reserved T. G. 90 Bull-dozers from its ready stock at Calcutta and wanted Government's decision to be taken. It was also stated that 90 per cent of the value would have to be paid at Calcutta against physical delivery. Shri Sunkavalli made frequent visits to Bhubaneswar during those days and stayed at the State Guest House. On May 15, 1966, the Secretary, Irrigation & Power Department, submitted a note to the Development Commissioner proposing purchase of 12 numbers of T. G. 90 tractors at an approximate cost of Rs. 24 lakhs. On May 21,

1966 Shri Mallik, Deputy Minister of Irrigation & Power, signed the file in token of the approval and on May 26, 1966 Shri Tripathy, Chief Minister, agreed to that.

The proposal was thereafter submitted to the Finance Department for concurrence. The Secretary, Finance Department, pointed out that it was not appropriate for Irrigation Department to have taken the orders of the Chief Minister prior to consultation with the Finance Department. Reference was also made by the Finance Department to the fact that the budget position was very tight. The Secretary, Finance Department, endorsed the file to the Development Commissioner-cum-Additional Chief Secretary. The Development Commissioner thereafter submitted a note that tractors were badly needed, and since those tractors were available at cheap rates, i. e., at pre-devaluation rates, all the 12 tractors should be purchased. The State Government points out that Mr. Sunkavalli had nowhere stated that the tractors would be available at pre-devaluation rates, since devaluation took place only subsequent to his previous letter. The file containing the proposal to purchase 12 tractors then went to Shri Mallik, Deputy Minister, and he agreed to the proposal on July 16, 1966.

In the meanwhile, it is stated, on July 4, 1966 Shri Raghuramiah, Union Minister, came to Bhubaneswar. He stayed in the State Guest House and a party was arranged in his honour. Shri Tripathy and Shri Sunkavalli were amongst those present at the party.

The case of the State Government further is that during the above period, on June 2, 1966, the Financial Adviser of the Irrigation & Power Department, addressed a letter to the Central Water and Power Commission to intimate price of T. G. 90 Yugoslav tractors. Reply was then received that such tractors were not used by the Central Government. Suggestion was made that tenders be invited from Yugoslavia and other countries.

After the proposal to purchase 12 tractors from Vijaya Commercial Corporation was approved by Shri Mallik, it is stated, Shri Sunkavalli again came to Bhubaneswar along with Shri D. Rajagopala Rao, who was a low-paid employee of Shri Sunkavalli. Shri Rajagopala Rao represented himself to be the proprietor of Vijaya Commercial Corporation. Shri Rajagopala Rao then gave a bill for supply of 12 number of T. G. 90 tractors at a cost of Rs. 1,62,225 each and also appended a note that in case he would have to pay the devaluation rates,

Orissa Government should pay the same. A move was then made for payment of 90% advance. The Department calculated it at Rs. 17.50 lakhs but subsequently it was said that the Central excise duty and the customs duty should also be paid and included in the advance. The amount came to Rs. 24,90,225 and a cheque for that amount was handed over to Shri Rajagopala Rao. The above payment, according to the State Government, was made even though there was no demand in writing of 90% advance and even though the firm had earlier represented that it would take the advance of 90% after delivery of the R/R on giving a bank guarantee. The bank guarantee was subsequently changed to insurance guarantee. No bank guarantee was taken and only a writing was obtained from an Insurance Company.

The State Government further alleges that Vijaya Commercial Corporation had no tractor in its possession and had even no import licence for the import of such tractors. On October 10, 1966 the said firm demanded 57.5% of the total value of the equipment on account of increase due to devaluation of rupee in India and asked for extension of time till December 31, 1966. Questions were then asked in the State Legislature about the deal. Shri Mallik thereupon made a note on the file by which he sought to shift the responsibility to the officers. The file then went to Shri Tripathy and he directed that attempts should be made to collect back the advance paid.

As regards the amount of Rs. 24,90,225 for which cheque was issued, it is stated, Shri Rajagopala Rao deposited the same in a bank and immediately thereafter withdrew about Rs. 8 lakhs. The State Government concludes from the above that there was a conspiracy to defraud the State Government of a sum of Rs. 24,90,225. Shri Tripathy and Shri Mallik are accused of being parties to the above conspiracy.

In support of the above allegation the State Government has filed the affidavits of Shri Bishnu Prasad Patnaik, Under-Secretary in the Irrigation & Power Department, Shri Umadri Bihari Biswal, Accounts Officer, Shri Prana Krushna Behera, Manager, Orissa State Guest House, and Shri Prasanta Kumar Patra, Executive Engineer.

Shri Tripathy in the course of his affidavit has denied the charge levelled against him. According to Shri Tripathy the purchase of tractors was approved by him for implementing various projects of the State. The tenders were scrutinised by

the technical officers of the Government and their recommendations were accepted. In doing so, the Government accepted most competitive tenders. Shri Tripathy denies having attended the party in honour of Shri K. Raghuramiah. As regards Shri Sunkavalli, Shri Tripathy states that he was not known to him. Shri Tripathy adds that Government orders were passed for enquiry into the matter. He or any members of his family did not derive any pecuniary benefit from the transaction.

Shri Mallik also has denied the correctness of the charge levelled against him. According to Shri Mallik a recommendation was made by the Secretary, Irrigation & Power on May 15, 1966, for purchase of 12 tractors in question. The recommendation was supported by the Development Commissioner on May 19, 1966. The proposal was thereafter approved by Shri Mallik on May 21, 1966. The Chief Minister also endorsed his concurrence on May 26, 1966. The above tractors were urgently needed for projects and since it was represented that those tractors were difficult to obtain and were being made available at pre-devaluation price, Shri Mallik agreed to the proposal. Shri Mallik never passed any order for payment of advance. When it was brought to the notice of Shri Mallik that the party concerned was asking for payment at post-devaluation rates, he directed on November 2, 1966 a close and quick examination of the entire matter. Shri Mallik also recommended that the entire matter be referred to the Vigilance Commissioner. The present State Government is stated to have deliberately remained indifferent to pursue the matter by taking action against the firm in question. Shri Mallik denies that there was any personal contact between him and Shri Sunkavalli at any stage. Shri Mallik also denies having attended the party in honour of Shri Raghuramiah.

Supplementary affidavits have been filed by Shri Bishnu Prasad Patnaik and Shri Pranakrushna Behera on behalf of the State Government as well as by Shri Mallik.

In respect of this allegation, two orders dated May 21, 1966 and July 16, 1966 of Shri Mallik and one order dated May 26, 1966 made by Shri Tripathy have been assailed on behalf of the State Government. So far as the orders dated May 21, 1966 of Shri Mallik and May 26, 1966 of Shri Tripathy are concerned, I find that they did not make any separate orders but merely appended their signatures to the note dated May 15, 1966 of Shri K. S. Ramachandran, Secretary, Irrigation &

Power. Before that note was put up before Shri Mallik, it was signed by Shri R. P. Padhi, Development Commissioner-cum-Additional Chief Secretary on May 19, 1966. In that note the Secretary, Irrigation & Power, referred to the proposal for purchase of bull-dozers and traction units for medium irrigation projects. It was pointed out that there were four projects and the problem which called for solution, related to compaction units for the earth dams. Six tractors of D8 class (equivalent to 12 tractors of TG 90 class) were stated to be required for compaction work for Salandi Medium Irrigation project. Likewise, the requirements for Salia and Ghodahado Projects were also given. Mention was also made of the fact that a number of exisisting tractors and bull-dozers had outlived their utility. The concluding part of the note along with the signatures appended to it reads as under :—

“Again earth moving machinery are not freely available and after we are so hard pressed that we have to go in for second-hand machinery. Now that some new TG 90's are readily available ex-stock without foreign exchange, we may as well buy them. An example of our predicament is that we moved the I. D. A. for foreign exchange for 10 D8 tractors and dozers and this was agreed to as long ago as December, 65 or early January, 66. But till now there is no formal release of foreign exchange. The project will be unable to keep to time schedule and will also increase in cost considerably if we go on waiting for the release.

Purchase of 12 new tractors will cost roughly Rs. 24 Lakhs. This has to be accommodated within the Plan allocation for Salandi. In any case, if the project is to start irrigating in 1967 and be substantially completed by June 1968, the allocation should be increased. As the Government of India is also very eager that the project should be completed very early, they may be agreeable to raise the plan ceiling on this account. The delay in completing Salandi has been a weak point with Government of India whenever they go for discussion with I. D. A. and consequently Government of India want to get the project completed earlier without any more hold-ups. We should therefore actively persue the matter and get an additional plan outlay of Rs. 1 crore against this Project. In fact though a provision of Rs. 1.5 crore is shown against Salandi in the Plan for 1966-67, in the project report accepted by the I. D. A. and Finance Ministry, the provision is Rs. 2.5 crores. Thus, accommodation of the purchase of the machinery in Salandi Project budget should not seriously affect the availability of funds for actual works.

The proposal to purchase 12 Nos. of TG 90's may be approved in principle. The correct price will be checked up with relevance to other quotations, etc., and brought to the minimum

reasonable figure. Other terms of purchase will also be settled after the purchase is approved in principle.

Dy. Minister (I. & P.) may also see.

Sd. K. S. Ramachandran
15-5

D. M. (I. & P.)

Sd. R. P. Padhi
19-5-1966

C. M.

Sd. P. Mallik
21-5-1966
Sd. S. Tripathy
26-5"

Shri Mallik and Shri Tripathy by appending their signatures approved in principle the proposal to purchase 12 Nos. of TG 90 tractors. It is in my opinion, not possible to hold them guilty of any impropriety because of their having given the above approval. The Secretary, Irrigation & Power had given detailed and convincing reasons for the purchase of 12 tractors. It was pointed out by the Secretary that those tractors were urgently needed for the completion of Salandi medium irrigation project. The Government of India was stated to be very keen with regard to the early completion of the project because this matter was being taken up with the International Development Authority. The note of the Secretary, Irrigation & Power, was supported by the Development Commissioner -cum-Additional Chief Secretary and I fail to understand as to how Shri Mallik and Shri Tripathy can be said to have done something objectionable by approving the recommendations of the Secretary, Irrigation & Power, and of the Development Commissioner.

So far as the order dated July 16, 1966 of Shri Mallik is concerned, I find that the State Government has neither filed a copy of that order nor it has filed a copy of the note on the basis of which Shri Mallik passed that order. If the State Government sought to impugn the order dated July 16, 1966 of Shri Mallik, it should, in my opinion, have filed the copy of the order along with the note on which it was based in order to give a complete picture of the context in which that order was made. In case Shri Mallik approved the proposal contained in the note, the note would become an integral part of the order, and without the note and the order, it would be difficult to express an opinion about their propriety.

The omission to file a copy of the note and the order becomes all the more inexplicable when it is kept in view that the copies of a large number of other documents, which have only a remote bearing, have been filed on behalf of the State Government. Be that as it may, Para. 42 of the affidavit, filed on behalf of the State Government, gives some idea of the context in which the order dated July 16, 1966 was made by Shri Malik. The aforesaid paragraph reads as under :—

“That on 5-7-1966 while endorsing the file to the Finance Department for concurrence, the Secretary (Irrigation & Power) pointed out that after devaluation, all prices of earth-moving machinery are shooting up. These tractors will be available at the original prices. It is, therefore, a great advantage to buy immediately. For immediate concurrence, the Deputy Secretary, Finance on 6-7-1966 pointed out that it is difficult to examine the actual immediate need for new heavy earth-moving machineries in a short time in the absence of a detailed statement of the existing equipment. On 7-7-1966 the Secretary pointed out that orders of the Chief Minister have been obtained on 26-5-1966 without consulting the Finance Department. The proposal involved an expenditure of Rs. 25 lakhs and the procedure adopted is, therefore, not correct. After orders of the Chief Minister have been obtained, it appears a part file has been started and referred to the Planning & Co-ordination (Planning) Department for their concurrence. Incidentally that file has also been referred to the Finance Department for our views by the Planning & Co-ordination Department. Thus, the same matter has been referred to the two Departments simultaneously. He advised on analysis that there should be restriction in the expenditure on purchase of earth-moving equipment only to the extent of the sale-proceeds of other machineries in Salandi which were earlier proposed to be sold. On 14-7-1966 the Secretary, Irrigation & Power, states that funds can be found within the budget provision of the Irrigation & Power Department to accommodate the purchases at pre-devaluation rates. On this note, the Secretary, Finance, on 16-7-1966 observed that the Finance Department may perhaps concur with the proposal of purchase of 6 new Tractors. The Additional C. S. recommended to Deputy Minister, Finance to purchase all the twelve dozers at pre-devaluation prices. On 16-7-1966, Shri Malik, the Deputy Minister, Finance, agreed to the proposal.”

It would appear from the above that when the Secretary, Irrigation & Power, sought the concurrence of the Finance Department to the purchase of 12 tractors, the Finance Department at first objected to the proposal, as it involved an expenditure of Rs. 25 lakhs. Later when it was pointed out on July 14, 1966 by the Secretary, Irrigation & Power

that fund could be found within the budget provision, the Finance Secretary concurred with the proposal to purchase six new tractors. The Additional Chief Secretary thereafter recommended the purchase of all the twelve tractors (also described as bull-dozers) at pre-devaluation prices. Shri Mallik agreed to this proposal on July 16, 1966. It is, in my opinion, difficult to spell out any inference of impropriety against Shri Mallik on that account. The principle about the purchase of 12 tractors had already been approved earlier by the Chief Minister and Shri Mallik. From the scanty material placed on record in respect of order dated July 16, 1966, it appears that the said order by Shri Mallik was merely a reiteration of his previous order dated May 21, 1966 propriety of which has already been discussed above. The recommendation of Additional Chief Secretary on the very face of it was reasonable as, according to him, the twelve tractors were to be purchased at pre-devaluation price. It is well-known that prices of imported goods had a steep rise as a result of devaluation of the rupee. No impropriety was thus involved in the acceptance of the proposal of Additional Chief Secretary.

Neither Shri Tripathy nor Shri Mallik are shown to have done anything in the payment of advance amounting to Rs. 24,90,225. On the contrary, the material on record indicates that they were not in the picture when the cheque for the above amount was issued and handed over to Shri Rajgopala Rao of Vijaya Commercial Corporation. It may also be mentioned that the propriety of the orders of Shri Tripathy and Shri Mallik has to be judged by the context in which they were made and not by what transpired subsequently.

Affidavit of Shri P. K. Patra, Executive Engineer, has been filed on behalf of the State Government. According to that affidavit, Shri Sunkavalli told the Executive Engineer to make the payment of advance immediately as he had to leave Bhubaneswar on some urgent work. Shri Sunkavalli is also stated to have casually mentioned at that time that the Ministers in power were interested in the deal. In my opinion, no importance can be attached to the alleged statement of Shri Sunkavalli because it is the case of the State Government itself that Shri Sunkavalli is a very unreliable person and made misrepresentations in order to defraud the State Government of huge amount. It could not have been difficult for such a person to make any statement, whether

it be correct or not in order to secure the cheque of Rs. 24,90,225. As such, no inference can be drawn against Shri Tripathy and Shri Mallik from the aforesaid alleged statement of Shri Sunkavalli.

When questions about this deal were asked in the State Legislative Assembly, Shri Mallik passed an order on November 2, 1966 that the facts revealed an unsatisfactory state of affairs and as such needed a close and quick examination. On December 1, 1966, Shri Mallik passed an order that appropriate steps be taken to procure the machinery from the firm in question at the pre-devaluation price or to realise the amount of advance together with interest forthwith. It was further stated in that order:—

“The matter may be entrusted to the Vigilance Commissioner for enquiry and fix up responsibility against those who are at fault for taking suitable action against them.”

On December 20, 1966, Shri Mallik stated in the course of his order :—

“To my mind, as I have said before, the normal procedure in giving advance has not been followed and the legal advice is that no proper legal safeguards have been taken. More complications have come as the Insurance Co., have tried to avoid their liability by cancelling the insurance contract. However, I would suggest that we may wait till the 1st week of January to see what is developing in the meanwhile and thereafter refer it to the Vigilance Commissioner for taking it up.”

It is clear from the notes of Shri Mallik that he wanted the matter to be taken up by the Vigilance Commissioner. The course suggested by Shri Mallik indicates his desire to have the matter probed into, which would normally not be the attitude of a person who is himself involved in the shady deal.

I have given the matter my consideration and am of the view that there are certain aspects of the matter, especially those relating to the payment of advance which indicate something fishy and as such called for further probe. So far as Shri Tripathy and Shri Mallik, however, are concerned, the material on record does not show that they did anything improper. I would, therefore, hold that the charge of impropriety, as contained in this allegation, has not been proved against Shri Tripathy and Shri Mallik.

CHAPTER 42

ALLEGATION No. 42

Re :

Dealings of Kalinga Cement Products and Kalinga Agencies

Allegation No. 42 relates to alleged impropriety in the dealings of Kalinga Cement Products and Kalinga Agencies. The respondents named in the allegation are Shri Brundaban Nayak and Shri Routray.

According to the case set up by the State Government, Shri Brundaban Nayak was elected from Hinjili Constituency in Ganjam district to the Orissa Legislative Assembly in 1961 and was taken as a Deputy Minister in Shri Patnaik's Ministry on July 29, 1962. Subsequently, on October 2, 1963 in the Ministry formed by Shri Mitra, Shri Nayak was made a Minister and continued as such till June 28, 1965, when it was decided by the Governor of Orissa that Shri Nayak had become disqualified for being a Member of the Orissa Legislative Assembly. Shri Nayak was in charge of Community Development & Panchayati Raj as also Local Self-Government Branch of Health Department from July 29, 1962 to October 1, 1963. From October 2, 1963 till June 28, 1965, Shri Nayak was Minister for Community Development & Panchayati Raj as well as Tribal & Rural Welfare Departments. Shri Nayak started an Industrial Undertaking under the name and style of "Kalinga Cement Products" at Berhampur, Ganjam to manufacture R. C. C. spun pipes and the factory went into production in March, 1963. In April, 1963, it is stated, Shri Nayak started another commercial concern "Kalinga Agencies", as the sole distributor of the products of Kalinga Cement Products in the name of Shri R. N. Samantray, who was an employee of Shri Nayak. Shri Nayak was the sole proprietor of both these concerns, namely, Kalinga Cement Products and Kalinga Agencies. In 1963, Shri Nayak obtained a loan of Rs. 1,30,000 from Orissa State Finance Corporation, a Government Undertaking, by mortgaging the assets of the industrial concern. Later, on February 18, 1965 the Kalinga Cement Products was shown as having been leased out for three years to Shri Dibakar Panigrahi, who is brother-in-law of Shri Nayak.

On July 29, 1963, it is stated, Shri Nayak applied to Berhampur Co-operative Central Bank Limited for opening two current accounts one each in the name of the concerns mentioned above. In the letters addressed to the Bank in

that connection Shri Nayak described himself as the sole proprietor of Kalinga Cement Products and Kalinga Agencies. Shri Nayak also intimated that the proposed current accounts would be operated either by him or by his authorised agent Shri R. N. Samantray.

Between June, 1963 and August, 1964, it is stated, the above-mentioned concerns of Shri Nayak effected as many as 80 sales almost all of which were made to the different Departments of the Orissa Government. Mainly those sales were to the Public Health Department, the Works Department, the Community Development & Panchayati Raj Department and the Rural Engineering Organisation. The details of those sales are given in the particulars of allegations. The State Government alleges that orders for the material were placed as and when representatives of the concerns contacted the officers concerned. The supply orders had no relation with the requirements and the rates quoted by the concerns were accepted.

The case of the State Government further is that one Shri Parikhit Biswal of Berhampur filed a petition before the Governor of Orissa on August 18, 1964 alleging that Shri Nayak had entered into contracts with the Government of Orissa for the supply of materials and had received payments through his concern—Kalinga Cement Products and Kalinga Agencies. As such, it was represented, Shri Nayak was disqualified for being a Member of the Assembly under sub-clause (c) of clause (1) of Article 191 of the Constitution of India, read with clause (d) of section 7 of the Representation of the People Act. The Governor of Orissa referred the matter for opinion to the Election Commission. In connection with the proceedings before the Election Commission letters were written by Executive Engineers of different divisions as well as by Chief Engineer that R. C. C. spun pipes manufactured by Kalinga Cement Products had been purchased from Kalinga Agencies at D. G. S. & D. rates and payments were made to the Kalinga Agencies on bills given by that concern. The Election Commission on consideration of the documents and affidavits produced by the parties came to the conclusion that Shri Nayak was the proprietor of Kalinga Agencies and that the contracts for the supply of the goods by Kalinga Cement Products to the State Government were negotiated and concluded on behalf of Shri Nayak by his agents and servants. The opinion of the Election Commission was received by the State Government on June 16, 1965 and on June 28, 1965 the decision of the Governor of Orissa

was published that Shri Nayak had become disqualified for being a Member of the Orissa Legislative Assembly. The State Government also alleges that as cement was needed for the factory of Shri Nayak, he as a Minister secured large quantity of cement from the stock of different departments of the Government in breach of trust and in violation of the Cement Control Order with the knowledge and connivance of Shri Routray, Minister of Supply.

The State Government concludes from the above that Shri Nayak abused his official position for securing undue pecuniary benefit to himself and his men. Shri Nayak is further stated to have used his influence in getting false representations from the Government Officers in connection with the proceedings before the Election Commission.

In support of the above allegation, the State Government has filed the affidavits of Inspector Hemakanta Sahu (Vigilance) and Inspector Gokulananda Das (Vigilance).

Shri Nayak in the course of his affidavit has denied the correctness of the allegations made against him. According to Shri Nayak, since February 18, 1965 when Kalinga Cement Products was leased out to Shri Dibakar Panigrahi he has no interest in the said Concern and has no knowledge of any sale alleged to have been made by the Kalinga Cement Products. During the period Shri Nayak was an M. L. A. or a Minister, Kalinga Cement Products never entered into any transaction of sale with the Government or any of its departments. Shri Nayak admits that Kalinga Agencies sold some material to the Departments of the Government during the period he was a Minister, but he maintains that he was at no time proprietor of the Kalinga Agencies. As regards the decision of the Election Commission, Shri Nayak states that the same was not correct. All sales to Government Departments, according to Shri Nayak, by Kalinga Agencies were at D. G. S. & D. rates and the Government sustained no loss in those transactions. No purchase of any cement pipes was made, as far as Shri Nayak recollects, by the Panchayati Raj Department during the period he was Minister in charge of the Department. Dealing with the supply of cement to Kalinga Cement Products, Shri Nayak states that the Kalinga Cement Products was a small-scale industry, and he secured the required quantity of cement from the authorities concerned for legitimate industrial purposes without suppressing any fact. The allegation that Shri Nayak secured large quantity of cement from stocks of different departments

for Kaling Cement Products has been denied. Regarding the letters issued by the Engineers, it is stated, they constituted replies to the letters addressed by Shri Raghunath Samantray. No extraneous influence was used with the officers by Shri Nayak. So far as the letter addressed to Bank in respect of Kalinga Agencies is concerned, Shri Nayak states that he wrote it to have an effective check against the contingency of Shri Samantray not paying the price of the goods supplied to him. Shri Nayak, however, had no occasion to operate upon that account.

Shri Routray in the course of his affidavit has stated that he had no knowledge of the alleged transactions and came to know of them only when a question was put in the Assembly. Shri Routray has refused to correctness of the inference drawn against him.

Supplementary affidavits have been filed by Inspector Hem Kanta Sahu (Vigilance) on behalf of the State Government as well as by Shri Nayak. G. W. 12 Shri Raghunath Samantray filed a list of purchase orders placed by different departments with Kalinga Agencies and the same has been marked G. W. 12/1. G. W. 22 Shri K. Ganesan, Superintendent of Election Commission of India, produced documents G. W. 22/1 to G. W. 22/25 from the file of the Election Commission in petition filed by Shri Parikh Biswal against Shri Nayak.

In respect of this allegation, I find that Shri Nayak was taken as a Deputy Minister in Shri Patnaik's Ministry on July 29, 1962 and was given charge of Department of Community Development & Panchayati Raj as well as Health (Local Self-Government) Department. On October 2, 1963 in the Ministry formed by Shri Mitra, Shri Nayak was made a Minister and was given charge of the Department of Community Development & Panchayati Raj. Shri Nayak continued as Minister till June 28, 1965, when it was decided by the Governor of Orissa, as per notification issued on that day, that Shri Nayak had become disqualified for being a Member of the State Legislative Assembly under sub-clause (e) of clause (1) of Article 191 of the Constitution, read with clause (d) of section 7 of the Representation of the People Act. The above action was taken on the basis of a petition filed by Shri Parkhit Biswal and in accordance with the opinion of the Election Commission.

In 1963, Shri Nayak started an Industrial Undertaking at Berhampur under the name and style of Kalinga Cement Products

to manufacture R.C.C. Spun Pipes. The factory went into production in March, 1963. In April, 1963 another commercial concern, named Kalinga Agencies, was started and it was shown to be the sole distributor of the products of Kalinga Cement Products. Products of the value of more than Rs. 1,50,000 manufactured by Kalinga Cement Products were supplied by the Kalinga Agencies to various Departments of the Government of Orissa during the period from June, 1963 to August, 1964. A petition was presented on August 18, 1964 by Shri Parikhit Biswal to the Governor of Orissa alleging that Shri Nayak was the sole proprietor of Kalinga Cement Products which manufactured and sold cement pipes and that he had been selling those pipes to the State Government. Prayer was accordingly made that Shri Nayak be declared to be disqualified for being a Member of the Legislative Assembly. The Governor then sent the petition to the Election Commission for its opinion.

Shri Nayak admitted before the Election Commission, as he has admitted in these proceedings, that he was the proprietor of Kalinga Cement Products. Shri Nayak also did not dispute before the Election Commission, as he has not disputed before this Commission, that Kalinga Agencies sold spun pipes manufactured by Kalinga Cement Products to Departments of the State Government. The stand of Shri Nayak, however, both before this Commission as well as before the Election Commission has been that he was not the proprietor of Kalinga Agencies. According to the State Government, Shri Nayak was the proprietor of Kalinga Agencies. The material question, which arises for determination, consequently is whether Kalinga Agencies was a proprietary concern of Shri Nayak. In this respect, I find that on July 29, 1963 Shri Nayak addressed two letters to the Secretary, Berhampur Co-operative Central Bank Ltd., Berhampur, Ganjam. One of the letters was on the printed letter form of Kalinga Agencies and it was mentioned in the letter-head that Kalinga Agencies was the sole agent of Kalinga Cement Products. It was further mentioned in the letter-head that the telegraphic address of Kalinga Agencies was "PIPES" and the telephone number was "63A". The letter reads as under :—

" Dear Sir,

I, Shri B. Nayak, sole proprietor of Messrs. Kalinga Agencies Berhampur, request you to open a Current Account in the name of the said firm. I enclose herewith an application in the prescribed form together with a challan for Rs. 50 being the initial deposit.

The account will be operated either by me or by my agent Shri R. N. Samantray whose specimen signature is given along with that of mine on the specimen signature card.

Yours faithfully

Sd/-B. Nayak

(B. Nayak) "

Encl.

The second letter was on the printed letter form of Kalinga Cement Products. The concern was mentioned in the letter-head to be manufacturers of R.C.C. Spun Pipes, Septic Tank Latrines and some other articles. On one side it was mentioned in the letter-head that Kalinga Agencies was the sole agent of the concern. The telegraphic address of Kalinga Cement Products was mentioned to be "PIPES" and the telephone number to be "63A". The letter reads as under:—

" Dear Sir,

I, Shri B. Nayak, sole proprietor of Messrs. Kalinga Cement Products, Berhampur, request you to open a Current Account in the name of the said firm. I enclose herewith an application in the prescribed form together with a challan for Rs. 50 being the initial deposit.

The account will be operated either by me or by my agent Shri R. N. Samantray whose specimen signature is given along with that of mine on the specimen signature card.

Yours faithfully

Sd/-B. Nayak

(B. Nayak) "

Encl.

Shri Nayak admits having signed the above two letters, but according to him he wrote the letter relating to Kalinga Agencies in order to have an effective check against the contingency of Shri Samantray not paying the price of the goods supplied to him. Shri Samantray is further stated to be the proprietor of Kalinga Agencies. In my opinion, this explanation of Shri Nayak cannot be accepted, because the above letter could not prevent Shri Samantray from operating upon the account of Kalinga Agencies and withdrawing the amount whenever he (Shri Samantray) chose to do so. Shri Nayak stated in most express and unqualified language in the letter reproduced above that he was the sole proprietor of Kalinga Agencies. In the absence of anything to show that the above admission made by Shri Nayak was not correct; Shri Nayak must be

held to be the sole proprietor of Kalinga Agencies. There are other circumstances also which go to show that Kalinga Agencies was the proprietary concern of Shri Nayak. Both Kalinga Agencies and Kalinga Cement Products were doing business in the same premises and this is clear from the fact that both had the same telegraphic address and the same telephone number. Receipt dated August 14, 1963 was issued by Shri Samantray about the receipt of his salary for the months of June and July, 1963. The above receipt relates to the period when Shri Samantray was doing the work of Kalinga Agencies. The receipt goes to show that the status of Shri Samantray was that of an employee and not a proprietor. In the face of the above material, I am in full agreement with the opinion dated June 14, 1964 of the Chief Election Commissioner that Shri Nayak was the real proprietor of Kalinga Agencies and that Shri Samantray was no more than a namelender for selling the products of Kalinga Cement Products to State Government. It is indeed open to question whether the matter can be gone into again and re-agitated in these proceedings after having been disposed of earlier in accordance with the opinion of the Chief Election Commissioner.

Shri Nayak in his affidavit has stated that the State Government did not sustain any loss by purchase of pipes from Kalinga Agencies as the purchases were effected at the rates approved by the Director General of Supplies and Disposals. There is nothing to show that the above statement of Shri Nayak is incorrect. Indeed, no attempt has been made at the time of arguments to question this part of the statement contained in Shri Nayak's affidavit.

An attempt has been made on behalf of the State Government to show that Shri Nayak exerted official pressure in order to secure letters dated April 13, 1965, photostat copies of which are G. W. 22/21 to G. W. 22/25, from the Engineers for his defence in the proceedings before the Election Commission. According to Shri Nayak, those letters constituted replies to the letters addressed by Shri Raghunath Samantray and contained true statement of facts. Shri Nayak denies having used any extraneous influence for the issue of those letters. In this respect, I find that a perusal of the above letters shows that they were sent in reply to the letters addressed by the proprietor of Kalinga Agencies. It was mentioned in the letters that the spun pipe had been purchased by the Executive Engineers from Kalinga Agencies at D. G. S. & D. rates and not from Kalinga Cement Products. The factual statements contained in those letters have not been

shown to be incorrect and there is also nothing to show that Shri Nayak exercised any pressure for the issue of those letters. I hold accordingly.

Lastly, it has been argued on behalf of the State Government that Shri Nayak abused his position as a Minister by arranging loan of cement from Rural Engineering Organisation and Irrigation Divisions to Kalinga Cement Products in violation of Rule 11 of the Orissa Cement Control Order, 1963. In order to prove such a loan, the State Government has relied upon a statement enclosed with a letter purported to have been addressed on August 10, 1964 by Shri Somanath Patra to the Development Officer, Udyog Bhavan, New Delhi. It is stated that the aforesaid letter was handed over to Inspector Gakulanda Das (Vigilance) by Shri Patra and Shri Patra told Inspector Das that the said letter had been received from Shri S. Mohanty, an employee of Kalinga Cement Products. Shri Nayak in the course of his affidavit has questioned the authenticity of the above documents and has stated that the statement in question has been fabricated at the instance of parties inimical to him. After giving the matter my consideration, I am of the view that the statement in question should be excluded from consideration. Letter dated August 10, 1964 was addressed to the Development Officer, Udyog Bhavan, New Delhi and it was mentioned in the letter that copies of the same were being sent to Director of Industries, Orissa, District Industries Officer, Ganjam and Special Officer-cum-Under-Secretary, Supply Department of Government of Orissa. No cogent explanation has been given as to why the copies of the statement sent to the official agencies, three of which were under the Government of Orissa, have not been produced. There is no authenticity of the statement produced before the Commission as there would have been of the statement or its copies sent in August, 1964 to the authorities concerned. Further, according to letter dated August 10, 1964 the statement related to the month of July, 1964 while the statement placed on record covers the entire period from August 1, 1962 to July 31, 1964. Inspector Das had no direct knowledge of the matter and according to his affidavit, he derived the information from another person. No affidavit of the person from whom the Inspector derived the information has been filed.

Argument has then been advanced on behalf of the State Government that even if the above statement is excluded from consideration the Commission should take into account the notes dated December 11, 1965, March 3, 1966 as well as the

letter dated March 1, 1966 copies of which have been produced by Shri Nayak as Annexures X-7, X-8 and X-9, respectively. According to those documents, the godown of Kalinga Cement Products was used for the purpose of storing the Cement of Kalinga Cement Products, Khallikote College, the Executive Engineer and the Rural Engineering Organisation, and they were drawing the cement from the godown as and when they required the same. There was, it is stated, no loan or return of cement but only a mutual arrangement for the purpose of storage with a view to avoid deterioration of the cement. According further to the above documents, order for supply of spun pipes was placed by the Executive Engineer, Chikiti Irrigation Division with Kalinga Agencies the dealers of Kalinga Cement Products. The Kalinga Cement Products at that time pleaded inability to manufacture the pipes unless cement was supplied for the purpose. As the pipes were urgently needed, the Executive Engineer agreed to the proposal and supplied cement for the purpose with a view to expedite the supply. Afterwards when the Executive Engineer wanted to recover the price of the cement at a rate higher than the market rate, Kalinga Cement Products returned that quantity of cement. Although a view, in my opinion, can be taken that the statements contained in the above three documents are not very convincing, it is equally plain that no finding can be given on the basis of the above documents regarding the unauthorised loan of cement to Kalinga Cement Products under the influence of Shri Nayak.

I would, therefore, hold that there is no satisfactory evidence to show that there was any unauthorised loan of cement by a Department to Kalinga Cement Products under the influence of Shri Nayak.

Nothing has been brought out against Shri Routray at the time of arguments.

My findings in respect of the different matters arising under this allegation are:—

1. Kalinga Cement Products and Kalinga Agencies were the proprietary concerns of Shri Nayak.
2. While Shri Nayak was Deputy Minister or Minister of Orissa, his proprietary concern 'Kalinga Agencies' sold spun pipes of the value of more than Rs. 1,50,000 to various Departments of the Government of Orissa.

3. On account of the above sales of spun pipes, Shri Nayak become disqualified for being a Member of the Legislative Assembly and a notification to that effect was issued by the Governor of Orissa on June 28, 1965. Shri Nayak has thus already suffered the penalty for the contravention of law.
4. The spun pipes were sold by Kalinga Agencies to the Departments of the Government of Orissa at the rates approved by the Director-General of Supplies and Disposals and it has not been shown that the State Government suffered any pecuniary loss as a result of those purchases.
5. No official pressure is shown to have been exerted by Shri Nayak for the issuance of letters dated April 13, 1965 by the Engineers.
6. There is no satisfactory evidence to show that there was any unauthorised loan of cement by a Department to Kalinga Cement Products under the influence of Shri Nayak.
7. The charge against Shri Routray, contained in this allegation is without any basis.

CHAPTER 43

ALLEGATION No. 43

Re :

Alleged Favouritism in purchase of "Pathanpatta" and "Katha O Chitra"

Allegation No. 43 relates to alleged favouritism to Shri Rabindra Nath Misra, proprietor of Utkal Bani Bihar by purchase of alphabetical chart "Pathanpatta" and pictorial story chart "Katha O Chitra". The respondents named in the allegation are Shri Sanganna and Shri Mohanty.

According to the case set up by the State Government, the Orissa Government decided to appoint a Committee with effect from November 15, 1961, to advise the State Government in matters connected with the revision of curriculum relating to the primary education in the State. On June 12, 1962, the Education Department approved a revised syllabus, which had been recommended by the Syllabus Committee of the Board of Primary Education, for Class I and Class II of the primary classes. On July 3, 1962 the Government decided to introduce the revised syllabus from April 1, 1963. The object of the revised syllabus was that there should be two books printed in large letters and profusely illustrated in colour. One of the books was an alphabet reader with the help of which the children could learn the vowels, consonants, *matras* and *phalas*. The second book was to help the children for learning compound letters. There was also provision for telling stories which the children might have heard from their teachers and elders. In pursuance of the above decision the Government approved "Mo Chhabi Bhai" for Class I for the year 1963-64 as the nationalized text-book. Intimation about this fact was given to the Director of Public Instructions in March 1963. The Director on the basis of this information issued notification dated March 21, 1963 indicating that "Mo Chhabi Bhai" was approved text-book of Class I in the School Session of the year 1963-64.

On August 5, 1961, it is stated, the proprietor of Utkal Bani Bihar requested the Tribal & Rural Welfare Department to issue instructions to all the District Magistrates to introduce his chart entitled "Pathanpatta" in the primary schools for distribution to Scheduled Castes and Scheduled Tribes students. On August 26, 1961 the Tribal & Rural Welfare Department issued instructions to all Collectors to see if the above chart could be used in the Sewa Ashrams in case it was considered suitable. A clarification was then

sought by the District Welfare Officer, Phulbani as to whether the chart "Pathanpatta" should be added to the list of reading material supplied by the department earlier. The aforesaid Welfare Officer was then told that the chart might be purchased for the Sewa Ashrams if funds were available and if considered suitable. On December 11, 1961 Shri R. N. Misra, proprietor of Utkal Bani Bihar, wrote another letter to the Under-Secretary, Tribal & Rural Welfare Department, requesting that instructions be issued to the District Welfare Officer to purchase his "Katha O Chitra", a story chart approved by the Director of Public Instructions. On the suggestion of Special Officer-cum-Under-Secretary, a circular letter dated January 8, 1962 was issued to all the District Magistrates requesting them to see if story chart "Katha O Chitra" could be used in the Sewa Ashrams. Some other publishers also addressed letters to the Tribal & Rural Welfare Department for introduction of their books and charts. A revised list of the charts approved by the Director of Public Instructions was thereafter issued on April 6, 1962 by the Special Officer-cum-Under-Secretary, Tribal & Rural Welfare Department. It was indicated that the story chart, as approved by the Director of Public Instructions and the Tribal & Rural Welfare Department, should be supplied.

On April 10, 1963 the Tribal & Rural Welfare Department issued a circular to all Collectors indicating therein that text-book and alphabetical chart approved by the Director of Public Instructions should be supplied to 50 per cent of students. The proposal for such a circular was initiated by the Special Officer-cum-Under-Secretary of the Tribal & Rural Welfare Department and was endorsed by the Deputy Secretary and was approved by the Deputy Minister, Shri Sanganna, on April 5, 1963. On May 25, 1963, the Education Department intimated to the Tribal & Rural Welfare Department that "Mo Chhabi Bahi" was the nationalized text-book for Class I and the same had been sent to District Social Organizers for distribution to Panchayat Samitis, Notified Area Councils and Municipalities. The Tribal & Rural Welfare Department was asked to advise the District Welfare Officers to draw necessary funds from the allotment placed at the disposal of District Magistrates and give the money to the concerned Headmasters and Headmistresses of Sewa Ashram Schools to enable them to purchase the required number of books for their institutions. On receipt of the above letter, the Tribal & Rural Welfare Department issued revised instructions to all District Magistrates indicating that

the text-book "Mo Chhabi Bahi" was adequate to give knowledge of the alphabets to the children with the help of coloured illustrations. Direction was also given that no alphabet chart should be purchased. As regards "Pathanpatta" it was stated that the said chart was more costly and contained fewer illustrations.

On October 20, 1965, it is stated, the Executive Officer, Zilla Parishad in a letter to the District Welfare Officer, Cuttack intimated that the Chairman of the Panchayat Samitis were pressing for supply of story charts and as such the Tribal & Rural Welfare Department might reconsider the continuance of the supply of "Katha O Chitra" to the primary schools in the interest of the Scheduled Castes and Scheduled Tribes students. On October 29, 1965 Shri Rabindra-nath Misra, proprietor of Utkal Bani Bihar moved the Tribal & Rural Welfare Department for purchase of story chart "Katha O Chitra" as the same was very popular. On receipt of the above letter, Shri Sanganna, Minister, Tribal & Rural Welfare Department, passed orders "to examine and put up". Reference was then made to the Education Department for its advice. The Director of Public Instructions and the Secretary, Press Preparation and Publication Committee, expressed the view that the story chart "Katha O Chitra" might be used a supplementary reader but not as a substitute for the nationalized text-book. The Secretary of the Education Department then made a proposal for supply of story chart "Katha O Chitra" to Scheduled Castes and Scheduled Tribes students reading in the primary classes. Shri Mohanty, Minister of Education accorded his approval to the said proposal on April 21, 1966. Accordingly, on November 5, 1966 a further resolution was issued by the Tribal & Rural Welfare Department:

"The story chart "Katha O Chitra" will be supplied first to the Scheduled Tribe and Scheduled Caste students of Primary Schools of Tribal & Rural Welfare Department and if funds permit to the Scheduled Caste and Scheduled Tribe students reading in other Primary Schools as supplementary reader to the Nationalized Text-Book."

The proposal regarding the above resolution for supply of story chart was initiated in the Tribal & Rural Welfare Department by the Special Officer-cum-Under-Secretary in the Tribal & Rural Welfare Department. The Joint Secretary suggested that the story chart "Katha O Chitra" might be supplied to the said institutions. The Secretary thereafter suggested that the chart should be supplied to scheduled caste and scheduled tribe students reading in primary schools if funds

permitted. This proposal was approved by the Minister, Shri Sanganna.

A letter was also in the meantime issued on September 6, 1966 by the Tribal & Rural Welfare Department that story chart "Katha O Chitra" might be supplied to the scheduled caste and scheduled tribe students in primary schools of Sewa Ashrams of Tribal & Rural Welfare Department as a supplementary reader provided the funds permitted for such a purchase after meeting the cost of nationalised text-books. The State Government claims that "Pathanpatta" and "Katha O Chitra" were purchased in spite of the nationalization of text-books at huge cost.

In support of this allegation, Shri Banambar Patnaik, Under-Secretary in the Tribal & Rural Welfare Department, has filed the affidavit on behalf of the State Government.

Shri Mohanty in the course of his affidavit has denied the correctness of the allegation made against him. According to Shri Mohanty he had no interest in Shri Rabindra Nath Misra. Shri Mohanty was sworn in as a Minister and took charge of the Education Department on October 2, 1963. As such, he was in no way responsible for the issue of circular dated April 10, 1963. Regarding "Katha O Chitra" Shri Mohanty states that when the Tribal & Rural Welfare Department requested the Education Department to accord concurrence to the proposal for supply of "Katha O Chitra" to scheduled castes and scheduled tribes students of primary schools in 1966, the Director of Public Instructions and the Secretary of Press Preparation and Publication Committee were consulted. Shri Mohanty agreed to the suggestion for purchase of "Katha O Chitra" as a supplementary reader, because the suggestion was based upon the opinion of experts on the subject, i.e. the Director of Public Instructions and the Secretary of Press Preparation & Publication Committee.

Shri Sanganna, too, has denied the correctness of the allegation made against him. According to Shri Sanganna he did not personally know and had no acquaintance with the proprietor of Utkal Bani Bihar and he passed orders in the usual course of official business on the notes of the officers concerned of the Education and Tribal & Rural Welfare Department.

In respect of this allegation, no order made by Shri Sanganna has been assailed on behalf of the State Government at the time of arguments and it has not been

shown that he did anything improper. Argument has, however, been advanced on behalf of the State Government questioning the propriety of the order dated April 21, 1966 of Shri Mohanty. Regarding this order, I find that it was based upon the note dated April 16, 1966 of the Deputy Secretary of the Education Department. The note along with the orders reads as under:—

“Secretary—

This is about free supply of the story picture entitled ‘Katha O Chitra’ to the scheduled caste and tribe student by the T. R. W. Department.

The extract of notes from T. R. W. File taken at P. 7/N may be seen. The pictorial charts were supplied by the T. R. W. to scheduled caste and tribe students to attract them to come to the school. But as a result of publication of the nationalized text-books, it was thought that distribution of the story chart would not be necessary. But representations for several Panchayat Samitis were received for distribution of those charts again. The T. R. W. made a reference to the Deputy D. P. I. (P. & B.) and Secretary, P. P. P. Committee for their views. Their views may be seen at P. 42/ and P. 27/c respectively in the linked file of the Ed. Department on the following parts:—

- (i) Whether distribution of the story chart will in any way affect sale of nationalized text-books.
- (ii) Whether it is necessary to supply scheduled tribe and caste students such charts in order to teach them the art of story-telling.”

In our view, in primary school syllabus there is provision for story-telling in classes I, II (vide page 7 portion marked A and P. 8 portion marked B in the syllabus placed below). Deputy D. P. I. (P. & B.) in his views given at p. 42/c in the T. R. W. file says that such story chart, picture chart, etc., can be used as teaching aid to supplement the reading materials used for children. Pedagogically this is a second principle to use such charts in language classes particularly for the weaker section of the children who will be interested and encouraged for reading. Since Government in T. R. W. Department supply the nationalized text-books to the scheduled castes and tribes children at the primary stage I do not see how the distribution of chart will in any way affect the sale of the nationalized text-books.

Secretary, P. P. P. Committee has given his views at page 37/c in T. R. W. Department file as follows:—

“The story chart cannot serve as a substitute for the State text-books in any way. In the circumstances, I do not consider that distribution of these charts will affect the sale of nationalized text-books. This will help the students in learning the art of story-telling”.

What Deputy D. P. I. (P. & B.) and the Secretary, P. P. Committee say is quite correct. The story chart cannot replace the nationalized text-books and it will not in any way affect the sale of the text-books. Such story charts are only necessary as a teaching aid to assist the teachers in telling stories to children in a systematic and interesting manner. The chart illustrates in multi-colour different stages of stories which are generally told to children in classes I and II. The story given at the bottom is written in very simple language and sentences within the language standard of these schools. As a matter of fact, some time back such story pictures with the story written at the book were being supplied to the primary schools from the Education Department. In view of these facts, we may have no objection to T. R. W. Department supplying this story chart "Katha O Chitra" to students reading in Seva Ashram and to the school themselves.

A copy of the story chart 'Katha O Chitra' is placed in the file for reference.

For favour of order—

Sd. N. Nayak
16-4-1966

As proposed at 'A'

Sd. K. K. Samal
16-4-1966

M. Education

Sd. S. Pradhan
18-4-1966

Sd. S. P. Mohanty
21-4-1966

It would appear from the above that the Deputy Secretary in stating that the Education Department should have no objection to the supply of Katha O Chitra by the Tribal & Rural Welfare Department to the students in Seva Ashrams, relied upon the opinions expressed by the Director of Public Instructions and the Secretary of Press, Preparation and Publication Committee. The note of the Deputy Secretary gave reasons in support of his recommendation and was supported by the Secretary, Shri K. K. Samal. Shri Mohanty, in my opinion, cannot be held to be guilty of any impropriety because of his having accepted the above recommendation of the Secretary and the Deputy Secretary of the Education Department.

I would, therefore, hold that the charge of impropriety as contained in this allegation, has not been proved.

CHAPTER 44

ALLEGATION No. 44

Re :

Alleged Impropriety in the Allotment of Kendu Leaf Grants

Allegation No. 44 relates to alleged impropriety in the allotment of Kendu Leaf Grants. The respondents named in the allegation are Shri Misra and Shri Deo.

The case of the State Government is that under section 11 of Orissa Kendu Leaves (Control of Trade) Act, the Government was to distribute grants of not less than 50 per cent out of the net profits derived from the trade of Kendu leaves to the Panchayat Samitis and Grama Panchayats as determined by Government resolutions. As per resolution, dated March 16, 1963 it was decided that the unit of distribution to Panchayat Samitis and Grama Panchayats should be the Revenue subdivision. 20 per cent amount payable to each subdivision should be divided equally among the Panchayat Samitis within the subdivision. 75 per cent should be divided equally among the Grama Panchayats within the subdivision and the remaining 5 per cent of each subdivision should be pooled together and retained as reserve for hard-cases to be allotted by Government. For the years 1962-63 and 1963-64 the Forest Department of the Government of Orissa did not issue any separate sanctions relating to the hard-case grants and placed the entire distributable amount including the 5 per cent hard-case grants at the disposal of the Grama Panchayat Departments. For the year 1964-65 the Forest Department earmarked the hard-case grant amounting to Rs. 1,91,797 subdivisionwise. Since the communication reached late, the Director proposed to surrender the grant and requested for its allotment in addition to the usual grants in 1965-66. On March 27, 1965, Shri Brundaban Nayak, who was then Minister, Community Development, passed an order that as hardly three days time was left, Rs. 10,000 should be granted to each of the 13 Sadar Panchayat Samitis at the District Headquarters subdivision of each district. Regarding the balance of about Rs. 61,000 he directed that the amount be drawn by the Grama Panchayat Department afterwards for giving grants to the deserving Gram Panchayats and Blocks. Rs. 1,30,000 was accordingly distributed to the Sadar Panchayat Samitis of the 13 districts. The balance of Rs. 61,000 was surrendered with the stipulation that it would be made available in the next year. The amount of Rs. 61,000 was accordingly, reallocated in 1965-66. The reallocated amount

of Rs. 61,000 was distributed by Shri Deo, who was Deputy Minister, Community Development, in the following way:—

“1. Brundaban Bidya Pitha, Gumma, Ganjam	..	Rs. 10,000
2. Pratappur High School, Purusottampur, Ganjam	..	Rs. 5,000
3. Sinnapalli High School, Kalahandi	..	Rs. 10,000
4. Komna High School, Kalahandi	..	Rs. 7,000
5. Jarbandha High School, Sambalpur	..	Rs. 5,000
6. Melchamunda High School, Sambalpur	..	Rs. 5,000
7. Narsinghanath Rest Shed, Sambalpur	..	Rs. 10,000
8. Jahargar L. P. School, Kendrapara	..	Rs. 2,000
9. Ramkrishnapur M. E. School, Salepur	..	Rs. 3,000
10. Nilgi M. E. School, Kalahandi	..	Rs. 4,000
Total		Rs. 61,000”

Shri Deo, it is stated, was elected from Khariar Constituency of Kalahandi district. The allotment of Rs. 10,000 to Sinnapalli High School, Kalahandi (mentioned at No. 3 in the above statement) was made by Shri Deo, though the officer of the Department had proposed that the aforesaid amount be sanctioned for Baulagaon High School.

On March 5, 1966, it is stated, a proposal was made for raising the hard-case grants from 5 per cent to 10 per cent to enable the Government to provide certain amounts. This suggestion was agreed to by the Department of Co-operation & Forestry. 5 per cent of the hard-case grants for 1965-66 came to Rs. 2,11,693 and 10 per cent came to Rs. 4,23,387. Before the proposal for raising the grant to 10 per cent could be finalised, Shri Deo sanctioned Rs. 77,000 for 12 institutions. Some further grants were also made by Shri Deo.

According to the final list of distribution of hard-case grants of Rs. 2,11,000 for the year 1966-67, following districts got the grants as under.

(1) In Kalahandi district	14 institutions got	..	Rs. 94,000
(2) In Cuttack district	15 institutions got	..	Rs. 69,000
(3) In Puri district	4 institutions got	..	Rs. 13,000
(4) In Bolangir district	1 institution got	..	Rs. 20,000
(5) In Sambalpur district	2 institutions got	..	Rs. 15,000”

On September 18, 1966 Shri Dec, Deputy Minister, Community Development, sanctioned a further amount of Rs. 69,000 from the funds earmarked for hard-case grants to 18 institution out of which Kalahandi district was to get Rs. 42,000. The sanction order, however, could not be issued as the Minister, Shri Misra, did not approve the proposal. On October 4, 1966 the Director, Community Development submitted a note. In that note, the Director gave the figures of allotment of hard-case grants as under—

Name of the district	Allotment during the year 1964-65	Allotment during the year 1965-66	Allotment during the year 1966-67	Total	Income earned during 1966-67
(1)	(2)	(3)	(4)	(5)	(6)
1. Sambalpur	10,000	30,000	15,000	55,000	10,85,594
2. Bolangir	10,000	10,000	20,000	40,000	14,62,503
3. Dhenkanal	10,000	10,000	..	20,000	5,45,355
4. Sundargarh	10,000	15,000	..	25,000	3,79,421
5. Phulbani	10,000	10,000	..	20,000	3,71,500
6. Kalahandi	10,000	49,000	94,000	1,53,000	3,54,846
7. Koraput	10,000	10,000	..	20,000	18,184
8. Keonjhar	10,000	10,000	..	20,000	11,444
9. Mayurbhanj	10,000	10,000	..	20,000	2,622
10. Puri	10,000	10,000	13,000	33,000	2,184
11. Cuttack	10,000	25,000	69,000	1,04,000	126
12. Balasore	10,000	10,000	..	20,000	..
13. Ganjam	10,000	45,000	..	55,000	..

The above note was endorsed to Shri Misra, Minister, Community Development, who then passed the following order on November 11, 1966.

“I have gone through the notes carefully. As yet no principle has been fixed regarding distribution of the hard-case Kendu Leaf Grant. As I understand, had it not been for a decision to retain certain percentage as hard-case grant out of the Kendu Leaf Grant available to Gram Panchayats; ordinarily areas or districts earning the income would have been benefited or in other words the money would have gone to them. Keeping this in view, I would like to lay down the principle that henceforward this fund should not be utilized in those districts which do not earn the income. For the year 1966-67 the hard-case Kendu Leaf Grants may be raised to 10 per cent to meet the drought situation. But Government may exercise their discretion in utilizing this money for purposes other than education for benefit of the community in those areas.

For the year 1966-67 the hard-case Kendu Leaf Grant may be raised to 10 per cent to meet the drought situation. This money may be spent in districts earning this income for purposes of both education and community benefit. Henceforward the grants may be made to G. P. direct for specific purpose defined in the order.

I find from the distribution list that there has been an uneven distribution of this grant. While distributing further grants the districts which have already got a sizeable amount as hard-case for educational purposes should be kept out of the list."

Shri Misra then ordered that fresh proposals, according to the principles laid down by him, be submitted. Fresh proposals were thereafter submitted and according to those proposals, major part of the grants went to Bolangir district to which Shri Misra belonged. Then Shri Deo came to know that there had been alteration in his order of sanction for Rs. 69,000 he recorded a note that he stood committed in respect of that amount to different institutions. Shri Misra thereafter sanctioned Rs. 22,000 for four Schools in Kalahandi district.

The State Government concludes from the above that Shri Misra and Shri Deo committed impropriety inasmuch as they sanctioned hard-case grants for the districts in which they were interested.

In support of the above allegation, the State Government has filed the affidavits of Shri Raj Kishore Patnaik and Shri Prakash Narain Gurto, Under-Secretaries in the Community Development & Panchayati Raj Department.

Shri Misra in the course of his affidavit has denied the charge levelled against him. According to Shri Misra, the Director of Community Development submitted a note dated October 4, 1966 wherein he pointed out that there was no hard and fast rule for the sanction of hard-case grants. The Director also sought permission for raising the hard-case grants from 5 per cent to 10 per cent. Shri Misra then fixed the principle for distribution of hard-case grant. He also observed that the grant be raised to 10 per cent to tackle the situation in drought affected areas. Shri Misra did not approve the Deputy Minister's proposal for further grant to Kalahandi district as it had already got a sizeable amount from the hard-case grant. Shri Misra sanctioned Rs. 45,000 in conformity with the principle laid down for distribution of hard-case grant. The allegation that Shri Misra spent the bulk of the sanction in Bolangir district has been described

by him as false and motivated. Small sums were given to institutions in a large area for educational purpose and this was done because Bolangir district suffered from drought in 1965-66, and this had affected the running of private schools. It, therefore, became necessary to give grants to the needy institutions.

Shri Deo in the course of his affidavit has stated that in 1965 Kalahandi district suffered from acute famine condition due to drought. The plight of the population, which consisted mostly of Adivasis, was most miserable, and called for sympathy for those famine stricken people especially in Khariar and Sinnapalli areas. The Prime Minister, accordingly, visited the affected areas in Khariar and Sinnapalli. The district of Kalahandi being most backward in the sphere of education amongst all the 13 districts of the State, it became necessary to grant financial aid to the educational institutions of the district. But for that the educational institutions in the famine stricken areas of Kalahandi would have closed down. The Chief Minister of Orissa in the course of his speech at Khariar, said that Shri Deo had been given the portfolio of Community Development & Panchayati Raj so that he might do everything to meet the unprecedented famine condition and serve the best interest of the people in those areas. Hard-case Kendu Leaf Grant was purely a discretionary matter and Shri Deo made those grants in the exercise of his discretion whenever he felt a particular case merited such allotment.

In respect of this allegation I find that though Shri Deo sanctioned amounts for hard-case Kendu Leaf Grants for Kalahandi district, he also sanctioned amounts for the other districts. A substantial part of the amount sanctioned was no doubt earmarked for different educational institutions in Kalahandi district, but for that I find a plausible reason has been given by Shri Deo. His affidavit shows that Kalahandi district suffered from acute famine condition due to drought in 1965 and 1966. The hardship suffered by those living in that area attracted the attention of the people in India and abroad. The Prime Minister thereupon visited the drought affected areas of Kalahandi. It then came to light that the educational institutions in Kalahandi would close down unless they were given financial assistance. In view of the above situation the Chief Minister reshuffled the portfolios and entrusted the portfolio of Community Development to Shri Deo with the express object that Shri Deo might do something tangible to alleviate the suffering and misery of

famine stricken people. It was in those circumstances that Shri Deo sanctioned the various amounts of hard-case Kendu Leaf Grants in favour of the educational institutions. The reasons given by Shri Deo for sanction of the hard-case Kendu Leaf Grants, in my opinion, are convincing and by no means unreasonable. The fact that Shri Deo hailed from Kalahandi district, would not detract from the propriety of his orders sanctioning different amounts if there be otherwise cogent reasons justifying the sanction of the amounts.

Reference on behalf of the State Government has been made to the fact that Komna High School for which Rs. 10,000 were sanctioned by Shri Deo was named after his son. This fact, in my opinion, would not make material difference if the need of the said school was otherwise genuine. Be that as it may, I find that it was Shri Misra, Minister in charge of the Department, who made the final order for grant of Rs. 10,000 for that school on December 21, 1966.

Coming to the order of Shri Misra, dated the November 11, 1966, reproduced earlier, I find that the said order was made because the note of the Secretary mentioned that there was no hard and fast rule regarding sanction of the hard-case grants and the matter was being treated as purely discretionary. Shri Misra then passed the order in question. In that order Shri Misra laid down the principle that hard-case Kendu Leaf Grants should be sanctioned for the areas or district which produced Kendu Leaves. The order also shows that Shri Misra wanted to set right, what, he felt, was an uneven distribution of the grant. The said order of Shri Misra, in my opinion, was not vitiated by any impropriety. It may be that some other criterion for distribution of the hard-case Kendu Leaf Grants would perhaps have been better, the fact all the same remains that this was a matter which Shri Misra had to decide in the way he considered it proper in the exercise of this judgment. The order cannot be said to be manifestly unreasonable or perverse, and in my view, there was no *mala fide* intention in the making of the above order. The fact that Kendu Leaf producing districts, including Bolangir to which Shri Misra belongs, would have derived benefit under the order, is not sufficient to brand the order as *mala fide*. Hard-case Kendu Leaf Grants were thereafter made in accordance with that order. The institutions in Bolangir district no doubt received a good part of those grants but this was due to the fact, as is shown by the affidavit of Shri Misra, that Bolangir district too had suffered from drought in

1965-66 and the running of private schools had been affected thereby. It, therefore, became necessary to give grants to those institutions.

The material on record shows that when Shri Deo came to know of the order of Shri Misra, he (Shri Deo) protested, because the order of Shri Misra had the effect of vetoing some of the sanction orders made by Shri Deo. It was then brought to the notice of Shri Misra that announcements had been made in public meetings by the Deputy Minister in respect of some of the grants. Shri Misra then sanctioned Rs. 22,000 for the institutions for which Shri Deo had made the announcements in public meetings. These facts, in my opinion, show that there was not much co-ordination in the department but it cannot also be inferred from those facts that the Minister and the Deputy Minister were acting *mala fide*.

I would, therefore, hold that the charge of impropriety, as contained in this allegation, has not been proved.

CHAPTER 45

ALLEGATION No. 45

Re :

Alleged favouritism in dealing with certain officers

Allegation No. 45 relates to alleged acts of impropriety and favouritism in dealing with certain officers against whom there were allegations of corruption. The respondents named in the allegation are Shri Patnaik, Shri Mitra and Shri Routray.

According to the case of State Government, Shri Somanath Misra, I.A.S., was the Collector and Deputy Commissioner of Sambalpur and was transferred from that district in 1960. His representation against transfer was rejected and he proceeded on leave of 105 days and thereafter joined as Joint Secretary, Political & Service, Department.

Shri Misra during this period sent a representation to the Governor on March 9, 1961, making allegations against political parties, ex-Ministers and other officers. About a week after the Ministry headed by Shri Patnaik came into power, Shri Somanath Misra was transferred back as Deputy Commissioner, Sambalpur. When the question about this matter was put in the Assembly, Shri Mitra stated that it had been found that Shri Misra was a victim of some political manoeuvring.

On August 5, 1963, the Special Secretary, Ministry of Home Affairs, Government of India, addressed a letter to the Chief Secretary, Government of Orissa, stating that in the course of the investigation against some officers of the Central Government, the Central Bureau of Investigation had found the names of certain officers in Orissa in the entries in the books of Siraj-ud-din. It was suggested that it would be advisable to entrust the investigation against the said officers to the Central Bureau of Investigation. A reply was sent on behalf of the State Government by the Additional Chief Secretary on August 20, 1963 that the said Government had no objection to the cases being investigated by the C. B. I. On October 14, 1963 the Superintendent of Police, Special Police Establishment, lodged a report that Shri Somanath Misra had, while functioning as Deputy Secretary, Board of Revenue, Orissa received costly presents and other illegal gratification from

Mohd. Siraj-ud-din, mine-owner and exporter of ores. On October 19, 1963, the official residence of Shri Somanath Misra at Sambalpur was searched by the Special Police Establishment. The search, it is stated, disclosed that Shri Misra possessed assets to the tune of Rs. 2,24,031. Some information regarding the service of Shri Misra was thereafter asked for by the Special Police Establishment and the same was supplied by the State Government.

On December 1, 1963 a telegram was received from the Home Ministry by the Chief Secretary, Orissa, enquiring if Shri Misra had been suspended. Reply to that was sent that there had been no order of suspension as the case was still under investigation. On January 1, 1964, the Special Secretary, Home Ministry, addressed a letter to the Chief Secretary, Orissa that the investigation had progressed sufficiently and the material collected showed that there was a *prima facie* case against Shri Misra. The Home Ministry, therefore considered it appropriate that Shri Misra be placed under suspension. The Chief Secretary, Government of Orissa thereupon asked the Home Ministry to send the data collected against Shri Misra so that the State Government could take action in the matter. In pursuance of this letter, the Special Secretary, Home Ministry, sent along with his demi-official letter, dated January 8, 1964, a brief note against Shri Misra. The Additional Chief Secretary then suggested that Shri Misra be placed under suspension without calling for his explanation. The Chief Secretary, however, did not agree with the above suggestion and observed that as the investigation was being carried on under instructions of the State Government, the said Government had to satisfy itself before taking further action against the officer concerned. The Chief Secretary also pointed out that the policy followed was that before suspension an officer was called upon to explain his conduct in the case and the facts were put to him. The Chief Secretary accordingly suggested that a statement of the case be given to Shri Misra and he should show cause as to why he should not be suspended. Shri Routray, who was Home Minister and Shri Mitra, who was Chief Minister, agreed to this suggestion. Shri Misra was then called upon to furnish his explanation in the light of the allegation which were enclosed with the communication sent to Shri Misra. Shri Misra then submitted an explanation and stated that his real property was of the value of Rs. 1,29,145 and not of the amount claimed by the CBI. He also denied the other allegations. The Additional Chief Secretary then

suggested that it would be fair that the explanation of Shri Misra should be looked into by the Special Police Establishment. This fact was intimated to the Special Secretary, Ministry of Home Affairs. The Special Secretary of the Home Ministry expressed his indignation over allowing Shri Misra to scrutinise the papers forwarded to the Orissa Government. The Special Secretary further pointed out that it was not possible to consider, as to what extent the allegations against Shri Misra were established. The Additional Chief Secretary and the Chief Secretary thereafter suggested that Shri Misra be placed under suspension and the suggestion was approved by Shri Mitra. Accordingly, Shri Misra was placed under suspension on February 21, 1964.

It is further stated that in 1964 Shri Banchanidhi Misra, who was an employee of Siraj-ud-din and who could give material evidence, died. The Government of India thereupon accepted the recommendations of the Special Police Establishment that Shri Misra be proceeded against departmentally and the criminal proceedings against him be dropped. Shri Misra was consequently reinstated and another order of suspension was passed against him to facilitate departmental proceedings. The inquiry against Shri Misra was held by the Vigilance Commissioner. The Vigilance Commissioner sent his report on February 10, 1966. His findings were that the State Government had failed to substantiate the charges that Shri Misra possessed assets disproportionate to his income and had shown lack of integrity in dealing with Siraj-ud-din. Some remarks were also made by the Vigilance Commissioner about the conduct of Shri Misra. A suggestion was then made by the Additional Chief Secretary that Shri Misra having been exonerated be reinstated. Shri Routray agreed to this suggestion.

When the report of the Inquiry Commission was received Shri Misra it is stated, reached the age of 55 years and the question arose of giving him extension till the age of 58 years in view of the decision of the Government of India raising the age of retirement to 58 years. The Chief Secretary suggested that Shri Misra should not be retained in service after the age of 55 years. Shri Routray then passed an order on July 25, 1966 as under :—

"I had discussion with C. M. earlier. Shri Misra is to continue beyond 55 age."

In December, 1966 the Home Ministry pointed out that there were mistakes in the report of the Vigilance Commissioner

in computing the income and expenditure of Shri Misra. The Home Ministry advised that Shri Misra be compulsorily retired on attaining the age of 55. The services of Shri Misra were thereafter terminated in March, 1967 after giving him three months' notice.

The State Government further alleges that Shri B. G. Rao Pattnaik, ex-Collector of Kalahandi district, was proceeded against departmentally in respect of several charges of corruption and malpractices. The Inquiry Officer, as per report, dated June 10, 1961 found Shri Rao Pattnaik guilty of most of the charges and recommended his removal from service. Five criminal cases were also started against Shri Rao Pattnaik. He was acquitted on April 30, 1961 in one of the cases. The remaining four cases were then withdrawn under orders of Shri Mitra and Shri Patnaik. The State Government claims that the order of withdrawal was not legal as the four other cases were of a nature different from the one in which judgment of acquittal had been given.

When the report, dated June 10, 1961 of the Inquiry Officer was received, the Chief Secretary was asked to examine the same. The Chief Secretary observed that the inquiry had been vitiated by serious departure from proper procedure and for lack of opportunity to the delinquent officer. Shri Biju Patnaik then made a note on July 13, 1962 on the file as under :—

“After the Court stricture on us it looks very foolish for us to pursue this officer. However, Law Department may see”.

The Chief Secretary thereafter recorded a note on July 15, 1962 as under :—

“In the result there is nothing serious for which the Collector should be dealt with in disciplinary proceedings. Government may therefore, order that on the evidence there is nothing against the Collector to warrant proceedings. The case will thus be dropped and the accused informed.”

Shri Mitra agreed to the suggestion of the Chief Secretary and Shri Biju Patnaik passed the following order on July 30, 1962.

“There is no charge of corruption established against this officer. There is no further need to pursue him and the case be dropped.”

Shri Rao Pattnaik then made an application for being reimbursed with his expenses. The Additional Chief Secretary on December 11, 1963 observed that it was a fit case for the Government to reimburse the legal expenses incurred by Shri Rao Pattnaik. Shri Routray agreed on December 13, 1963 to the suggestion and Shri Mitra, Chief Minister, gave his approval to the same on January, 29, 1964. Rs. 13,542.74 Paise were thereafter paid to Shri Rao Pattnaik.

The third officer, referred to in this allegation, is Shri S.C. Bose, who was the Headmaster of the Capital High School, Bhubaneswar. As Headmaster, Shri Bose held a Class II Gazetted post in the Education Department of the Government of Orissa. A pseudonymous complaint was sent to the Deputy Superintendent of Police (Vigilance), Bhubaneswar by some one containing allegations of misappropriation of school funds by Shri Bose. An inquiry was thereafter conducted. The Superintendent of Police (Vigilance) submitted a report on November 25, 1965 suggesting that Shri Bose be prosecuted under section 409 of the Indian Penal Code read with section 5 of the Prevention of Corruption Act. Request was made for obtaining sanction of the Government for prosecution since Shri Bose was a Class II Officer. By letter, dated January 8, 1966 the Superintendent of Police (Vigilance) was informed that the Government approved the commencement of criminal prosecution against Shri Bose under section 409, I.P.C. The file was thereafter called by Shri Routray on the ground that the Education Minister, Shri Mohanty, was enquiring as to whether there was any Vigilance case pending against Shri Bose in connection with the examination of his case for re-employment. The file was thereafter sent to Shri Mohanty. Shri Mohanty, Education Minister, observed on March 8, 1966 that his department was previously ignorant of the vigilance case. It was further mentioned that in view of the reports submitted by the Superintendent of Police (Vigilance) the prayer of Shri Bose for re-employment for one year from March 15, 1966 has been rejected. On April 13, 1966 Shri Routray passed an order that since the Officer had already retired, the case be passed on to the Education Department for audit of the school accounts with a view to fixing the liability of the losses suffered on account of the dealings of the Headmaster. Order was also made that the Education Department should withhold the pension of the Officer till the matter was finalised. The criminal action was stayed. The above order, it is stated, resulted in procrastination of the proceedings.

The fourth officer, who is referred to in this allegation is Shri Parma Nanda Biswal, Deputy Superintendent of Police. It is stated that there was an allegation against the aforesaid officer about his having misbehaved with a young woman on March 25, 1963 when she came in connection with a report made by her under section 394 of the Indian Penal Code. Some other allegations were also made against Shri Biswal. An inquiry was held by the Superintendent of Police and the charges were held to have been substantiated. On receipt of the Inquiry report the Joint Secretary P. & S. Department, suggested that the charges should be referred to the Administrative Tribunal. The Chief Secretary agreed with the proposal. When the matter was put up before Shri Routray, Minister, Political & Services, he observed as follows:—

The enquiries against this Deputy Superintendent of Police were made on the allegations made in an anonymous petition. Earlier, we made declaration not to take notice of anonymous petitions, but nevertheless, in this case, we have proceeded with the enquiries. I would therefore, suggest that we may send these enquiry reports against this Deputy Superintendent of Police to Inspector-General of Police, who will call for an explanation from this officer and forward the same to Government with his views.

Shri Mitra thereafter recorded a note on June 19, 1964 as under:—

"The allegations are very serious. I feel he should be asked to explain why he should not be proceeded against. Minister, Home, may see."

When the file went back to Shri Routray he wrote the word "seen." The matter was then referred to the Inspector-General of Police, who was asked to forward the charges to Shri Biswal for his explanation. Shri Biswal thereafter obtained some copies and submitted an explanation. This resulted in delay of 14 months and the matter was referred to the Administrative Tribunal after the new Ministry came into power.

The fifth, and the last, officer to be dealt with in this allegation is Shri P. Jena, Block Development Officer of Sundergarh. It is stated that Shri Jena was proceeded against for misappropriation of Government money to the tune of Rs. 15,930 and for dereliction of duty. The Administrative Tribunal found him guilty and recommended reduction in rank. This was agreed to by the Chief Secretary as well as by Shri Routray and Shri Mitra. Thereafter a notice was issued to the Officer concerned to show cause as to why he should not be reduced in rank. The Officer then gave an

explanation. The Chief Secretary recommended that the punishment of reduction in rank be confirmed. Shri Routray, however, observed that some credence should be given to the officer and he should not be reduced in rank. Order was made that the pay of the Officer should be deducted in two stages. The Chief Minister agreed to this order.

In support of the above allegations, the State Government has filed the affidavit of Shri Haris Chandra Pathy, Assistant in the Home Department.

Shri Biju Patnaik in the course of his affidavit has denied the charge levelled against him. According to Shri Patnaik, Shri Misra was transferred back to Sambalpur at his request on consideration of the relevant records. Shri Patnaik had no interest in Shri Misra and this would be evident from the fact that when the Central Government wanted the allegations against the said officer to be investigated by the Central Bureau of Investigation, the State Government readily agreed to the same.

As regards Shri Rao Patnaik, Shri Biju Patnaik states that on June 30, 1962 the Law Secretary had put the following note:—

“Incidentally Government may very well take note of the fact that in the Sessions case in which the Collector had figured as accused and which has ended in his acquittal, the Sessions Judge has accepted the position that there had been the influence of Political parties on the witnesses and generally on the case itself to the serious prejudice of the Collector. In the result there is nothing in the record to justify any further enquiry in the matter.”

In the light of the observations by the Secretariat Officials the cases of disciplinary proceedings against Shri Rao Patnaik were ordered to be dropped.

Shri Mitra like wise had denied the charge levelled against him. According to Shri Mitra he passed the orders in question in respect of Shri Misra and Shri Rao Patnaik to the best of his judgement as a Minister.

Shri Routray, too, has denied the correctness of the allegations made against him. According to Shri Routray, in the matter relating to Shri Misra he was acting in accordance with the advice of the Chief Secretary. He also found that the course suggested by the Chief Secretary was appropriate keeping in view the rules and practice followed by the Government. As regards the dropping of criminal proceedings against

Shri Misra because of the death of employee of Siraj-ud-din, it is stated, the man had died about two years prior to the date Shri Misra was placed under suspension. In respect of the retirement of Shri Misra, Shri Routray states that the retiring age of an IAS Officer is 58. In view of the finding of the Vigilance Commissioner, the Government did not think it proper to make him retire compulsorily on his completing the age of 55. The successor Government did so and the officer has moved the High Court where the matter is pending.

Dealing with the case of Shri S. C. Bose, Shri Routray, states that when he found that there had been no audit of the accounts for 14 years he referred the matter to the Education Department. There was no question of Shri Routray shielding the officer concerned.

Coming to the case of Shri Parma Nand Biswal, Shri Routray states that he thought it fit to give the officer concerned a chance to explain as to why he should not be placed under suspension. For this purpose papers were sent to the Inspector-General of Police. After the explanation of the officer was obtained, even the Vigilance Commissioner did not advise the suspension of the officer but merely suggested a reference to the Administrative Tribunal. This advice was accepted.

As regards Shri Jena, Shri Routray has referred to the report of the Administrative Tribunal in the course of which it was stated :—

The amounts which are found to have been temporarily misappropriated while he was at Sundergarh Block were only for a short period i. e., about three months. After his transfer the amount of Rs. 15,930 was deposited and thereby the shortage recouped under the Paddy Purchasing Scheme. So far other amounts are concerned, there is no proof of temporary misappropriation. Considering these circumstances, reduction in rank perhaps would be adequate as a punishment."

As the officer concerned explained that the temporary misappropriation was only a diversion of funds to other projects with the knowledge of the then Collector Sundergarh and as it was found that the Collector had not been examined in spite of the request of the officer, Shri Routray thought it proper to award a punishment of reduction of pay to the extent of two annual increment.

In respect of Shri Somnath Misra, the first order made by the respondents concerned, which has been assailed on behalf

of the State Government, is dated July 5, 1961 and reads as under :—

“Chief Secretary

C. M. desires that Shri Somnath Misra, I.A.S., be transferred as Deputy Commissioner, Sambalpur and Shri Somiah at present Deputy Commissioner, Sambalpur posted as District Magistrate, Mayurbhanja, Shri Sharma, District Magistrate, Mayurbhanja, be posted as Deputy Secretary, O. and M. in place of Shri Somnath Misra, Shri Kukurja posted as District Magistrate, Bolangir and Shri R. N. Das posted as Deputy Secretary, Labour.

Sd. Biren Mitra

5-7-1961

C. M.

Governor may see.

Sd. Illegible

5-7-1961

Sd. B. Patnaik

5-7-1961

“Governor

Sd. Illegible

5-7-1961 „

Regarding the above order, I find that Shri Misra was ordered to be transferred from Sambalpur district in December, 1960 after he had worked there as Deputy Commissioner for about 16 months. Shri Misra then represented that his transfer was the result of manoeuvring of some politicians and that his premature transfer operated as a stigma on his official career. Shri Patnaik and Shri Mitra seen to have been impressed by that representation. This fact is clear from the reply of Shri Biren Mitra in the Orissa Legislative Assembly on March 29, 1963. Shri Mitra then stated that Shri Misra at the time of his earlier transfer from Sambalpur had been the victim of political manoeuvring and for that reason he was sent back to Sambalpur as Deputy Commissioner. The impugned order was made by Shri Mitra and Shri Patnaik in exercise of their administrative powers and the fact that another view of the matter could have also been taken would not make material difference. As the order stands, it is difficult to spell out an inference of impropriety against the respondents concerned. It may be

mentioned that Shri Patnaik gave an express direction that the impugned order be shown to the Governor. This would have hardly been the direction if Shri Patnaik was out to make an improper order.

The Second time, the respondents are shown to have come into the picture in respect of Shri Misra, was on January 3, 1964. It appears that on January 1, 1964, Shri L. P. Singh, Special Secretary, Ministry of Home Affairs, addressed a letter to Shri Sivaraman, Chief Secretary, Orissa stating that during the investigation of the case against Shri Misra *Prima facie* evidence had become available to the Special Police Establishment indicating that Shri Misra did not act with integrity in his dealings with the firms of Mohd. Seraj Udin. Shri Sivaraman was informed that the Government of India considered that it would be appropriate to place Shri Misra under suspension with immediate effect. On receipt of the above letter, Shri Sivaraman sent the following reply to Shri L. P. Singh on January 3, 1964.

"Please refer to your demi-official letter No. 9/14/63/ AVD dated the 1st January 1964. I shall be very glad if you can let me have an indication of the *prima facie* evidence which has been collected by the Delhi Special Police Establishment to enable me to deal with the matter. This is not to mean that I am not accepting your judgement of the matter, but you will agree that for the State Government to take action the data must be before them."

The above reply was shown to Shri Routray, Minister, Political & Services and Shri Mitra, Chief Minister. Both of them appended their signatures on the draft reply in token of their having seen the same. No exception, in my opinion can, be taken to the above letter of Shri Sivaraman much less to the act of Shri Routray and Shri Mitra in appending their signatures to its draft. As the order for suspension was to be made by the State Government, Shri Sivaraman took the view that the State Government should have an indication of the *prima facie* evidence collected by the Special Police Establishment to enable it to deal with the matter. Shri L. P. Singh, on receipt of Shri Sivaraman's letter dated January 3, 1964, sent a brief note of the facts which had come out during the investigation against Shri Misra. On January 28, 1964 Shri Sivaraman, Chief Secretary, addressed a note on the question of the suspension of Shri Misra to Minister, Political & Services. The note along

with the orders dated January 29, 1964 of Shri Routray and Shri Mitra, reads as under—

“Minister P. & S.

From P. 1/N. The statement of the case sent by Shri L. P. Singh gives sufficient indication of involvement of the officer in the offences mentioned; particularly a savings of more than Rs. 2 lakhs is an impossibility for an officer of this grade and length of service and with the large family he has got. So there seems to be sufficient material for proceeding against the officer.

2. In vigilance cases we have been following a policy that before suspension an officer is called upon to explain the position of the facts. We have kept the safety just in case some material relevant to the case has not been noted by vigilance. In this case, I understand that the Special Police Establishment have also questioned Shri Somanath Misra, recently according to the information supplied by the Officer to me. He should therefore be in a position to make a statement to Government in case he has anything to say in defence of himself at this stage, for us to know whether suspension is necessary or not. I would, therefore, advise giving him a statement of the case and asking him why he should not be suspended pending enquiry into the case. As he is already aware of the matter, one week's time should be sufficient.

Chief Minister may see.

Sd. B. Sivaraman

28-1-1964

I agree.

Sd. N. Routray.

29-1

Sd. B. Mitra,

29-1

The State Government has assailed the propriety of the above orders of Shri Routray and Shri Mitra. In this respect, I find that according to the note of Shri Sivaraman, with which Shri Routray and Shri Mitra agreed, there seemed to be sufficient material for proceeding against Shri Misra. The note also shows that the policy followed by the State Government in vigilance cases had been that before suspension an officer was called upon to explain the position of the facts. Shri Sivaraman, accordingly, advised that a statement of the case might be given to Shri Misra and he be asked as to why he should not be suspended pending enquiry into the case. It was also mentioned in the note that Shri Misra should have only one week's time to furnish his explanation. As the Ministers are normally guided by the Secretaries in the matters relating to procedural formalities of suspension, I can find no impropriety in the acceptance of the suggestion of the Chief Secretary by Shri Routray and Shri Mitra.

The next occasion, on which Shri Routray and Shri Mitra came into the picture, was in February, 1964. On February 20, 1964, Shri Sivaraman, Chief Secretary, addressed a note to the Minister, Political & Services, in the course of which he stated that there was a *prima facie* case for holding that Shri Misra had means out of proportion to his income. Recommendation was accordingly made that Shri Misra be placed under suspension pending completion of the enquiry and proceedings, if any. Shri Routray accepted the recommendation of Shri Sivaraman on February 21, 1964. Shri Mitra and the Governor, Shri Khosla, also expressed their concurrence on that very day. An order for the suspension of Shri Misra was accordingly issued on that day i. e. February 21, 1964. No exception can obviously be taken to the above orders of Shri Routray and Shri Mitra directing the suspension of Shri Misra.

On November 13, 1964 Shri Jayal, Joint Secretary in the Ministry of Home Affairs, addressed a letter to Shri Barren, Additional Chief Secretary of Orissa, stating that due to the death of an employee of Seraj-ud-din and Co. the C B I would not be launching criminal proceeding against Shri Misra. The State Government was requested to proceed against Shri Misra departmentally. On February 5, 1965 Shri Sivaraman in the course of a note suggested that the case of Shri Misra might be referred to the Vigilance Commissioner.

with the orders dated January 29, 1964 of Shri Routray and Shri Mitra, reads as under—

“Minister P. & S.

From P. 1/N. The statement of the case sent by Shri L. P. Singh gives sufficient indication of involvement of the officer in the offences mentioned; particularly a savings of more than Rs. 2 lakhs is an impossibility for an officer of this grade and length of service and with the large family he has got. So there seems to be sufficient material for proceeding against the officer.

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Chief Minister may see.

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It was also suggested that a fresh order of suspension be issued in respect of Shri Misra. On February 11, 1965 Shri Routray passed an order in the course of which he stated—

“Since the officer is under suspension for over a year, it is necessary that the Vigilance Commissioner should go into this case and try to expedite its findings.”

It was further stated—

“Shri Misra was suspended pending a contemplated criminal case. The Government of India have now said that because of certain difficulties they do not want to proceed with the criminal case. They have advised us to proceed against the officer departmentally and I agree with this view. But the question is whether a fresh suspension order should be issued or the previous one would be valid. This is a matter on which the Law Department would advise.”

No exception, in my opinion can be taken to the above order. The order was also signed by Shri Mitra on February 12, 1965. The Law Department then suggested that a fresh order of suspension would be necessary. Accordingly on October 22, 1965 the previous order of suspension was vacated and a fresh order of suspension of Shri Misra was issued by the State Government.

The Vigilance Commissioner held a departmental enquiry against Shri Misra and came to the conclusion that the prosecution had failed to establish its case. The Vigilance Commissioner also observed that the conduct of Shri Misra was unbecoming of an officer belonging to the Indian Administrative Service. On February 21, 1966 Shri A. K. Barren, who had taken over as Chief Secretary, put up a note about allowing certain officers to continue in service up to the age of 58. The Chief Secretary suggested that all officers except Shri Misra be allowed to continue in service up to the age of 58 years. As regards Shri Misra, the Chief Secretary suggested that he might be allowed to retire at the age of 55. Shri Roatray then passed the following orders :—

“I had discussions with C. M. earlier

Shri Misra is to continue beyond 55 age.”

It is clear from the above order that the decision about the retention of Shri Misra beyond the age 55 years was arrived at as a result of discussion between Shri Routray and the Chief Minister. What factors actually weighed with them are not clear from the order. It is however significant that there is nothing on the record to indicate that Shri Routray or for

the matter of that any of the respondents concerned had a personal interest in Shri Misra. Assuming that the better view would have been not to retain Shri Misra beyond the age of 55 years, it would merely show an error of judgment and not a *mala fide* conduct. The material on record indicates that earlier, while dealing with the question of retirement of Shri Rao Patnaik, I. A. S. at the age of 55 years, Shri Routray observed on June 15, 1964 that the said officer had outlived his utility and hence he should retire. The Central Government then reviewed the position and ultimately the said officer was allowed to continue beyond the age of 55 years as per order dated July 20, 1964 of the Chief Minister. It is possible that Shri Routray was influenced by the precedent of Shri Rao Patnaik when he made the impugned order in respect of Shri Misra. Be that as it may, no inference of impropriety can be drawn against Shri Routray on that account.

The Second Officer, whose case has been dealt within this allegation, is Shri B. G. Rao Patnaik, I. A. S., District Magistrate and Collector of Kalahandi district. It appears that on the basis of a report against Shri Rao Patnaik, five criminal cases were started against him in the court of Special Judge. A departmental enquiry was also held in respect of some of the matters by Shri R. Sarangi. Shri Sarangi, as per report, dated June 10, 1961 found that apart from one, all other charges had been proved against Shri Rao Patnaik. After the report of Shri Sarangi had been received, Shri Sukhthankar, Governor of Orissa, directed as per order, dated June 16, 1961 that it would be for the new Government to decide as to whether the result of the departmental proceedings should be considered separately or together with the result of the criminal cases. On April 30, 1962 the Special Judge acquitted Shri Rao Patnaik in one of the cases. In the course of his judgement, the Special Judge passed strictures on the Government machinery and observed that political parties had got involved in the case. Shri Rao Patnaik contested the validity of the enquiry conducted by Shri Sarangi on the ground that the procedure adopted by the Enquiry Officer was violative of the principles of natural justice. The opinion of the Law Department was then taken and the Law Department stated that the departmental enquiry against Shri Rao Patnaik was vitiated by a number of infirmities. Shri Sivaraman in the course of his note, dated June 25, 1962 referred to the infirmities pointed out by the Law Department and stated that the enquiry had been seriously vitiated by

certain departures from proper procedure and for lack of opportunity to the officer concerned. He also expressed his doubt on the point as to whether there was any fair case against Shri Rao Patnaik. Shri Patnaik passed the following order on the above note:—

“After the Court’s strictures on us, it looks very foolish for us to pursue this officer. However Law Department may see.

Sd. B. Patnaik

13-7-1962”

The Law Secretary in the meanwhile stated that there was nothing in the record to justify any further inquiry in the matter. On July 15, 1962 Shri Sivaraman addressed a note to the Minister, Political & Services. The note along with the orders made on its basis reads as under—

“Orders at P. 21 *ante* will recall the case. My reference to the Law Department and the views of the Law Department from page 22 above may be seen. Government have already decided that the enquiry is not complete and if further proceedings are to be completed, an Enquiring Officer will have to be appointed and the accused given further chance to defend himself. It is not for a decision of Government whether a further enquiry is it all warranted. The prosecution has led all the evidence it has and it is only the defence which has been denied opportunity to defend himself. On the evidence on record, none of the charges has been proved. The only thing that can be taken against the Collector is that he used a Peon for cooking in his house. As regards this mistake he has alleged that he had utilised the Peon outside office hours. Though this is a practice to be deprecated, the laws of economics compel many a Peon to take other part-time work. Government may not therefore take serious notice of this but tell the Collector that it was not desirable that he employed a Peon as his cook.

2. The other important allegation about utilisation of the carpenters of the Ashram Schools has to be looked against the background of Government’s intention in these matters. I have placed below duly flagged copies of instructions issued in Tribal & Rural Welfare Department about this matter. Even in 1960, after the Collector was chargesheeted, Government have given extraordinary privileges to private persons for getting their works done in the Ashram Schools. The only charge that can be made against the Collector is that instead of getting the work done in the school he got the carpenters to his house. His answer is that this was the leave period and therefore the mistake is not very serious. I agree with him.

3. In the result there is nothing serious for which the Collector should be dealt with in a disciplinary proceedings. Government may therefore order that on the evidence there is nothing against the Collector to warrant proceedings. The case will then be dropped and the accused informed.

Sd. B. Sivaraman
15-7-62"

I fully agree with C. S.

Sd. Biren Mitra
29-7

"C. M.

For orders. Governor may see.

Sd.
30-7

There is no charge of corruption established against this officer. There is no further need to pursue him and the case may be dropped.

Sd. B. Patnaik
30-7-62"

The above note along with the orders was sent to the Governor for his information. It is difficult, in my opinion, to spell out any inference of impropriety from the orders made by Shri Patnaik and Shri Mitra. The orders were based upon the advice of the Law Department and the Chief Secretary which indicated that there was nothing serious as warranted proceedings against Shri Rao Patnaik.

Another order in respect of Shri Rao Patnaik which has been assailed is that of Shri Routray made on December 13, 1963 for reimbursing Shri Rao Patnaik for the legal expenses incurred by him. In this respect, I find that the order of Shri Routray was based upon the recommendation of Shri A.K. Barren, Additional Chief Secretary, who observed in his note dated December, 11 1963 that it was a fit case for the Government to take a decision that officer would be reimbursed for the legal expenses incurred by him. Shri Biren Mitra also approved on January 29, 1964 the proposal of

Additional Chief Secretary. It cannot, in my opinion be said that there was any impropriety in the above orders of Shri Routray and Shri Mitra.

Coming to the case of Shri Parmananda Biswal, the State Government has assailed the order dated April 21, 1964 of Shri Routray and the one dated June, 19 1964 of Shri Mitra. In my opinion, no impropriety was involved in any of those orders. The material on record shows that on January 20, 1964 Shri Sivaraman, Chief Secretary, stated that in view of the *prima facie* serious allegations against Shri Biswal it was desirable to suspend him. Shri Sivaraman suggested that the officer be asked to explain as to why he should not be suspended. Shri Routray thereafter observed on April 21, 1964 that the enquiry report against Shri Biswal might be sent to the Inspector-General of Police who would call for an explanation from Shri Biswal and forward the same to the Government with his views. The papers were thereafter put up before Shri Mitra and he observed—

“The allegations are very serious. I feel he should be asked to explain why he should not be proceeded against. Minister (Home) may see.

Sd. B. Mitra
19-6.”

There was nothing objectionable in the above orders and I fail to understand as to how Shri Routray and Shri Mitra can be held to be guilty of impropriety on that score.

The next case, which is dealt with in this allegation, relates to Shri S. C. Bose. In respect of Shri Bose, I find that when approval was sought for registration and investigation of the case against Shri Bose, Shri Routray accorded the approval on January 1, 1966. Subsequently, when it came to the notice of Shri Routray that the Education Department had not been informed of the case against Shri Bose even though Shri Bose was under the Administrative control of the Education Department. Shri Routray observed that the Education Department should not have been kept in the dark. In the meantime, Shri Bose had retired and on April, 12, 1966 Shri Routray directed that the accounts of the School, of which Shri Bose was the Headmaster, should be got audited to find out the irregularities and the liability of the Headmaster. The accounts of the School before that had not

been audited for 14 years. It was further directed that the Education Department be informed to withhold the pension of the Headmaster till the matter was finalised. A direction was also given that till the finalisation of the matter the criminal action against the Headmaster might remain pending. The above order appears to have been passed by Shri Routray in the exercise of his judgement and, in my opinion it is not possible to draw an inference of impropriety against Shri Routray.

Another officer, whose case was the subject of this allegation, is Shri Jena. In respect of him the State Government has not placed any material on the record. The charge in respect of him, therefore, remains unsubstantiated.

As a result of the above, I hold that no charge of impropriety as contained in this allegation, has been proved.

CHAPTER 46

ALLEGATION No. 46

Re :

Pecuniary benefits by Abuse of Power

Allegation No. 46 relates to pecuniary benefits alleged to have been derived by abuse of power and the respondents named are Shri Patnaik, Shri Mitra and Shri Routray.

According to the case set up by the State Government Shri Patnaik was not a man of much means before 1947. He joined politics and was elected to the Legislative Assembly in 1946. Shri Patnaik thereafter showed a relentless zeal to develop Industries, but he had not much capital for the same. One of his earliest industrial adventures was a plant to manufacture synthetic petrol for which he got Rs. 6.5 lakhs from Orissa Government. In 1948 Shri Patnaik promoted a Textile Mill, named Orissa Textile Mills Ltd., and it went into production in 1949. Huge loans for the Company were given by the Government of Orissa, Government of India and the Industrial Finance Corporation. The Orissa Government also purchased shares of the Company of the value of Rs. 12,75,000. Shri Patnaik in the name of his Company—B. Patnaik and Company Private Ltd., was its Managing Agent. During the first 15 years of its working, the shareholders received very little dividend. Shri Patnaik also started the following concerns :—

1. Kalinga Tubes, Ltd.
2. Kalinga Airlines Private, Ltd.
3. B. Patnaik Mines Private, Ltd.
4. Kalinga Construction Company Private, Ltd.
5. Kocks (India) Private, Ltd.
6. B. Patnaik and Company Private, Ltd.
7. Kalinga Industries, Ltd.
8. Kalinga Otto Private, Ltd.

Kalinga Foundation Trust too was created by Shri Patnaik. In addition to that, he developed interest in

Aska Co-operative Sugar Factory and United India Periodicals, Delhi. In all these concerns, Shri Patnaik and his family members, his close associates, friends and relatives remained in control. The concerns of Shri Patnaik, which were making little profit before he was appointed Chief Minister, became flourishing concerns during the time he was Chief Minister. The Orissa Government guaranteed a Debenture loan to the tune of Rs. 97 lakhs for Kalinga Tubes, Ltd.

It is stated that after Shri Patnaik became Chief Minister, he amassed huge assets. The income tax assessment figures of Shri Patnaik during the years, 1960-61 to 1965-66 were as under, even though Shri Patnaik after becoming the Chief Minister had transferred most of his interests in favour of the members of his family :—

Assessment year	Assessed Income	Wealth Tax
	Rs.	Rs.
1960-61 ..	82,325	18,172
1961-62 ..	92,944	24,593
1962-63 ..	13,02,763	34,998
1963-64 ..	20,88,305	41,675
1964-65 ..	19,94,772	Not complete
1965-66 ...	Not yet complete	

Shri Patnaik who was in a very bad pecuniary condition before becoming a Minister, is alleged to have developed into a millionaire and in a meeting he said in 1964 that his assets had gone up to Rs. 10 crores. He kept his money in Kalinga Foundation Trust and thus evaded the payment of income tax. The total money that found its way to this Trust was Rs. 1 crore. Although the Trust was shown to have come into existence in 1947 it actually came into being in 1959.

Shri Patnaik is further stated to have acquired huge house property in New Delhi and Calcutta.

Several projects were started and several State owned Corporations were formed during the period Shri Patnaik was in power. The names of those projects and Corporations were—Balimela Dam Project, Tikerpada Project, Industrial Development Corporation, Orissa Construction Corporation,

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1. Kalinga Tubes, Ltd.
2. Kalinga Airlines Private, Ltd.
3. B. Patnaik Mines Private, Ltd.
4. Kalinga Construction Company Private, Ltd.
5. Kocks (India) Private, Ltd.
6. B. Patnaik and Company Private, Ltd.
7. Kalinga Industries, Ltd.
8. Kalinga Otto Private, Ltd.

Kalinga Foundation Trust too was created by Shri Patnaik. In addition to that, he developed interest in

further contributed Rs. 1 lakh towards the National Defence Fund. Immovable property in Cuttack and Calcutta was also acquired by Shrimati Mitra.

Shri Mitra is also stated to have formed a concern called Jana Kalyan Publications. Its total assets on September, 30, 1966 was to the tune of Rs. 5,71,913-98 paise. A three storeyed building worth more than Rs. 3 lakhs was constructed for that concern.

Shri Mitra is further stated to have declared when he became Chief Minister that the cost of the total assets owned by him and his wife was Re. 1 only, and that whoever would pay Re. 1 would get all his property. A large number of persons sent money orders of Re. 1 to him and the amounts of those money orders were retained by Shri Mitra.

Shri Routray, according to the case of the State Government, did not have any source of income besides his Ministership. During the years 1961 to 1967 he built a house worth Rs. 68,700 at Cuttack and a house worth at least Rs. 86,800 at Bhubaneswar. The house at Bhubaneswar was in the name of Shrimati Routray. The State Government asserts that keeping in view the fact that the salary of a Minister is Rs. 1,000 and Shri Routray had to maintain himself and his family, he could not have been in a position to spend the amount on the two houses.

In support of the above allegation the State Government has filed the affidavit of Inspector, Hemakanta Sahu (Vigilance), Inspector, Gaurang Patra (Vigilance) and Shri Sashi Sekhar Misra, Joint Secretary in the Finance Department.

Shri Patnaik in the course of his affidavit has controverted the allegations made against him and described them as mischievous, motivated and false. According to Shri Patnaik, the statement showing the net wealth returned and determined by the Wealth Tax Officer would indicate that there has been only a marginal increase of his net wealth. The small additions were made out of known sources and out of income after payment of due taxes. Shri Patnaik has denied that he kept his income in Kalinga Foundation Trust. Likewise, the allegation has been denied that Shri Patnaik was not a man of much means in 1946. It is stated that Shri Patnaik came out of the prison in 1945, and in 1947 the capital of Shri Patnaik and his wife exceeded Rs. 5 lakhs. In 1955 their capital exceeded Rs. 13.5 lakhs. For the year 1947-48 to 1953-54 his

income was assessed at Rs. 17.76 lakhs. Shri Patnaik asserts that he or his family members do not own any property in Calcutta. He sold his shares in Kalinga Tubes and Kalinga Industries when he assumed office in 1961, and out of the sale proceeds of the shares he purchased a house at Delhi for Rs. 5 lakhs. According further to Shri Patnaik, he never went to Australia, America, Germany or Japan to enter into contracts for or on behalf of the Government of Orissa, nor did he go out of the country on personal visits during the time he was in office. As regards the speech alleged to have been made by him about his assets being worth Rs. 10 crores, Shri Patnaik states that he never made any such speech. Dealing with the major projects started by him, Shri Patnaik states that while the earlier Coalition Government had prepared the Third Five-Year Plan for Orissa at Rs. 160 crores, his Government raised the amount to Rs. 227 crores in the Second Year of the Plan by continuous efforts to muster the State's resources and by persuading the Government of India. Shri Patnaik has also referred to the observations of Dr. A. N. Khosla, Governor of Orissa, in a letter to the Prime Minister of India that Shri Patnaik had shown vision, initiative, drive and proper financial sense in administering the development programmes of the State. An order of Appellate Assistant Commissioner dated April 1, 1968 has also been filed by Shri Patnaik.

Shri Mitra in the course of his affidavit has denied the correctness of the allegations made against him. According to Shri Mitra, before he assumed office as Chief Minister on October 2, 1963 the concern, Orissa Agents, had already been closed since August, 5, 1963. Orissa Agents is stated to be the concern of Shrimati Mitra and Shri Mitra had no interest in it. He never used his position to help that concern. Shri Mitra has denied having derived any pecuniary benefit by abuse of his power. He has also denied having amassed huge wealth through illegitimate business with Government of Orissa. As regards the allegation made against him about his having started several concerns. Shri Mitra states that such allegations were published in two local newspapers, namely, Prajatantra and Eastern Times. Shri Mitra filed two suits for damages on the ground that those publications contained defamatory and false allegations. Decrees for recovery of damages were awarded in those suits. Appeals against the decrees awarded by the trial Court are now pending in the High Court. Shri Mitra also denies that he constructed a house

at Cuttack. The three storeyed house at Cuttack is stated to belong to Jana Kalyan Publications Ltd., of which Shri Mitra is a shareholder to the extent of only Rs. 2,000. Shri Mitra is occupying the second floor of that house with his family since July 13, 1967 and is paying Rs. 350 as monthly rent. As regards the house let out to Bird & Company, Shri Mitra states that it became necessary to let out that house as Shrimati Mitra had to pay a substantial amount as Income Tax. Dealing with the offer to sell all the assets and liabilities of Shri Mitra and his wife for a price Re. 1 he states that he had no assets worth the name and the liabilities of his wife were so heavy that they would exceed her assets. It was in this view of the matter that he made the offer in a political statement to the Press for the sale of assets and liabilities of himself and his wife at a cost of Re. 1. A sum of Rs. 425.92 Paise was received by Shri Kamini Kant Patnaik, Lawyer of Shri Mitra, in the shape of money order. None of the persons, who made the offer, however, came forward to take the assets with the liabilities as the liabilities were found to be much more than the assets. Shri Mitra denies having retained even a single Paise out of the said sum of Rs. 425.92 Paise. An amount in excess of Rs. 425.92 Paise is stated to have been spent on correspondence in this connection. Shri Mitra has also relied upon a letter dated January 15, 1965 addressed by Shri Biswanath Das, the then Governor of Uttar Pradesh to Shri Lal Bahadur Shastri, Prime Minister of India, in defence of Shri Mitra.

An affidavit of Shri Sunil Kumar Sen, who was employed as an Accountant of Orissa Agents, has also been filed by Shri Mitra, according to Shri Sunil Kumar Sen, Orissa Agents closed its business in August, 1963 and did no business thereafter. Intimation about this fact was given to the Sales Tax and Income-Tax authorities, and the registration of the concern was cancelled. A statement of assets and liabilities of Orissa Agents as on March 31, 1964 has also been filed. According to this statement, the liabilities of Orissa Agents including the tax demand were to the tune of Rs. 11,35,559.16 Paise. The liabilities exceeded the assets by an amount of Rs. 6,51,169.44 Paise. It is also mentioned that the income-tax was assessed on a total income of Rs. 9,25,905.00 as some expenditure had been added back to the net profit.

Shri Kamini Kant Patnaik too has filed his affidavit in respect of this allegation. According to Shri K. K. Patnaik he was authorised by Shri Mitra to deal with the money orders

of Re. 1 sent to him. Shri Mitra directed Bhubaneswar Postal authorities that money order amounts in this connection be paid to Shri K. K. Patnaik. Shri K. K. Patnaik thereafter received Rs. 425-92 Paise. A number of enquiries were then made and replies were sent by registered post. An amount much more than what was received was thereby spent. None of the persons who made the offer, it is stated, came forward to take the assets with the liabilities as the liabilities were found to be much more than the assets.

Shri Routray in the course of his affidavit has stated that the allegation that he did not have great source of income outside his ministership is substantially correct. He was in office almost continuously for a period of 19 years and received some income on account of his share in ancestral land. His brother, Shri H. K. Routray who was a shipping contractor in Calcutta, was giving Rs. 500 per month to Shri Routray until 1956 when the brother died. Shri Routray, however, does not rely upon the income from his brother in calculating his total income. Shri Routray also saved money from his travelling allowance, the total of which, during the years from 1948 to 1967, came to Rs. 1 lakh. These facts, according to Shri Routray, adequately explain as to how the two houses, one at Bhubaneswar and the other at Cuttack, could be constructed. The cost of the Cuttack house was Rs. 57,500 and that of Bhubaneswar house was Rs. 65,000. House building loans to the extent of Rs. 46,000 were taken in connection with the construction of the houses. Shri Routray adds that he married in 1949 and has got only one son who passed the School Leaving Certificate Examination this year. He has no daughter. His living is modest, comfortable and not ostentatious. His wife, who looks after the small household, seldom spends more than half of the income. Rent to the extent of Rs. 50,000 was received for the two houses. Shri Routray, accordingly, asserts that the allegation that he did not have sufficient funds to construct the two houses is without any substance.

Two supplementary affidavits have been filed on behalf of the State Government by Inspector, Gaurang Patra. These supplementary affidavits were, however, not filed within the prescribed time. A supplementary affidavit has also been filed on behalf of Shri Routray.

In respect of this allegation I shall first take up the case of Shri Routray because it is his case which has been argued first of all. According to the State Government, Shri Routray

and his wife could not have constructed a house at Cuttack and another house at Bhubaneswar out of their legitimate sources of income. In this respect I find that the affidavit of Shri Routray shows that he got money from the following sources from 1948 till 1967 :—

ANNEXURE I

	Rs.
" A. Salary and allowances as an M. L. A. from 1948 to 1952, about.	9,000
B. Salary and allowances besides free furnished house as Deputy Minister for five years (1952—1957) at Rs. 850 per month, about.	51,000
C. Salary and allowances as Minister besides free furnished house from 1957 to 1967 for 9½ years at Rs. 1,100 per month, about	1,25,000
	1,85,000
D. My own loan from Government under the Middle-Income Group Housing Scheme in 1961.	16,000
E. My wife's loan from the Andhra Bank in April, 1965 for Bhubaneswar House.	30,000
F. Receipts from house rent—	
(i) Cuttack house about	25,000
(ii) Bhubaneswar house about	25,000
Total ..	2,81,000
G. Total Travelling allowance drawn during the period from 1952 to 1967 as Deputy Minister, Minister and Deputy Chief Minister, about.	1,00,000 "

During the period he was Deputy Minister and Minister Shri Routray was provided with a free furnished residential house. A garden was attached to the house. The services of a Chaukidar were also made available to him. According further to the affidavit of Shri Routray, his wife used to save Rs. 400 per mensem from his income. It is also clear from the affidavit that before June 23, 1961 (the Commission is only concerned with the period from June 23, 1961 to March 8, 1967) Shri Routray

had in deposit Rs. 27,437 in the Punjab National Bank and Shrimati Routray had in deposit Rs. 10,960-70 in the United Commercial Bank and Rs. 15,453 in the Postal Savings Bank Account. As regards the construction of the house at Cuttack by Shri Routray, the affidavit of Shri Routray shows that it was constructed during the period from February 1961 to July 1962. Shri Routray has stated that he had the following broad sources of income available to him during the period when the house at Cuttack was constructed—

"Date/Month/Year	Amount	Source
	Rs.	
(i) 28-6-1960 to 26-3-1962.	26,000	Withdrawals from the Punjab National Bank (Annexure A).
(ii) 1961 ..	16,000	Loan from Middle-Income Group Housing Scheme—Sanctioned and paid by Collector, Cuttack.
(iii) 28-7-1961 to 19-6-1962 and on 18-8-1963.	4,500	Withdrawal from the United Commercial Bank and Postal Savings Bank by my wife Shrimati Nalini Debi Routray [Annexure A(i)].
1961-62 ..	10,000	From my brother Shri A. P. Routray <i>vide</i> Paragraph 3.
1961-62 ..	9,571	Outstanding dues of M/S Utkal Distributors paid off in 1965.
1960-61 ..	5,000	Approximate savings from my salary and allowances.
Total ..	71,071	

So far as withdrawal of Rs. 26,000 by Shri Routray from the Punjab National Bank and Rs. 4,500 by Shrimati Routray from the United Commercial Bank and the Postal Savings Bank account are concerned, the details have also been furnished by Shri Routray. In my opinion, there can be hardly any doubt with regard to those withdrawals. Likewise, there can be hardly any doubt with regard to the item of Rs. 16,000 which Shri Routray got on loan from the Collector. As regards the item of Rs. 9,571 I find that the affidavit of Inspector, Md. Haroonal Rashid filed in allegation No. 35 shows that an amount of about Rs. 9,000 was due from Shri Routray to Utkal Distributors on March 31, 1962. There also appears to be no reason to question the statement of

Shri Routray that his wife saved Rs. 5,000 in the year 1960-61. The total of these amounts comes to a little over Rs. 61,000. This amount was sufficient to meet an expenditure of Rs. 57,500 which sum, according to Shri Routray, was the cost of the Cuttack House. The State Government, however, claims that the cost of the construction of the house at Cuttack was Rs. 68,700. Reliance in this connection is placed upon the affidavit of Inspector, Hemakanta Sahu. Inspector Sahu in the body of his affidavit has not indicated as to what was the basis of his estimate. In the verification of the affidavit, however, Inspector Sahu states that he has based his estimate "upon local enquiries and the valuation of the house done according to the plan by the Executive Engineer (Vigilance)". Neither the names of the persons from whom enquiry was made have been indicated nor the plan prepared by the Executive Engineer (Vigilance) has been placed on record. No affidavit or the estimate of the Executive Engineer has been filed. In the circumstances, I find no cogent ground to prefer the estimate of the cost of the house given by Inspector Sahu to the cost of construction given by Shri Routray.

As regards the house at Bhubaneswar, Shri Routray's affidavit shows that the house was constructed during the period from the beginning of 1965 till the end of May, 1967. The affidavit further shows that Shri and Shrimati Routray had the following amounts available with them when the house was constructed :—

	Rs.	
" 17-4-1965	.. 30,000	Loan from Andhra Bank, Cuttack Branch by my wife Smt. Nalini Debi Routray.
1965-1966	.. 16,500	Withdrawals from the account of Smt. Nalini Debi Routray in the United Commercial Bank, Cuttack (Annexure B).
1964-1966	.. 12,700	Withdrawals from Postal Savings Bank Account of Smt. Nalini Debi Routray (Pass Book in Chandini Chowk P. O.) (Annexure B).
Total	.. 59,200	

ITEM NO. 3 (SAVINGS FROM PAY)

	Rs.	
June 1961 to February 1967.	27,000	Average savings from my income— income made by my wife @ Rs. 400— per month.

According to Shri Routray, the value of the house at Bhubaneswar was Rs. 65,000. The State Government, however, claims that the cost of construction of the said house was Rs. 86,800. Reliance in this connection is placed upon the affidavit of Inspector, Hemakanta Sahu. For the reasons given above while dealing with the house at Cuttack, I find no cogent ground to prefer the estimate given by Inspector Sahu to the value mentioned by Shri Routray. So far as the amount of Rs. 59,200 is concerned, it consists of the loan of Rs. 30,000 from the Andhra Bank, Rs. 16,500 withdrawn from Shrimati Routray's Bank account and Rs. 12,700 withdrawn from Postal Savings Bank Account. There can, in my opinion, be hardly any doubt about the availability of Rs. 59,200 to Shri and Shrimati Routray as indicated above. There also appears to be no reason to question the statement of Shri Routray that the balance of the amount needed for the construction came from the savings from the income made by Shrimati Routray. The material on record also shows that the Registrar of Companies was a tenant of the ground-floor of the house at Cuttack and was paying Rs. 450 per mensem with effect from May 16, 1962 in pursuance of an agreement between Shri Routray and the Government of India. This rental income seems to have augmented the bank deposit in the name of Shrimati Routray. Shri and Shrimati Routray were thus in a position to meet the cost of construction.

I have given the matter my consideration and am of the opinion that the allegation that Shri Routray and his wife were not in a position to spend money on the construction of the two houses from the legitimate sources of income has not been substantiated.

So far as Shri Patnaik is concerned, the annexure to the affidavit filed on behalf of the State Government shows that Shri Patnaik, his wife, two sons and one daughter held 53,383 shares in twelve companies prior to 1961 and 51,513 shares in those companies after 1961. The total value of the shares held before 1961 was Rs. 55,22,400, while the total value of the shares held after 1961 was Rs. 52,40,400. The above annexure thus goes to show that after 1961 there was a reduction not only in the number of shares held by Shri Patnaik and the members of his family but also in the total value of those shares.

Shri Patnaik has given in annexure A to his affidavit the valuations of his wealth as determined by the Wealth Tax Officer for the assessment years 1961-62, 1962-63 and 1963-64. As regards the assessment year 1964-65 it is admitted in the affidavit filed on behalf of the State Government that the valuation has not yet been determined by the Wealth Tax Officer. The above chart reads as under :—

ANNEXURE A—Continued

BIJU PATNAIK	ASSESSMENT 1961-1962			
	Valuation as per Wealth Tax Officer			
Details of Wealth	No. of shares	Paid up per share	Rate per share	Amount
1	2	3	4	5
		Rs.	Rs. P.	Rs.
Kalinga Tubes Ltd. ..	7,826	100	206.75	16,18,025
Kalinga Industries Ltd. (Ord.) ..	2,139	100	151.00	3,22,989
Kalinga Industries Ltd. ..	150	100	100.00	15,000
Kalinga Airlines Private Ltd. ..	50	50	543.00	27,150
United India Periodicals Private Ltd. ..	100	100	12.00	1,200
Kalinga Otto Private Ltd. ..	500	25	25.00	12,500
Kalinga Construction Corporation Private Ltd.	250	100	Nil	Nil
B. Patnaik Mines Private Ltd. ..	500	40	Nil	Nil
Orissa Textile Mills Ltd. ..	6,400	10	..	45,867
Orissa Textile Mills Ltd. ..	Prof. Nil	Nil	Nil	Nil
Aska Co-operative Sugar Industries ..	500	25	..	12,540
B. Patnaik and Co., Private Ltd. ..	9	80	80.00	720
				20,55,991
Add—Other Assets (Book Value) ..				10,89,841
				31,45,832
Less—Liabilities (Book Value) ..				9,72,938
Net Wealth ..				21,72,894

ANNEXURE A—Concluded

ASSESSMENT YEAR 1962-63				ASSESSMENT YEAR 1963-64			
Valuation as per Wealth Tax Officer				Valuation as per Wealth Tax Officer			
No. of shares	Paid up per share	Rate per shares	Amount	No. of shares	Paid up per share	Rate per share	Amount
6	7	8	9	10	11	12	13
	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.
7,826	100	227	17,76,502	Nil	Nil	Nil	Nil
2,139	100	177	3,78,603	Nil	Nil	Nil	Nil
150	100	100	15,000	Nil	Nil	Nil	Nil
50	100	1,644	82,200	150	100	5,058	7,58,700
100	100	12	1,200	400	100	12	4,800
Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
250	100	Nil	Nil	250	100	Nil	Nil
500	40	Nil	Nil	500	40	Nil	Nil
6,400	10	..	45,867	6,400	10	..	45,867
10	100	100	1,000	10	100	100	1,000
500	35	..	12,540	500	25	..	12,540
9	80	80	720	9	80	80	720
23,13,632				8,23,627			
10,96,105				24,33,018			
34,09,737				32,56,645			
10,29,792				6,18,438			
23,79,945				26,38,207			

It would appear from the above chart that during the assessment year 1962-63 there was an increase in the wealth of Shri Patnaik from Rs. 21,72,894 to Rs. 23,79,945. This increase was due to appreciation in the valuation of the shares held by Shri Patnaik as is clear from the chart. So far as other assets were concerned there was hardly any increase in the value. The chart further shows that during the assessment year 1963-64 Shri Patnaik's net wealth went up from Rs. 23,79,945 to Rs. 26,38,207. This increase in the wealth appears to have been due to the fact that Shri Patnaik parted with some other shares and acquired 100 shares of Kalinga Airlines Private Ltd., during the year thus raising the total number of his shares in that Airlines Company from 50 to 150. The value of each shares of Kalinga Airlines Private Ltd., in the assessment year 1961-62 was Rs. 543. In the assessment year 1962-63 the value of the share rose Rs. 1,644 and in the assessment year 1963-64 it further rose to Rs. 5,058. It would, therefore, follow from the wealth tax assessment that the increase in the wealth of Shri Patnaik during the assessment year 1963-64 was because of the rise in the value of the shares of Kalinga Airlines Privates Ltd.

Reference on behalf of the State Government has been made to the fact that the income of Shri Patnaik as assessed by the Income Tax Officer for the assessment year 1962-63 (accounting year 1961-62) jumped to Rs. 13,02,763 from Rs. 92,944 as assessed in the previous year. For the assessment years 1963-64 and 1964-65 the income was assessed by the Income Tax Officer at figure of Rs. 20,88,305 and Rs. 19,94,772. It appears that the Income Tax Officer, while assessing the income of Shri Patnaik for the years 1962-63, 1963-64 and 1964-65, included in his income certain cash credits appearing in the name of Kalinga Foundation Trust. The Income Tax Officer also held that there was no Trust functioning in fact and in law, and that the name of the said Trust was used by Shri Patnaik to put through his own transactions. The cash credits appearing in the name of the Trust were treated by the Income Tax Officer as not genuine and he assessed the same as Shri Patnaik's undisclosed income. The Income Tax Officer also took the view that 39,000 shares of Kalinga Tubes Ltd., of the value of Rs. 39 lakhs allotted to certain individuals in 1958 really belonged to Shri Patnaik. The Income Tax Officer in arriving at the aforesaid conclusion referred to the fact that he had examined a number of persons who had denied the collection of funds for the Trust. The Income Tax

Officer also relied upon certain other circumstances and the information derived from a number of persons including Dr. H. K. Mahtab and Shri Nabakrushna Choudhury. Shri Patnaik filed three appeals against the orders of the Income Tax Officer relating to assessment of his income for the assessment years 1962-63, 1963-64 and 1964-65. The contention advanced on behalf of Shri Patnaik was that Kalinga Foundation Trust, though registered under the Societies Registration Act on November 28, 1959 had been functioning since 1947. It was urged that the Trust was a separate entity and reliance was placed upon various circumstances including a donation of Rs. 1 lakh to Utkal University by the Trust by means of a cheque signed by Dr. Mahtab. The main point stressed by Shri Patnaik was that he was not granted opportunity to meet objections raised by the Income Tax Officer and to cross-examine the witness examined by the Income Tax Officer. The Appellate Assistant Commissioner of Income Tax, as per order, dated April 1, 1968 accepted the appeals and set aside the assessment orders relating to the three years and directed that the Income Tax Officer should make the assessment afresh after affording adequate opportunity to Shri Patnaik to cross-examine the witness who had made statements to the Income Tax Officer. It was observed :—

“In the above analysis of the case, it would be absolutely clear that the minimum requirement of the natural justice were not complied with having regard to the very important issues raised in the assessment, the vital questions of law and fact involved and the far reaching consequences of the conclusions arrived at by the I. T. O. In order to establish the proposition that Kalinga Foundation Trust was not only a bogus one but was a benamidar of the appellant, the principles of justice demand that the assessee should have been given adequate and ample opportunity to meet the case against him. The specific points of finding of the enquiries should have been disclosed the names and addresses of the persons who denied having collected funds for the Trust in view of evidence maintained by the Trust (Sic). It was essential that their names should have been disclosed to the assessee so as to cross-examine them.”

It would follow from the above that the assessment orders, on which the State Government has relied in order to show the income of Shri Patnaik, no longer hold the field because of their having been set aside in appeal. There is no other material before the Commission to show as to what was the income of Shri Patnaik during the above-mentioned three years. I would, therefore, hold that on the material brought on the record of the Commission, it is not possible for the

Commission to give a finding as to what, if any, increase took place in the income of Shri Patnaik after his becoming the Chief Minister of Orissa.

The State Government has also alleged that Kalinga Foundation Trust was not a genuine Trust and that an amount of more than Rs. 1 crore held by that Trust in fact belonged to Shri Patnaik. Reliance in this context has been placed by the State Government upon the observations of the Income Tax Officer while making income-tax assessments for the years 1962-63 to 1964-65. As stated above, the aforesaid order has been set aside in appeal. The findings and the observations of the Income Tax Officer, in the circumstances, cannot be of much avail to the State Government. Apart from the findings of the Income Tax Officer, there is no other cogent material on the basis of which the Commission can hold that the money lying to the credit of Kalinga Foundation Trust in fact belonged to Shri Patnaik. The State Government has also not been able to adduce any satisfactory evidence to show as to what extent, if any, there was increase in the assets of the Trust after Shri Patnaik became Chief Minister. The copies of the printed accounts of the Trust for the years ending December 31, 1960, December 31, 1961, December 31, 1962, December 31, 1963 and December 31, 1964 filed by Shri Patnaik, according to the case of the State Government, are not reliable. It may also be mentioned that this Commission is not concerned with the question as to whether there has been any evasion in the payment of income tax by Shri Patnaik.

Reference on behalf of the State Government has also been made to a newspaper report, according to which Shri Patnaik stated in a meeting at Jharsuguda on April 15, 1963 that he was the owner of Rs. 10 crores. Shri Patnaik in the course of his affidavit has denied having made such a speech. A question about that speech was also put in the Lok Sabha. Mr. T. T. Krishnamachari, Finance Minister, then stated in reply that enquiries made by the Government showed that newspaper reports regarding Shri Patnaik's claim to have amassed Rs. 10 crores were not correct and that the claim of Shri Patnaik appeared to be that he controlled concerns with a capital of about Rs. 10 crores. The State Government in the circumstances cannot derive much assistance from the newspaper report regarding the alleged statement of Shri Patnaik.

The allegation of the State Government that Shri Patnaik went abroad to enter into contracts on behalf of the State

Government has been categorically denied by Shri Patnaik in his affidavit. No cogent evidence has been adduced by the State Government in support of the above allegation.

Coming to the case of Shri Mitra, I find that the Orissa Agents was started as the proprietary concern of Shrimati Easwaramma Mitra in 1959. It is the common case of both the parties that the income of Shrimati Easwaramma Mitra as the proprietor of Orissa Agents was assessed by the Income Tax Officer for the different years as under :—

"Assessment year	Income assessed
	Rs. P.
1960-61	.. 35,336.00
1961-62	.. 69,143.00
1962-63	.. 1,02,027.00
1963-64	.. 6,98,524.00
1964-65	.. 20,875.99 "

It would follow from the above that the income of Shrimati Mitra, which amounted to Rs. 69,143 during the assesment year 1961-62 (accounting year 1960-61) rose to Rs. 1,02,027 in the assessment year 1962-63 and jumped to Rs. 6,98,524 during the assessment year 1963-64. It may be mentioned that the order of Income Tax Officer for assessment year 1963-64 shows that an amount of Rs. 3,49,679 which was initially shown as a part of business expenditure by the assessee, was during the course of assessment proceedings accepted by her as part of her business income liable to tax. Shrimati Mitra accordingly filed a revised return. No appeal is also stated to have been filed against the order of Income Tax Officer. It can, therefore, be held that during the years Shri Mitra was Deputy Chief Minister the income of his wife as the proprietor of Orissa Agents rose steeply. The dealings of Orissa Agents, which resulted in the increase in income, were mostly with the State Government and are the subject matter of allegation No. 62 and would be discussed there.

As regards the amounts spent by Shrimati Easwaramma Mitra on the acquisition of land and construction of building after June 23, 1961 the learned counsel for the State Government and Shri Mitra are agreed that the material on record shows that an amount of about Rs. 95,000 was spent on

that. This fact is also clear from the affidavit filed on behalf of the State Government as well as the annexure to the affidavit of Shri Sunil Kumar Sen.

Shri Mitra has filed judgments in two suits instituted by him. One of the suits was against Prajatantra Prachar Samiti and three others in respect of a news item published in the Prajatantra. The other suit was against Prajatantra Prachar Samiti and three others in respect of a news item published in Eastern Times. The plaintiff claimed that the news items in question, which related *inter alia* to the dealings of Orissa Agents, were calculated to defame him. He, accordingly, claimed Rs. 20,000 as damages. The suits were resisted by the defendants. The trial Court held that the publications in question were defamatory of the plaintiff. It was further held that the burden of proof rested upon the defendants to prove that the statements contained in the news items were true. The defendants were found to have adduced no evidence regarding the truth of the imputation in the publications. In view of that, the Court held that the impugned publications were not true. Decree for recovery of Rs. 200 was awarded in favour of the plaintiff against defendants 2 to 4 in each of the suits. Appeals against those decrees are now pending in the High Court. As the defendants led no evidence in those suits and as the judgment and decrees in those suits are the subject matter of appeals, no material help, in my opinion, can be derived by Shri Mitra from the aforesaid decisions of the trial Court.

The material on record also shows that the house constructed by Shrimati Easwaramma Mitra at Cuttack was leased to Bird & Co., for ten years, and an advance rent of Rs. 1,20,000 was received on that account. The house was let out with effect from November 1, 1966 long after Shri Mitra had ceased to be a Minister. As such, no inference on that score can be drawn against Shri Mitra.

The letter dated January 15, 1965 of Shri Biswanath Das, the then Governor of Uttar Pradesh, is not shown to have any bearing on the matter which is the subject of this allegation. What Shri Das said in that letter was that Shri Mitra could create confidence in the people and that Orissa Agents did not enjoy monopoly. There was also reference to some other matters which are not related to this allegation. As such, Shri Mitra cannot derive much help from that letter for the purpose of this allegation.

My findings in respect of the different matters arising in this allegation, are as under :—

1. The allegation that Shri Routray and his wife were not in a position to spend money on the construction of two houses at Cuttack and Bhubaneswar from legitimate sources of income has not been substantiated.
2. There is no cogent material before the Commission for giving a finding as to what, if any, was the increase in the income of Shri Patnaik after he became Chief Minister of Orissa.
3. The wealth of Shri Patnaik, as determined by the Wealth Tax Officer increased from Rs. 21,72,894 in the assessment year 1961-62 to Rs. 23,79,945 in the assessment year 1962-63 and to Rs. 26,38,207 in the assessment year 1963-64. This increase was mainly due to appreciation in the value of the shares held by Shri Patnaik.

The assessed income of Shrimati Easwaramma Mitra as proprietor of Orissa Agents, which was Rs. 69,143 during the assessment year 1961-62 (accounting year 1960-61) before Shri Mitra became Deputy Chief Minister, rose to Rs. 1,02,027 in the assessment year 1962-63 and to Rs. 6,98,524 in the assessment year 1963-64. The dealings, which led to the increase in the income of Orissa Agents, were mostly with the State Government and are the subject matter of allegation No. 62.

5. The total amount spent by Shrimati Easwaramma Mitra on the acquisition of land and construction of building after Shri Mitra became Deputy Chief Minister was about Rs. 95,000.

CHAPTER 47

ALLEGATION No. 47

Re:

Steel Rolling & Fabrication Private Ltd.

Allegation No. 47 relates to the alleged impropriety in advancing Government money to Steel Rolling & Fabrication Private Ltd., Bhubaneswar (hereinafter referred to as SRF Company). The respondents named in the allegation are Shri Patnaik, Shri Mitra and Shri Routray.

According to the case of the State Government, the Chief Engineer, Roads & Building, used previously to procure his requirements of iron and steel materials from producers on the basis of quota certificate obtained from the State Government for supply of material to the Government. This procedure of obtaining material direct from the producers, who were at Calcutta, created difficulties like delay and loss during transit. Utkal Distributors and SRF Company were consequently enlisted during the period of control as registered stockists of controlled commodities like iron and steel by the Supply Department. After the period of the control, the Chief Engineer, Roads & Buildings, as also other departments continued to place their orders for supply of iron and steel with SRF Company. The execution of these orders was, however, not satisfactory. On January 22, 1963 the Director of SRF Company made a representation to the State Minister of Works and Transport for payment of advance of 20 per cent of the value of the materials for which orders had been issued by the Chief Engineer, Roads & Buildings, and were still pending so that the Company could make the supplies expeditiously. It was suggested that the amount advanced might be adjusted from 20 per cent of these bills for materials supplied thereafter. A copy of the representation was sent to the Chief Engineer for his views and report regarding the financial position of the Company and its reliability and capability for prompt supply of orders. A similar reference was made to the Supply Department and the Department was asked to communicate whether the Company was the controlled stockist in Orissa of iron and steel materials.

In reply, the Supply Department intimated that the Company had been appointed controlled stockist of iron and steel. As regards efficiency and reliability of the Company, it was reported that several orders were placed by District Magistrates of various districts with the Company and they had not so far been complied with.

A further representation was made in February, 1963 by the Director of the Company to the Minister of Finance, Shri Patnaik, stating that the Company was finding its financial capacity strained to the utmost in maintaining supplies due to mounting demands and the revised method of steel procurement. Request was made for sanction of advance of 20 per cent of the value of the materials against the pending orders issued by the Chief Engineer, Roads & Buildings. The representation was endorsed by Shri Patnaik to the Finance Department for examination. In the meantime, the Chief Engineer, Roads & Buildings, reported in March 1963, that out of orders for supply of 2,300 tons of steel placed with the Company from 1958 onwards, the Company had supplied only 417 tons and as such its performance was very unsatisfactory. The Company was also said to have failed to produce Sale Tax and Income-tax Clearance Certificates. The Chief Engineer accordingly gave report against the giving of 20 per cent advance to the Company. The Finance Department also objected to the proposal saying that it was not a usual practice to grant advance on orders and only in exceptional case, like that of Utkal Distributors, the advance had been allowed. The matter was then put up before the Minister, Works, Shri Mardaraj and he noted that the Company had not complied with the earlier orders. Reference was also made to the fact that there was unfortunate precedent for giving advance on orders for supply of stores. The matter was then put up before the Chief Minister, Shri Patnaik, who passed the following order on March 30, 1963:—

“We may give him a chance and see his performance for one year. Advance as in case of others may be considered.”

The decision of the Government for giving advance of 20 per cent up to a limit of 2.50 lakhs was communicated to the Chief Engineer on April 22, 1963, and it was stated that the arrangement would remain operative for one

year. The advance payment was to be up to 20 per cent of the value of the goods covered by the pending orders on the following conditions:—

- “(1) The company should execute an agreement and furnish personal bonds with sureties in proper form before advance payment was made.
- (2) Total amount of advance should on no account exceed Rs. 2.5 lakhs or the amount of security offered by the Company, whichever was less. The Executive Engineer, Bhubaneswar Division, would watch the position from time to time.
- (3) The Managing Director and the Chairman would be jointly and severally liable for payment of the advance to the extent of their personal properties.”

In spite of the above facility, it is stated that the Company made no supplies during the months of June and July, 1963. An advance of Rs. 2,13,372.60 Paise was paid on behalf of the Chief Engineer. By the end of the financial year, i. e., March 31, 1964 out of the total advance of Rs. 2,43,969.60 Paise, the Company supplied materials worth only Rs. 31,533.33 Paise, thus leaving an outstanding balance of Rs. 2,12,436.27 Paise.

Despite its poor performance, it is stated, the SRF Company made another representation in May, 1964 to the Minister, Finance, for further advance so that the total advance would come to Rs. 5 lakhs, including the outstanding balance. The departmental officers objected to raising the limit of the advance and only recommended extension of time for repayment of the outstanding balance within a further period of three or four months. Shri Mitra agreed to the suggestion of the Department, as per order dated August 4, 1964.

On August 20, 1964 SRF Company made another representation to the Chief Minister explaining some difficulties and requested that the limit of the advance should be raised to 10 lakhs and the same should be interest-free. The matter was thereafter put up before the Chief Minister, Shri Mitra. The Secretary, Finance Department, discussed the matter with the Chief Minister and made a note on August 22, 1964 as under:—

“This has been discussed with the Chief Minister. He may be allowed interest-free advance of six lakhs, i.e., 50 per cent of the order placed with him.”

Sanction orders were accordingly communicated granting interest-free advance of Rs. 6 lakhs to the Company. In spite of this huge advance, it is stated, the recovery from the Company by way of supply was of a small amount leaving a huge balance of Rs. 7,94,000 outstanding against the Company. Protracted correspondence then took place with the Company for effecting recovery of the huge outstanding advance but to no effect. In a meeting held in the office of the Secretary, Finance Department on May 10, 1966 it was decided that the adjustment of advance should be made through negotiations, failing which civil suit be filed. The Works Department after consultations with the Finance Department on July 22, 1966 informed the Chief Engineer to stop giving further advance to SRF Company. It was indicated that the recovery of the outstanding advance be made at the rate of 20 per cent against each running bill and that in case the extent of recovery fell short of Rs. 40,000 per month, the Company should make good the deficiency by cash payment so that the recovery was not less than Rs. 40,000. The performance of the Company, however, continued to be poor and the outstanding advance due from the Company in February, 1967 stood at the figure of Rs. 7.94 lakhs.

It is also alleged that the Managing Director of SRF Company has been a business associate of Shri Patnaik, Shri Mitra and Shri Routray.

The State Government concludes from the above that huge advance was given to an unreliable company with a corrupt motive.

In support of the above allegation, the State Government has filed the affidavits of Shri Muralidhar Satpathy, Assistant to the Chief Engineer, and Shri Prafulla Kumar Das, Assistant Financial Adviser-cum-Under-Secretary in the Works and Transport Department.

Shri Patnaik in the course of his affidavit has denied that the Managing Director of SRF Company has been his business associate. The other allegations made by the State Government, too, have been controverted and, it is stated, that there was nothing improper in Shri Patnaik making the order dated March 30, 1963.

Shri Mitra in his affidavit has denied the correctness of the allegations made by the State Government. According to Shri Mitra he was not business associate of anybody at any

time. It is further stated by Shri Mitra that in July, 1964 SRF Company wanted an extension of time for repayment of the advance as well as enhancement of the advance. The Financial Adviser proposed a short extension of time but not enhancement of the advance and Shri Mitra accepted the proposal. Subsequently, the matter was discussed at the secretariat level in the presence of Secretary, Finance, Secretary, Works, Chief Engineer, Roads & Buildings, Joint Secretary, Finance and Financial Adviser and a proposal was sent to the Secretary, Finance, for advance of Rs. 10 lakhs for his concurrence. The Secretary, Finance, discussed the matter with Shri Mitra and he approved payment of Rs. 6 lakhs as advance against the recommended amount of Rs. 10 lakhs.

Shri Routray in the course of his affidavit has likewise denied the correctness of the allegations made against him. According to him, he was not a business associate of the Managing Partner of SRF Company. As regards the advance payments made to the Company, Shri Routray states the Supply Department of which he was in charge had no part to play and he does not know the circumstances under which the advance was granted.

Supplementary affidavits have been filed by Shri Indramani Kanungo, Assistant Financial Adviser-cum-Under-Secretary, Works and Transport Department, on behalf of the State Government as well as by Shri Mitra.

I may state at the outset in respect of this allegation that nothing has been shown to me at the time of arguments as may indicate that the Managing Director of SRF Company was a business associate of Shri Patnaik, Shri Mitra or Shri Routray. The first order, which has been assailed on behalf of the State Government, is the order dated March 30, 1963, of Shri Patnaik. In this connection I find that in his representation dated February 27, 1963 the Director of SRF Company stated that in the face of mounting demands and the Steel Controller's revised methods of steel procurement, the financial capacity of the Company was strained to the utmost in meeting supplies. It was further mentioned that the Company had received orders from the Chief Engineer, Roads and Buildings, for supply of 1,883 tons of material of the total value of Rs. 13,18,100. Prayer was made for an advance of Rs. 2,50,000 against the pending orders, to be recovered from the bills for materials supplied thereafter.

further advance of Rs. 10 lakhs from the State Government may not be sanctioned in favour of this firm under the usual terms and conditions.

Orders of Chief Minister may please be taken.

S. M. Patnaik

21st August 1964"

The Secretary of the Finance Department recorded a note on August 22, 1964 as under :—

"This has been discussed with C. M. He may be allowed interest-free advance of Rs. 6 lakhs, i.e., 50 per cent of the order placed with him."

It is difficult, in my opinion, to hold Shri Mitra guilty of an impropriety because of the order made by him on August 22, 1964. It would appear from the above that a number of officers considered the question of payment of advance to SRF Company in a meeting held on August 20, 1964 and recommended that the advance might be sanctioned. Shri Mitra, while accepting the recommendation for payment of advance, reduced the amount to be advanced from Rs. 10 lakhs to Rs. 6 lakhs. The material on record also shows that the Managing Director of SRF Company gave an undertaking at that time that he would purchase State Loan Bonds of the value of Rs. 25 lakhs. Those bonds were thereafter purchased by the Managing Director. The above facts, in my opinion, do not indicate any animus on the part of Shri Mitra to show undue favour to SRF Company.

It may also be mentioned that the propriety of the orders of Shri Patnaik and Shri Mitra has to be judged by the context in which they were made and not by what transpired subsequently.

So far as Shri Routray is concerned, no impropriety has been shown to have been committed by him.

I would, therefore, hold that the charge of impropriety as contained in this allegation, has not been proved.

Shri Mardaraj, Minister of Works and Transport, was then asked to give his views and he recorded the following note:—

“ C. M. had asked for a report on the application of the Director, Steel Rolling and Fabrication Private Ltd. The reports from Chief Engineer, R. & B. and the Financial Adviser may kindly be seen. It seems this agency had not fulfilled certain previous orders and created a bad atmosphere. As far as giving advances on orders precedents have already been created.

Sd./

30-3-63”

Shri Patnaik thereafter passed the impugned order as under:—

“ We may give him a chance and see his performance for one year. Advance as in case of others may be considered.”

The above order was made by Shri Patnaik in the exercise of his judgement, and, in my opinion, no inference of impropriety can be drawn against him on that score. The SRF Company had represented its difficulties in making supplies of steel requirements in view of the revised methods of steel procurement and it also came to the notice of Shri Patnaik that there has been a precedent of payment of advance in the case of the other steel stockists. Shri Patnaik, accordingly, made the impugned order.

The next order, which has been assailed, is dated August 22, 1964 made by Shri Mitra. In respect of that order, I find that on August 20, 1964 the Managing Director of the SRF Company made a representation for payment of an advance of Rs. 10 lakhs to meet the heavy commitments for supply of iron and steel material to the State Government. On receipt of that representation, the matter was discussed in a meeting of the Secretary of Finance Department, Secretary of the Works Department, Chief Engineer, Roads and Buildings, the Joint Secretary of Finance Department and the Financial Adviser of the Works Department. The Managing Director of SRF Company also appears to have been present in that meeting. The result of the discussion in the meeting is clear from the note of Shri S. M. Patnaik, Secretary, Works and Transport Department. The concluding part of that note reads as under:—

“ The Managing Director has explained his point at length and it was felt in the meeting that he may be given a further chance. In view of the above, it may be considered whether

further advance of Rs. 10 lakhs from the State Government may not be sanctioned in favour of this firm under the usual terms and conditions.

Orders of Chief Minister may please be taken.

S. M. Patnaik

21st August 1964"

The Secretary of the Finance Department recorded a note on August 22, 1964 as under :—

"This has been discussed with C. M. He may be allowed interest-free advance of Rs. 6 lakhs, i.e., 50 per cent of the order placed with him."

It is difficult, in my opinion, to hold Shri Mitra guilty of an impropriety because of the order made by him on August 22, 1964. It would appear from the above that a number of officers considered the question of payment of advance to SRF Company in a meeting held on August 20, 1964 and recommended that the advance might be sanctioned. Shri Mitra, while accepting the recommendation for payment of advance, reduced the amount to be advanced from Rs. 10 lakhs to Rs. 6 lakhs. The material on record also shows that the Managing Director of SRF Company gave an undertaking at that time that he would purchase State Loan Bonds of the value of Rs. 25 lakhs. Those bonds were thereafter purchased by the Managing Director. The above facts, in my opinion, do not indicate any animus on the part of Shri Mitra to show undue favour to SRF Company.

It may also be mentioned that the propriety of the orders of Shri Patnaik and Shri Mitra has to be judged by the context in which they were made and not by what transpired subsequently.

So far as Shri Routray is concerned, no impropriety has been shown to have been committed by him.

I would, therefore, hold that the charge of impropriety as contained in this allegation, has not been proved.

CHAPTER 48

ALLEGATION No. 48

Re;

Orders placed with Allied Dealers, Cuttack

Allegation No. 48 relates to alleged impropriety in purchase orders placed with Allied Dealers, Cuttack. The respondents named in the allegation are Shri Patnaik, Shri Mitra and Shri Mardaraj.

According to the case set up by the State Government, Allied Dealers is a partnership firm, which was registered on July 7, 1959 and Shri Keshab Chandra Panda and Shri Manmohan Lal are its partners. Both these persons were also partners in firm Kalinga Engineering Works. The Foundry of Kalinga Engineering Works was set up on the land of Shrimati Easwaramma Mitra, wife of Shri Biren Mitra, and she invested Rs. 60,000 in Kalinga Engineering Works. Allied Dealers were sub-distributors of Orissa Agents in respect of the agency of manufactured products of Kalinga Tubes and Kalinga Industries. Shrimati Mitra was shown as the proprietor of Orissa Agents and Shri Patnaik and his family members had substantial financial interest in Kalinga Tubes and Kalinga Industries.

Quotations, it is stated, were called by the Joint Director of Agriculture for G. I. Pipes on December 7, 1961 from ten concerns including Allied Dealers. Orissa Agents submitted quotations along with Allied Dealers, and the quotation of Orissa Agents being the lowest was accepted. The next lowest was of Allied Dealers. Shri Dola Govinda Mohanty, an employee of Orissa Agents, subsequently intimated on December 26, 1961 that as their principals Kalinga Tubes were heavily committed, the Orissa Agents could not make the supply due to lack of stocks. The tender of Allied Dealers, which was the next lowest tender, was accepted as per order dated January 12, 1962 and the order was placed with the Allied Dealers. Although the order placed with the Allied Dealers was for B Class Pipes, it is stated the aforesaid firm supplied A Class Pipes which were inferior in quality and received money for higher class pipes. The Government consequently suffered heavy loss but no action was taken against the partners of the

firm due to the interest of Shri Mitra and Shri Patnaik. When the fraud came to light both the partners of Allied Dealers were prosecuted and convicted by the trial Court. Their appeals are now stated to be pending.

The State Government further alleged that in the case of a number of orders placed by the Chief Engineer, Public Health, the Kalinga Tubes informed the Chief Engineer that their sub-distributors Orissa Agents were making arrangements to supply the pipes and Orissa Agents in turn informed that they were directing their sub-distributors, Allied Dealers, to supply the pipes. The Allied Distributors then expressed their willingness to supply the material as the sub-distributors of Orissa Agents.

The State Government concludes from the above that a fraudulent device was adopted to inflate the rate of the material and this resulted in wastage of money, Shri Patnaik, Shri Mitra and Shri Mardaraj are stated to have committed the above impropriety.

In support of the above allegation, the State Government has filed the affidavits of Shri Shankar Samanta Sinhar, D.S.P. (Vigilance) and Shri B. K. Panigrahi, A.I.-G. of Police (Vigilance).

Shri Patnaik in the course of his affidavit has denied the correctness of the allegations made against him. According to Shri Patnaik, Orissa Agents was appointed in 1959 as one of the distributors and not the sole distributors of Kalinga Tubes, Limited. The concern had no exclusive rights for any territory. Orissa Agents was also the agent of Kalinga Industries for Tubular Structures but had not exclusive right.

Shri Mitra in the course of his affidavit has refuted the charge levelled against him. According to Shri Mitra he showed no favour to Allied Dealers at any time. He was not even aware of the transaction, referred to in the allegation. As Vigilance Minister, a file was sent to Shri Mitra disclosing *prima facie* case in respect of an offence under section 420, Indian Penal Code, and under section 420 read with section 511, Indian Penal Code, against the partners of Allied Dealers. On June 16, 1962, Shri Mitra approved the action proposed by the Department for starting criminal prosecution against the partners of Allied Dealers. As a result of that, criminal cases were instituted against the partners of Allied Dealers and their houses were searched. The partners were also convicted.

Shri Mardaraj, too, has denied the correctness of the allegations against him. According to Shri Mardaraj, the alleged purchases were made by different officers of the department and the Minister's sanction was neither necessary nor obtained. He had nothing to do with the transactions.

Affidavit of Shri Manmohan Lal, one of the partners of Allied Dealers, has also been filed in respect of this allegation and he has stated that the said firm was never the sub-distributor of Orissa Agents. It is further stated that Shri Mitra, Shrimati Mitra and Shri Patnaik had no concern with that firm. It is also stated that under orders of Shri Mitra, three criminal cases were started against the partners of the aforesaid firm and the firm was black-listed by the Government.

It has not been shown in respect of this allegation that any of the three named respondents passed any order or did anything improper. Reference has, however, been made on behalf of the State Government to the order dated January 12, 1962 which was placed by the Joint Director of Agriculture with Allied Dealers for supply of 5,780 Rft. B. Class G. I. Pipes at the rate of Rs. 11.49 per Rft. In this connection I find that the above order was placed with Allied Dealers because Orissa Agents had expressed inability to supply the material. The Assistant Engineer (Mechanical) made verification about the stock position of different firms and reported that Orissa Agents had no stock, and Allied Dealers had shown him challans of two wagons of B Class G. I. Pipes. It is also admitted on behalf of the State Government that when tenders for those pipes were invited, the quotation of Allied Dealers was found to be the lowest but for that of the Orissa Agent. In the circumstances, I find no impropriety in the placing of order dated January 12, 1962 with Allied Dealers. It subsequently transpired that the Allied Dealers supplied A Class Pipes instead of B Class Pipes. The two partners of the Allied Dealers were thereafter prosecuted and were convicted on June 16, 1967 by Subdivisional Officer, Bhubaneswar under section 420 read with section 34, and section 120-B, Indian Penal Code. Appeals in this case are now pending in the Appellate Court. The propriety of the order dated January 12, 1962 can obviously be not affected by the subsequent conduct of the partners of the Allied Dealers. It is noteworthy that on June 16, 1962 Shri Mitra approved the action proposed by the Department for starting criminal prosecution against the partners of Allied Dealers.

Another order, which has been referred to on behalf of the State Government, relates to supply of G. I. Pipes in response to tender dated January 17, 1962 of Chief Engineer, Public Health. It is not disputed that order in respect of these pipes was placed with Allied Dealers at the same rates as had been quoted by Orissa Agents. It is further not disputed that the rates of Orissa Agents were lowest. The material on the record also shows that the order was placed with Allied Dealers on receipt of a letter dated March 24, 1962 from Orissa Agents that the Orissa Agents were directing their local sub-distributors, Allied Dealers, to supply the material on their behalf on the same terms and conditions. As the order for supply of pipes was placed with Allied Dealers on the rates which had been found to be the lowest, no impropriety, in my opinion, can be said to be involved in the order.

Apart from the above-mentioned two orders, the propriety of no other order has been assailed at the time of arguments. I would, therefore, hold that the charge contained in this allegation has not been substantiated against the respondents.

CHAPTER 49

ALLEGATION No. 49

Re:

Ad hoc quota of 20 Ambassador Cars

Allegation No. 49 relates to alleged impropriety in respect of *ad hoc* quota of 20 Ambassador Cars. The respondents named in the allegation are Shri Patnaik, Shri Mitra and Shri Mardaraj.

According to the case set up by the State Government, All-India Congress Committee Session was held at Bhubaneswar in the first half of January 1964. On November 30, 1963 the then Chief Minister, Shri Mitra, wrote a letter to the Union Minister for Steel requesting for allotment of an *ad hoc* quota of 20 cars for the State of Orissa. On December 27, 1963 the Hindusthan Motors intimated that 20 Ambassador Cars were allocated on *ad hoc* basis in favour of the Government of Orissa. It was mentioned that delivery of 10 cars was being made to Bharat Motors, Cuttack and the remaining 10 to Kalinga Automobiles, Bhubaneswar. The State Government issued instructions to the Hindusthan Motors on December 29, 1963 to deliver all the 20 cars to Bhubaneswar Dealer only. All the cars were thereafter brought by Kalinga Automobiles to Bhubaneswar by January 6, 1964 mostly by road and some by train. On January 3, 1964 six vehicles out of the *ad hoc* quota were allotted to the State Guest-House with the approval of Shri Patnaik, the then Chairman of Planning Board, as per orders of Shri Mardaraj, Transport Minister. Earlier on August 22, 1963 the State Guest-House had mentioned its requirement to be only one car. The sudden increase in the requirements of the State Guest-House at Bhubaneswar, it is stated, was with a view to use the cars for the purpose of the All-India Congress Committee Session at Bhubaneswar. The allotment regarding the other cars received in the *ad hoc* quota was not made till January 31, 1964 when Government orders allotting 12 cars were issued under orders of Shri Mitra. Some of the allottees declined to take the cars and others desired to take delivery from other dealers. Allotment order was effective only in respect of 16 cars including the six allotted to the State Guest-House. The Kalinga Automobiles from time to time went on intimating to

the State Government regarding the damage to the cars received in that quota on account of accidents and other mechanical defects. At the request of Kalinga Automobiles, the State Government wrote to the Hindusthan Motors regarding the above damage to the cars. On March 27, 1964 Kalinga Automobiles reported to the Transport Controller that 4 of the cars received from the *ad hoc* quota had been seriously damaged in transit and sought permission to authorise Kalinga Automobiles to give possession of the damaged cars to the Caledonian Insurance Company with which they were insured. No report, however, about the cars being involved in accidents was made to the police. One of those cars was subsequently registered in the name of Shri Jacob John, Chief Engineer, Kalinga Tubes, and the second in the name of Shri N. K. Mohapatra, Secretary, Kalinga Tubes. A third car is stated to have been purchased by Shri Basanta Kumar Paul through Shri Kamini Kant Patnaik, who is a shareholder of Kalinga Industries and the Income-tax Adviser of Shri Patnaik and Shri Mitra. The above-mentioned three cars were sold without any order of the Transport Controller. The partners of Kalinga Automobiles had various dealings with the Government of Orissa and as such had a good cause to please Shri Patnaik and Shri Mitra. Apart from the 6 cars supplied to the State Guest-House, the rest of the cars were disposed of by Kalinga Automobiles after January, 1964 and it is stated "the sold cars were probably utilized in the Congress Session."

The State Government concludes from the above that Shri Mardaraj as Minister, Transport, Shri Patnaik as Chairman, Planning Board and Shri Mitra as Chief Minister, abused their position to favour Kalinga Automobiles for utilizing the cars for the Congress Session at Bhubaneswar.

In support of the above allegation, the State Government has filed the affidavit of Inspector, Gouranga Patra (Vigilance).

Shri Patnaik in the course of his affidavit has denied that he and his family members were the major shareholders in Kalinga Tubes, Ltd. and Kalinga Industries, Ltd. He had also denied that the cars in question were used by the Reception Committee of the Congress. According to Shri Patnaik he had no hand in or knowledge of the transfer of the cars in question to the officers of Kalinga Tubes, Ltd. At the relevant time he was not holding a single share in Kalinga Tubes, Ltd. and the shareholding of his wife was 10 per cent in the Company.

Shri Mitra in the course of his affidavit has denied the correctness of the allegation made against him. According to Shri Mitra, as the State quota of cars was very meagre and there were a large number of applications including a judge of the High Court waiting to get their vehicles. Shri Mitra made a personal request to the Union Minister of Heavy Industries, Shri C. Subramaniam, to increase the State quota of cars. Shri Mitra has denied having conspired with Kalinga Automobiles in respect of the allotment of the 20 cars received on *ad hoc* basis for the purpose of utilizing them at the session of the Indian National Congress.

Shri Mardaraj in the course of his affidavit has stated that the arrangement for the delivery of the 20 *ad hoc* quota cars was brought about under the instructions of Shri Mitra without the knowledge of Shri Mardaraj. The six cars were allotted to the State Guest-House under the orders of Shri Patnaik. Shri Mardaraj had no direct or indirect interest in the matter and did not connive at any impropriety. Shri Mardaraj has disclaimed any knowledge as to why and how some of the cars were passed on to third parties without the knowledge of the Transport Controller.

Shri Routray also has filed his affidavit in respect of this allegation and has stated that he did nothing significant in the matter.

Shri Basanta Kumar Paul too has filed his affidavit in respect of this allegation, and according to him he purchased a car in February/March 1964 from Kalinga Automobiles, Bhubaneswar. Shri Paul adds that he did not purchase the car from Shri Kamini Kant Patnaik nor was he introduced by Shri Kamini Kant Patnaik to any party for the purchase of the car. Shri Paul also asserts that he has never been a member of any political party.

An affidavit has also been filed by Shri Kamini Kant Patnaik in respect of the allegation and he states that no Ambassador Car was purchased by Shri B. K. Paul through him. Shri K. K. Patnaik adds that no car from the State quota in question was purchased by Kalinga Industries, Ltd.

Along with the affidavit of Shri Biju Patnaik, an affidavit of Shri Bijoy Kishore Das, Managing Partner of Kalinga Automobiles, has been filed. According to Shri B. K. Das, 6 cars, out of the *ad hoc* quota of 20 Ambassador Cars, were allotted to the State Guest-House under orders of the Government. Out of the remaining 14 cars, 4 were received by

Kalinga Automobiles in badly damaged condition. The vehicles had been insured with Caledonian Insurance Co. and the said Company as well as the State Government were informed of the damage to those cars. As the damaged cars after repair could not be sold as new ones, those cars were handed over to persons who were introduced through the Insurance Company against receipt of salvage value with repair charges. Shri B. K. Das adds that no vehicle was sold by Kalinga Automobiles through Shri K. K. Patnaik, Advocate.

In respect of the *ad hoc* quota of 20 cars, reference has been made on behalf of the State Government to the letter dated November 30, 1963, addressed by Shri Mitra to Shri Subramaniam, Union Minister of Steel, and the letter dated June 12, 1964 of Shri Swaran Singh, Union Minister. The letter from Shri Mitra to Shri Subramaniam reads as under :—

“Kindly recollect our discussions in Delhi regarding increase of the State quota of Fiat and Ambassador Cars. The allocation so far has been very limited and no wonder there are nearly 200 persons desiring Fiat Cars and over 100 persons desiring Ambassador Cars in the list of the Government quota. Even with this allotment we have to meet the requirements of the Governor and the Ministers. During the major portion of last year, the quota was curtailed to barely 2 per quarter in respect of Fiat Cars which have further complicated matters. I shall be grateful if you could order an *ad hoc* allocation of 10 Fiat and 10 Ambassador Cars for this State to meet the requirements of situation.”

Letter dated June 12, 1964 of Shri Swaran Singh to Shri Mitra reads as under :—

“Please refer to your D. O. No. 173-CM, dated the 9th May, 1964 to Shri C. Subramaniam, regarding allocation of Fiat cars to your State.

2. There is no increase in the level of production of Fiat cars; on the other hand, there are heavy demands for increased allotments of Fiat cars. During recent months many State Governments had requested for *ad hoc* allotments of Fiat cars, as well as for increases in their quarterly quotas of Fiat cars. But in view of the present acute supply position of Fiat cars, all such requests had to be refused. However, taking into consideration the urgency of the demand in some cases, *ad hoc* allocations of Ambassador cars were made in place of Fiat cars. In fact, 20 Ambassador cars were allocated to Orissa State on *ad hoc* basis at the time of the recent Congress Session at Bhubaneswar. You will, therefore, appreciate that under the current circumstances, it is not possible to agree to your present request.”

It is in my opinion difficult to hold Shri Mitra guilty of any impropriety because of his having addressed letter dated November 30, 1963 to Shri Subramaniam. All that Shri Mitra asked in that letter was for increase of the State quota of cars for Orissa and for an *ad hoc* quota of 20 cars. There was no reference in that letter to the Congress Session. The fact that the letter was addressed to Shri Subramaniam shortly before the Congress Session in Orissa would not affect the propriety of the letter. The material on record indicates that a large number of persons in Orissa were on the waiting list because of the small State quota of cars. In the circumstances, if Shri Mitra could use the Congress Session in Orissa as an occasion for pressing the demand for an additional allocation of cars for Orissa, he cannot be deemed to have done something improper or against the interest of the State.

As regards the allotment of six cars to the State Guest-House, I find that the Estate Officer as per letters dated August 21, 1963 and September 17, 1963 asked for the allotment of one Ambassador car for the Guest-House on priority basis. Subsequently, when 20 cars were allocated to Orissa on *ad hoc* basis, the Chief Secretary directed that six of those cars might be allotted to the State Guest-House for use of V. I. Ps. When this matter was brought to the notice of Shri Mardaraj on January 3, 1964 he stated that he had no objection but would like to consult the Chairman of the Planning Board. The papers were thereafter put up before Shri Patnaik and he expressed his concurrence with the proposal on January 3, 1964.

The allotment of six cars to the State Guest-House, in my opinion, was not vitiated by any impropriety. The Congress Party in those days was in power in almost all the States as well as the Centre. The Prime Minister and other Central Ministers as well as the State Chief Ministers and Ministers were expected to arrive in Bhubaneswar in connection with the Congress Session. Those persons were entitled to V. I. P. treatment not on account of their membership of the Congress party but because of their status as Central and State Ministers. The view then seems to have been taken that the number of cars at the disposal of the State Guest-House was not sufficient to meet the requirements of the situation. Six cars, out of the *ad hoc* allocation, were, accordingly, earmarked for the State Guest-House and became its permanent acquisition. It is difficult, in my view to spell out an inference of impropriety from the above decision of the authorities concerned.

It has been argued on behalf of the State Government that Kalinga Automobiles allowed the cars received by the firm as a result of the *ad hoc* quota to be used in the Congress Session before those cars were allotted to different persons. Reference in this connection is made to the statement of Shri Bijoy Kishore Das to the police on July 7th, 1964 in the course of an investigation of a case. It is also urged that as a result of the use of those cars in the Congress Session some of them were damaged. In this respect I find that there is no material to indicate that any of the named respondents asked the partners of Kalinga Automobiles to use the cars in the Congress Session. No liability on that score can consequently be fastened on any respondent named in this allegation.

As regards the actual allotment of the cars, I find that 14 cars were allotted by Shri Mardaraj on January 19, 1964 in accordance with the recommendation of the Secretary. There is nothing to show that any impropriety was committed in the allotment of those 14 cars. Subsequently when a number of persons to whom those cars were allotted declined to take those cars, an order for allotment of 12 cars was made in consultation with the Chief Minister Shri Mitra on January 30, 1964. There is nothing to show any favouritism or impropriety in the allotment of those 12 cars.

So far as the transfer of 4 damaged cars by Kalinga Automobiles is concerned, I find that there is nothing to show that any of the respondents did anything in the matter. They were in fact not in the picture and as such no inference can be drawn against them.

I would, therefore, hold that the charge of impropriety, as contained in this allegation, had not been proved.

CHAPTER 50

ALLEGATION No. 50

Balimela Projects

Allegation No. 50 relates to alleged impropriety in respect of contracts for Balimela Projects. The respondents named in the allegation are Shri Patnaik, Shri Mitra and Shri Mallik.

According to the case set up by the State Government, Shri Patnaik was Chief Minister when the work on Belimela Project started. The scheme of the Project involved purchase of materials and equipment worth about Rs. 8 crores. The equipment was needed for Balimela Power Plant and for Balimela Dam. In order to purchase that equipment the following contracts were entered into with Russian Concerns whose names have also been given :—

1. Contract No. 51/34017 dated 25-4-1964 for Rs. 4,45,00,000 with Machino Export.
2. Contract No. AE-57/2 dated 16-11-1962 for Rs. 1,43,65,544 with Avto Export.
3. Contract No. 51-62/3 dated 16-11-1962 for Rs. 10,97,250 with Studio Import.
4. Contract No. 64/62-D66 dated 16-11-1962 for Rs. 9,00,108 with Statko Import.
5. Contract No. ME-51/1 dated 16-11-1962 for Rs. 1,44,92,265 with Machino Export.

Total	<u>Rs. 7,53,55,167</u>
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Contract No. 1 was for purchase of equipments and materials in respect of Balimela Hydro-electric Power Station, and Nos. 2 to 5 for purchase of equipments and materials for Balimela Dam. No tenders were invited in respect of these contracts.

As regards contract No. 1, it is stated, Shri Patnaik had discussion with the First Secretary and the Deputy Trade Representative of the USSR on October 6, 1962 at Delhi and in pursuance of that the First Secretary wrote a letter to Shri Patnaik. By that letter the First Secretary asked

Shri Patnaik to furnish some technical data. On October 17, 1962 the Chief Construction Engineer, Balimela Project, supplied the particulars. A questionnaire was thereafter received in December 1962 from the Trade Representative of USSR. In pursuance of some discussion with Shri Patnaik on March 6, 1963 Machino Export wrote letter to Shri Patnaik making an offer for supply of Hydro-electric equipments for Rs. 37,67,207. On March 30, 1963 Shri Patnaik, who was also in charge of Irrigation & Power, endorsed the file to the then Governor stating "Governor may kindly look into this.....As Governor is going to Delhi, he may settle this point." Discussions were thereafter held by Engineer-in-Chief, Electrical Project, Orissa with Member, Hydro-Electric, Central Water and Power Commission. A note was then prepared stating that there appeared to be a scope for reduction in the price rate by Rs. 1.40 crores. On February 21, 1964 the Secretary, Irrigation & Power Department, put up a note stating that it would be necessary to have negotiations regarding the price with the Russians and this might be done by the Contract Committee. The note was endorsed to Deputy Minister, Shri Mallik, Chief Minister, Shri Mitra, and Chairman, Planning Board, Shri Patnaik, and they all approved the proposal but actually no negotiations were undertaken by the Contract Committee. The Central Water and Power Commission negotiated the matter with the representative of Machino Export. The Engineer-in-Chief, Electrical Project, was associated with the negotiation, which took place in Delhi, on behalf of the Government of Orissa. It was then suggested that Machino Export should agree to the price of Rs. 43 Millions in place of Rs. 44.5 Millions. The representative of the Machino Export, however, stated that the lowest price to which they could agree was Rs. 44.5 Millions. Shri Patnaik then sent a telegram to the Russian Ambassador for his intervention to agree to the price quoted by the Central Water and Power Commission. The Russian Ambassador thereupon replied that the proposal of Machino Export was acceptable to both sides. The Engineer-in-Chief, Electrical Projects, however, denied that the price of Rs. 44.5 Millions had been mutually agreed. On April 1, 1964 the Engineer-in-Chief, Electrical Projects, submitted a note to the Deputy Minister, Irrigation & Power, Shri Mallik, stating that as the price of Rs. 44.5 Millions was considered reasonable a Letter of Intent might issue to the Machino Export. The file was referred to Shri Patnaik, Chairman of the Planning Board, and he passed orders for the issue of letter of credit. On November 25, 1964 the contract was entered into for a

sum of 9,308,386 USA dollars (21 US dollars=100 Indian rupees). The above purchase, it is stated, was made through the agency of Khemka & Co. (Agencies) Private Ltd., (hereinafter referred to as the Khemka Company) resulting in extra payment of commission to the aforesaid agents of Russian Concern. Some of the correspondence was also carries on by Khemka Company which showed that the aforesaid Company acted as the agent of Machino Export. It is stated that a Commission of 5 to 15% on the total value of the purchases was received by that Company.

As regards the contracts at Nos. 2 to 5 the negotiations are stated to have started with a letter dated October 12, 1962 from the First Secretary of the USSR Embassy addressed to Shri Patnaik as Chief Minister. The same day i. e., on October 12, 1962 Secretary, Works Department, wrote a letter to the Secretary, Ministry of Irrigation and Power, saying that enquiries made from various parties indicated that the quickest deliveries could be given by the USSR Government authorities, and their rates were 20% cheaper. Shri Patnaik wrote a letter on that day to Shri Manubhai Shah, Minister for International Trade in the Ministry of Commerce, Trade and Industry, that the Orissa Government was proposing to procure the equipment from the USSR as the same was substantially cheaper than from other sources and the delivery time was good. On October 16, 1962 it was pointed out by Member of Central Water and Power Commission the the Russian Plant and Machinery had not been included in the list of standardized machinery and plant prepared by the Ministry of Irrigation and Power. In that connection the Secretary, Works Department, Orissa wrote that no adverse report had been received about the working of the Russian Machinery though major items of the machinery had been used in the country for years. It was also pointed out that the delivery schedule of the Russians was very attractive and their prices were favourable. By a letter, dated November 7, 1962 the Government of India, Ministry of Irrigation and Power, sanctioned the purchase of equipment and machinery to the extent of Rs. 3 crores subject to the conditions that the prices to be paid for the machinery to be purchased from USSR were competitive, and the approval of the Standing Sub-Committee of Experts on standardization was taken. The Government of India was then informed that the prices of the Russian equipment were comparatively lower and the delivery dates were favourable. As regards the approval of the Standing Sub-Committee, it was stated that the required

papers had already been handed over to the Director, Central Water and Power Commission. All the above correspondence, according to the State Government, was done with the approval of Shri Patnaik, and it resulted in the agreements mentioned at Nos. 2 to 5 above.

Khemka Company was accepted as agent of the Russian Dealers in respect of these contracts.

The State Government alleged that a loss was suffered by the State Government as a result of the above contracts, and the same could have been avoided if tenders has been invited, Shri Patnaik, Shri Mitra and Shri Mallik are stated to be responsible for the same.

In support of the above allegations, the State Government has filed the affidavit of Shri Bhamidipati Suryanarayana, Personal Assistant to the Additional Chief Engineer, Balimela Dam Project and Shri B. K. Panigrahi, Assistant Inspector-General of Police (Vigilance).

Shri Patnaik in the course of his affidavit has denied the correctness of the allegations made against him. According to Shri Patnaik, the transactions with the Russian Government were concluded on a Government to Government basis between the Government of India and the Government of USSR. The cost of similar equipment from the United States of America was 20 per cent higher and the delivery period were longer. Shri Patnaik tried his best and used his personal influence with Russian Ambassador for reduction of the prices of the equipment and for advancing the delivery time.

Shri Mitra in the course of his affidavit has likewise denied the allegation of the State Government. According to Shri Mitra, he never colluded with anybody in this connection.

Shri Mallik too refuted the charge levelled against him and has stated that the orders in question were passed in the regular course and were approved by the then Chief Minister.

Supplementary affidavits have been filed by Inspector Satchidananda Mishra on behalf of the State Government as well as by Shri Patnaik.

In respect of this allegation I find that it is the common case of the State Government and the respondents that Balimela Project is a Joint venture of the State Government of

Andhra Pradesh and Orissa. On October 9, 1962 the Government of Orissa was authorised by the Planning Commission to proceed with the procurement of construction equipment and workshop machinery amounting to Rs. 3 crores and to do other preliminary work connected with the Project.

Regarding the propriety of the four contracts, which were entered into on November 16, 1962 by the Government of Orissa with Russian concerns, I find that the Secretary, Irrigation & Power Department of Orissa, addressed a letter on October 12, 1962 to Secretary, Ministry of Irrigation & Power, in the course of which he stated:

"In accordance with the Inter-State agreement between Andhra Pradesh and Orissa, a copy of which has already been forwarded to the Ministry of Irrigation & Power, it is necessary that the dam should be constructed to a height of 140 ft. by May, 1965. It is therefore necessary to procure sufficient earth-moving machinery as well as workshop equipment required for its maintenance at the earliest possible date. A list of machinery and equipment proposed to be purchased is enclosed. Enquiries have been made from the various parties and it appears that the quickest delivery can be given by the USSR Government authorities. The CIF value and delivery dates as quoted by them are also shown in the statement.

The prices quoted by the USSR authorities are on an average about 20 per cent cheaper than the price of similar machinery from the USA and the delivery schedule is also quite suitable."

On November 7, 1962 the Government of India gave approval to the import of construction equipment and workshop machinery to the extent of Rs. 3 crores in non-convertible rupees under Trade Plan with USSR for the construction of Balimela Dam. It was mentioned that sanction was subject to the conditions that the prices paid were competitive, that the approval of the sub-committee of Experts on standardization of equipment would be taken and that the quantities imported were minimum essential for Balimela Project. On November 9, 1962 the Secretary, Irrigation & Power Department of Orissa, addressed a letter to the Ministry of Irrigation & Power, in the course of which he stated—

"(1) The prices quoted by the USSR Government in respect of some major items of equipments such as 6 cu. yd. excavator, 25 tons dumpers, 12 tons dumpers, scrapers, diesel excavators and motor graders, have been checked up in the office of the Central Water and Power Commission, New-Delhi, with the latest quotations for similar equipments from the USA obtained for the Beas Dam Project and it was found that the

prices of the Russian equipment were definitely on the lower side. In this connection I enclose a statement prepared in the office of the Central Water & Power Commission, New-Delhi, which shows the difference in the prices of the equipments from the two countries. Moreover, the delivery dates of the USSR equipment are quite favourable and it is doubtful if similar delivery dates would be available from other sources."

As regards the approval of the sub-committee of Experts on Standardization, the Secretary stated that the Chief Construction Engineer of the Balimela Dam Project had handed over to the Director of Central Water & Power Commission, four sets of specifications of the equipment proposed to be imported to obtain the approval of the sub-committee. It was further stated by the Secretary that a note had already been submitted justifying the quantities of each type of the equipment. The four contracts were thereafter entered into on November 16, 1962. It would appear from the above that the impugned contracts were entered into because the prices of the Russian equipments were found to be comparatively cheaper by 20 per cent than the price of similar American machinery. It was also found that the delivery dates of the Russian equipments were more favourable. The Government of India, while giving approval to the import of machinery, stated expressly that the import would be under the Trade Plan with USSR is non-convertible rupees. In the circumstances, I find it difficult to draw an inference of impropriety from the above transaction. The mere fact that the initial talk in respect of the supply of Russian equipments took place between Shri Patnaik and the First Secretary 'Commercial of the Russian Embassy on October 6, 1962 would not affect the propriety of the four contracts in view of the favourable Russian terms to which reference has been made.

It is true that no Global or other competitive tenders were invited before placing the order but the explanation for that is given in the letter dated October, 16, 1962 of the Secretary, Department of Irrigation & Power, to the Central Water and Power Commission. It was stated in that letter—

*"Inviting of competitive Tenders—*The urgency of getting the earth moving machinery and plant and the workshop machinery for this maintenance has been impressed on you personally by me. In terms of the Inter-State Agreement between Andhra Pradesh and Orissa, work on the Balimela Dam construction has to be started immediately. If we follow the normal procedure of inviting tenders through the DGS & D, it may take more than three months before we can get

competitive quotation from various parties. Even then the delivery schedules and the prices may not be suitable for the requirements of the Projects. We have been negotiating with the USSR who have offered very attractive delivery schedule. Moreover, the price quoted by the USSR authorities appear to be quite favourable. A comparative statement quoted by the Russian and the latest USA quotations for similar machinery is already available in your office and may be referred."

It would appear from the above that normal procedure of inviting tenders was dispensed with because it was felt that it would take more than three months to receive quotations from various parties. The need of starting the work immediately was emphasised in view of the term of the agreement between the States of Andhra Pradesh and Orissa. Reference was also made to the fact that the rates of the Russian equipment had been found to be favourable when compared to those of similar American equipment. The State Government, accordingly, decided to dispense with the invitation of tenders. This was an administrative decision of the authorities of the State Government in exercise of their power and whether one fully agrees with it or not, I find it difficult to draw an inference of *mala fide* intention or impropriety from that decision. There is no cogent evidence to show that Shri Patnaik or the other authorities of the State Government had any personal interest in purchasing the equipment from Russia and not from another country.

As regards the contract dated April 25, 1964 for purchase of equipment for Hydroelectric Power Station I find that on March 6, 1963 the First Secretary (Commercial) of the Russian Embassy addressed a letter to Shri Patnaik wherein he referred to a discussion with some representatives of the Orissa Government and offered equipment for the Hydroelectric Power Units. On March 30, 1963 Shri Patnaik addressed the following note to the Governor, Dr. A. N. Khosla:—

"Governor may kindly look into this. Unless Andhra Government finally agree, we may restrict our tunnel capacity and power plant can remain at 360 MW. Governor may also discuss with the Russians and settle the question of whether we should at all give them a contract for preparing the Project.

As the Governor is going to Delhi, he may settle these points."

Dr. Khosla, who is one of the top engineers, then discussed the matter at Delhi with a Russian team consisting of Russian Ambassador and others on April 9, 1963.

On December 27, 1963 the Deputy Secretary, Irrigation & Power Department, addressed a letter to Shri K. C. Gantayat, Engineer-in-Chief, Electrical Projects, Orissa forwarding therewith the offer for supply of power Units received from the Russian Trade Representative. On February 6, 1964 Shri Gantayat had discussion with Shri K. L. Vij, Member (Hydroelectric) of Central Water and Power Commission. It was then decided that the prices would be discussed by the representatives of the Central Water and Power Commission and Shri Gantayat jointly with the Russians. Shri Shankaran, Director, Hydroelectric Designs, then expressed the view that there appeared to be a scope of price reduction by nearly Rs. 1.40 crores in the Russian offer. On February 25, 1964 Shri Mitra and Shri Patnaik approved a suggestion that negotiations regarding the price with the Russians might be conducted by the Contract Committee and the Committee might have the assistance of the Member of Central Water and Power Commission of the Government of India. Negotiations were thereafter conducted by the Central Water and Power Commission in association with Shri Gantayat with the Russians. As a result of those negotiations the representative of the Central Water and Power Commission as well as Shri Gantayat came to the conclusion that the price of Rs. 44.5 millions asked by the Russians was reasonable. They, however, it is stated did not inform the Russians of their conclusions. Suggestion was then made to the State Government to induce the Russian to agree to the reduction in price to Rs. 43 millions. Shri Patnaik then sent a telegram on March 25, 1964 to the Russian Ambassador to agree to a reduction in price by Rs. 10 lakhs. Mr. Benediktov, Russian Ambassador, thereafter sent the reply stating that the price quoted was acceptable to both sides. When Shri Gantayat came to know of that telegram he stated in his letter dated March 30, 1964 that neither he nor the representative of the Central Water and Power Commission had agreed to the price. It was, however, added that the price of Rs. 44.5 millions was reasonable. On April 1, 1964 a note was recorded on the file. The note along with the orders reads as under—

“Dy. Minister, I. & P.

This file deals with procurement of Power House Plant for the Balimela Project from Russia. In this connection notes and orders at P.47/n may kindly be perused. The subsequent developments in this case are recorded in my note at p. 50/n. We have now received a reply from the Russian Ambassador to the telegram sent to him by the Chairman, Planning Board

which may be seen at p. 232/c. and also a report from Shri Gantayat, Engineer-in-Chief, Electrical Projects who attended discussions with the Russians in the office of the Central Water and Power Commission which may be seen at pp. 235/239/c. Shri Gantayat has reported that both the Members CWPC and he feel that the offer of Rs. 4.45 crores for 6 Units of 60 MW. each from Russia together with the Project Report, designs and working drawing is reasonable and may be accepted. The telegram from the Russian Ambassador at p. 232/c. indicates that the last offer made by them, namely, Rs. 4.45 crores has been accepted by both sides. Shri Gantayat in his report has stated that neither he nor the CWPC have intimated their consent to the offer to the Russians, although the offer is considered to be reasonable.

We have not yet received any official confirmation from the Government of India whether the power plant for this Project is included in the Trade Agreement with Russia. I have accordingly sent another telegram to the Ministry of Irrigation and Power which may be seen at p. 234/c. On receipt of their reply we may perhaps issue a Letter of Intent to the Russian authorities for the purchase of power units at the price mentioned above and follow it up with the normal agreement after getting the release of foreign exchange from the Government of India.

Submitted for orders

Chief Minister and Chairman, Planning Board may see

Sd.

1st April 1964

C. M. and C. B. P. may see

Sd.

3-4-1964

C. P. B. may advise

Sd. B. Mitra

5-4-1964

This Letter of Intent may be issued with the proviso that this is approved by Government of India. On receipt of our letter the Embassy of USSR will also accelerate the matter at Delhi.

Sd. B. Patnaik

6-4-1964

Sd. B. Mitra

6-4-1964

The impugned contract was thereafter entered into on April 25, 1964.

The above transaction, in my opinion, is not vitiated by any impropriety on the part of the respondents concerned. As would appear from the above, the negotiations about this contract were carried on by the Governor and thereafter by the Central Water and Power Commission in association with Shri Gantayat, Engineer-in-Chief of Electrical Projects. The recommendation of the Member, Central Water and Power Commission as well as of Shri Gantayat was that the quotation of Rs. 4.45 crores for the Hydro Electric Equipment was reasonable and should be accepted. Shri Patnaik thereupon tried to get a reduction in the quotation by making a personal appeal to the Russian Ambassador but could not succeed in doing so. Shri Patnaik then made an order for the issuance of letter of intent subject to the approval of the Government of India. The approval appears thereafter to have been given and the impugned contract was entered into. I am unable to find any taint of impropriety in the orders made by Shri Patnaik and the other respondents in this connection.

It has been argued on behalf of the State Government that some of the Russian equipments procured as a result of the contracts entered into on November 16, 1962 did not give satisfactory service. In this respect I am of the view that the propriety of the contracts entered into on November 16, 1962 is to be judged in the light of circumstances as were then existing and not by what transpired subsequently. The alleged subsequent unsatisfactory service of some of the equipment would not affect the propriety of the contract for supply of the equipment if their terms were found to be favourable at the time they were entered into and there was nothing then to indicate the unsatisfactory performance of the equipment. It may also be stated that the equipment for which contract was entered into on April 25, 1964 was for Hydro Electric Plant and as such was quite different from the earth moving equipment in respect of which contract were entered into on November 16, 1962.

A statement about the Russian equipment for Balimela Project was laid on the table of the Assembly Library by Shri S. N. Patnaik, Minister, Irrigation & Power, in present Government of Orissa, on December 18, 1967. Reference was also made to that statement by Shri S. N. Patnaik in the Assembly. According to that statement, the present Government of Orissa was importing 20 more Russian tractors. The statement further shows that there was nothing intrinsically wrong with the Russian equipment and the poor

performance of some of the equipment was due to a variety of factors which had nothing to do with its inherent quality. It was stated in the course of that statement:

"Reasons for Poor performance;

- (a) The Machines were not properly matched in number. We had applied for foreign exchange for Russian Dozer. This has taken two years for Government of India to sanction despite the personal Co-operation of Dr. K. L. Rao. Further delays have been caused by State Bank in issuing guarantees. The machines are ready at Black Sea Port awaiting the State Bank guarantee.
- (b) Spares not readily available because Balimela is so far away from the markets and because many of the vital parts have to be imported from Russia.
- (c) Often important lubricants were not available and machines had to remain idle.
- (d) The number of machines was calculated at a time when site conditions such as lead from borrow area to the dam site, performance of machinery, etc., were not clearly known.

To meet those difficulties in future, we are taking the following steps:—

- (1) Proper matching number of machines are being collected together;
 - (2) The additional machinery are those for which spares are generally available in India an Market or in other Projects in India.
 - (3) Petrol, oil and lubricants are being arranged on a long-term basis with Indian Oil Company.
6. Some critics say that Russian machinery are all bad. This is not so. The shovels supplied are excellent. The tractor and dozers are average and their dumpers have not worked quite as successfully as the shovels and dozers. Spare parts problem is one of the main obstacles."

Reference was made on behalf of the State Government to the Commission paid to Khemka Company. In that respect I find that the material on record shows that the aforesaid Company did not receive any commission in respect of the material sold by the Russian concerns to the Orissa Government for Balimela Dam Project. It only received remuneration for technical service rendered by it in respect of the supplies made by the Russian concerns. It, therefore, cannot be said that extra price was paid for the equipment because of the Commission payable to Khemka Company.

I would, therefore, hold that the charge of impropriety contained in this allegation has not been proved against the respondents.

CHAPTER 51

ALLEGATION No. 51

Re

Mining dues from Shri Chittaranjan Pani

Allegation No. 51 relates to alleged favouritism shown to Shri Chittaranjan Pani by non-realization of mining dues from him. The respondents named in the allegation are Shri Patnaik, Shri Mitra and Shri Sahu.

According to the case of the State Government, Shri Chittaranjan Pani is the brother of Shri Bijoy Kumar Pani who was President of the Pradesh Congress Committee and a supporter of Shri Mitra. Shri Chittaranjan Pani is a mine owner and took lease of Kahapani-A, Kahapani-B and Amgobha Manganese Mines in the district of Sundargarh. The arrear due from Shri Chittaranjan Pani on account of mining revenue till December 31, 1960 was assessed to be Rs. 2,16,771-66 Paise. Writ petitions were filed by the mine-owners of Orissa challenging such assessments but the writ petitions were dismissed by the High Court on March 16, 1962. Leave for Appeal to the Supreme Court was also not granted. The Collector, Sundargarh started collecting information for the purpose of starting a certificate case against Shri Chittaranjan Pani for realization of the arrear when following letter dated March 6, 1964 was received by the Collector from the Deputy Secretary to Government of Orissa, Mining & Geology Department:—

“Shri Chittaranjan Pani has addressed a representation to the Chief Minister against the amount of royalty demanded from him in the demand notices issued by you. Pending consideration of the representation and final orders thereupon, I am directed to request you to stay realization of the demanded amounts.”

On December 15, 1964 a letter was addressed by the Mining & Geology Department to the Collector, Sundargarh asking for report if the amount of arrears had been realised from the lessee. The Additional District Magistrate, Sundargarh, thereupon sent a reply that the realization of arrear dues from Shri Chittaranjan Pani was stayed by Government as per letter dated March 6, 1964. On receipt of the abovementioned letter by the Department from the

Additional District Magistrate, Sundargarh, a note was submitted that the communication dated March 6, 1964 did not appear to have been issued. A copy of the communication dated March 6, 1964 was called for from the Collector. The Additional District Magistrate, Sundargarh, as per letter dated August 25, 1965 sent a copy of letter dated March 6, 1964. On receipt of the above copy of the letter a note was put on the file by the dealing Assistant that neither the representation of Shri Pani was on the file nor was there any indication of the issue of such a letter. When the matter was put up before the Deputy Secretary he said that Issue Register indicated that the office copy had been placed on the file. The Secretary then passed an order asking for a copy of the representation. On March 5, 1966 Shri Chittaranjan Pani sent a letter to the Secretary, Mining & Geology Department along with a copy of his representation dated August 24, 1962 addressed to the Chief Minister. Shri Pani also mentioned that the stay order had been granted by the Chief Minister. The Secretary on March 25, 1966 endorsed the file to the Deputy Minister, Mining & Geology, Shri S. K. Sahu, for information with the note that it was proposed to dispose of the representation of Shri Pani by the end of April, 1966. No order was made on the above file by Shri Sahu till March 5, 1967 when he made the following order :—

“ Seen. It ought to be finalized quickly.”

Shri Pani in the meantime was called upon by the Secretary, Mining & Geology Department, to furnish the analysis reports of ores despatched from respective mines by April 7, 1966. Shri Pani did not submit the analysis reports till November 3, 1966 and went on applying for time. The Deputy Secretary on November 3, 1966 sought orders of the Deputy Minister in respect of the stay order. Shri S.K. Sahu, Deputy Minister, did not pass any orders on the file till March 3, 1967 when he wrote as under :—

“Sufficient time has passed in the meantime. If the party has failed to produce the necessary document like the analysis report, etc., no concession as applied for can be granted on oral version only.”

The stay order was vacated on March 14, 1967 whereafter action was taken for recovery of the arrears from Shri Chittaranjan Pani.

The State Government concludes from the above that favouritism was shown to Shri Pani by non-realization of arrears from him till March, 1967 when the new Ministry came into power.

In support of the above allegation, the State Government has filed the affidavits of Shri Raj Kishore Bhujabal, Deputy Secretary, Mining & Geology Department and D.S.P. Harihar Das (Vigilance).

Shri Patnaik in the course of his affidavit has denied the correctness of the allegation made by the State Government and has stated that he did not pass the stay order in question.

Shri Mitra in the course of his affidavit has also denied the correctness of the allegation made by the State Government and has stated that he did not show any favouritism to Shri Chittaranjan Pani.

Shri Sahu in the course of his affidavit has stated that when the stay order dated March 6, 1964 was granted on the representation of Shri Pani to the Government Shri Sahu was not holding the portfolio of Mining & Geology. He took over that portfolio as Deputy Minister in 1965 after Shri Tripathy became the Chief Minister. As regards the note of the Secretary dated March 25, 1966, Shri Sahu states that the above note was endorsed to him for information only and he was not requested by the Department to pass any order. It is further stated that there is nothing on the record to indicate as to when the file was actually placed before Shri Sahu and it was not possible for him to recall the attendant circumstances from memory. It might as well be that the file was lying in the office without the knowledge of Shri Sahu. Shri Sahu admits that he allowed 20 years time to Shri Pani to produce the relevant papers, but according to Shri Sahu, in similar circumstances time was allowed to other mine-owners also to produce relevant papers. Shri Sahu refutes the allegation that he showed any favouritism to Shri Pani.

Supplementary affidavit has been filed by Shri Patnaik.

So far as Shri Patnaik is concerned, all that has been argued on behalf of the State Government is that according to the statement placed by him on August 20, 1962 in the [134 Home—75]

State Legislative Assembly certificate cases had been instituted against Shri Pani, while in fact such cases had not been instituted. In this respect I find that Annexure 'A' to the Supplementary affidavit of Shri Patnaik shows that according to the letter dated August 18, 1962 of the Director of Mines certificate cases had been instituted against Shri C. R. Pani for recovery of arrears. The said letter also makes it clear that it was based upon the report of the Collector. It would follow from the above that the statement placed by Shri Patnaik in the Assembly was in conformity with the official information supplied to him.

As regards Shri Mitra, it is argued on behalf of the State Government that he passed an order on March 6, 1964 staying that recovery of arrears on a representation made by Shri C. R. Pani. The file, which contained the stay order, has not been traced but the letter dated March 6, 1964 of the Deputy Secretary, Mining & Geology Department to the Collector, Sundargarh, reproduced earlier, and the letter dated March 5, 1966 of Shri C. R. Pani making reference to the stay order by the Chief Minister, show that the stay order was granted by Shri Mitra in his capacity as Chief Minister. As the order and representation of 1964 are not traceable, it is somewhat difficult to express an opinion about the propriety of the stay order because the propriety can only be judged by the context in which the order is made and by the actual words of the order. From the other material on record it appears that the order was made by Shri Mitra in exercise of his powers and was to remain operative pending consideration of the representation and the final orders thereon. The disappearance of the file containing the stay order led to the staying of recovery for a period of about two years. It is, however, difficult to say on the material on record as to who was responsible for the disappearance of the file. Indeed, the material on record shows that the officials of the Mining & Geology Department were not even aware of the stay order and were under the impression that steps were being taken to recover the arrears from Shri Pani. It was only after the Collector of Sundargarh referred to the stay order that he was asked to supply a copy of the communication sent to him. I have given the matter my consideration, and am of the opinion that on the material on record it is difficult to hold Shri Mitra guilty of impropriety because of the stay order granted on March 6, 1964.

Coming to the case of Shri Sahu, I find that the allegation of the State Government is that the Secretary of the Mining & Geology Department endorsed the file relating to Shri C. R. Pani to Shri Sahu on March 25, 1966 and he did not dispose it off till March 5, 1967. In this respect I find that according to the affidavit filed on behalf of the State Government the file was endorsed to Shri Sahu for information only. It is not the case of the State Government that Shri Sahu was requested by the Department to pass any order. Neither the original file containing the note addressed to Shri Sahu nor a copy of that note have been produced by the State Government. There is also no material on record to indicate as to when the file was in fact put up before Shri Sahu. It also does not appear that the delay in the making of note by Shri Sahu on that file resulted in any obstruction to the proceeding for finalization of the case of Shri Pani. On the contrary the affidavit filed on behalf of the State Government shows that Shri C. R. Pani was called upon to furnish the analysis reports of ores despatched from the mines worked by him by April 7, 1966. Shri Pani thereafter met the Secretary of the Department on April 13, 1966 and made his submission. Extension of time was thereafter asked by Shri Pani for submitting analysis reports. Time for the purpose appears to have been granted to Shri Pani till November 3, 1966 when the Secretary of the Department stated that Shri Pani could not expect any further indulgence. The Secretary then proposed that the stay order should be vacated and the Collector be asked to start recovery proceedings against Shri Pani during the current financial year. On December 19, 1966, Shri Pani submitted an application to the Deputy Minister, Mining & Geology, stating that he had been suffering from high blood pressure for six months and as such was bedridden and could not appear before the Department for reassessment of royalties. Shri Pani prayed that the date of hearing for his appearance before the Department for reassessment of the royalties might be fixed as January 10, 1967. On December 22, 1966, Shri Sahu allowed the time till January 10, 1967. The propriety of this order of Shri Sahu has not been assailed on behalf of the State Government. The Secretary of the Department thereafter made a note on the application that this was the last opportunity and that on January 10, 1967, Shri Pani could send his representation with the papers and need not be personally present if he was unwell. The file thereafter does not appear to have been attended to by Shri Sahu till March 3, 1967 when he made the order reproduced earlier.

It has to be borne in mind that during the months of January and February, 1967, the Legislators were spending most of the time preparing the ensuing elections. Although view can be taken that official file should not be neglected during the days preceding the elections, no inference, in my opinion, can be drawn against Shri Sahu because of his having not attended to the file till March 3, 1967.

I would, therefore, hold that the charge of impropriety contained in this allegation has not been proved.

CHAPTER 52

ALLEGATION No. 52

Re:

Grant of Mining Lease to Dr. Sarojini Pradhan

Allegation No. 52 relates to the grant of mining lease to Dr. Sarojini Pradhan. The respondents named in the allegation are Shri Patnaik, Shri Routray and Shri Sahu.

According to the case of the State Government, Dr. Sarojini Pradhan is a family friend and supporter of Shri Patnaik and Shri Routray. As per notification dated July 20, 1965, the Government of Orissa in the Mining & Geology Department declared that an area of 438.50 acres in Kalaparnat, district Keonjhar, would be available for regrant in accordance with Mineral Concession Rules, 1960. Six persons including Dr. Sarojini Pradhan put in applications for the grant of that area. The other five applicants submitted their applications at the Collector's office while Dr. Sarojini Pradhan submitted her application at the residence of the Collector on the morning of that day. The application of Dr. Sarojini Pradhan was stated by the office to be defective. On August 22, 1966, the Secretary of the Department made the following note:—

“ Thus, the final picture which emerges is that a strict application of rules leaves only two parties in the field, viz., Messrs. Balasore Minerals and Messrs. Tantulia Khas Collieries Ltd. And on general Administrative ground Dr. S. Pradhan and Messrs. Kalinga Mining Corporation can be considered. It may be stated incidentally that Dr. S. Pradhan presented the application at 8 A.M. in the Collector's residential office and others at 11 A.M. in the Main Collectorate office.

Taking all factors into consideration, it is recommended that Dr. S. Pradhan be given the lease, subject to condition that she should produce within a week a certificate that no income-tax was due on September 10, 1965 from her.”

On September 6, 1966, Shri Sahu, Deputy Minister, made the following Note:—

“C.M.

Six parties have applied for the area which was thrown open for regrant. It is very difficult to discriminate between one and the other as all the applications were filed on September 10, 1965 at 11 A.M. in the Collectorate office except that of

Dr. S. Pradhan, which was received at Collector's residential office at 8 A.M. The description of the area is almost same in all the applications, as it was notified in the Gazette except typographical mistakes. However, as pointed out at portion marked 'B' in note of the Secretary, on general administrative grounds the cases of Dr. S. Pradhan and Messrs. Kalinga Mining Corporation deserve consideration.

Due to the facts mentioned above M. L. may be granted in favour of Dr. S. Pradhan as suggested by the Secretary, provided she produces within seven days a certificate that no income-tax was due on September 10, 1965, which is necessary under statutory provisions as shown in Secretary's note at 'C'. In case she fails the M. L. may be granted in favour of Messrs. K. M. C. who has the B. L. for the area previously. This case will be sent to Government of India for concurrence as more than nine months time has passed.

Sd/ S. K. Sahu

6-9-1966"

The above note was signed by Shri Routray on September, 1966. The Government of India was thereafter moved to accord approval to grant of mining lease in favour of Dr. Sarojini Pradhan.

The State Government concludes from the above that favouritism was shown to Dr. Pradhan in the grant of mining lease.

In support of the above allegation, the State Government has filed the affidavit of Shri Rajkishore Bhujabal, Deputy Secretary, Mining & Geology Department.

Shri Patnaik in the course of his affidavit has denied the correctness of the allegation against him and has pointed out that no specific case has been made out against. He has also stated that Dr. S. Pradhan is neither a family friend nor his supporter.

Shri Routray in the course of his affidavit has reproduced the relevant portion of the note dated August 22, 1966 of the Secretary of the Department, which reads as under:—

"Dr. S. Pradhan—

Three defects are mentioned by the Director. One of them is that the fixed points are not shown in the map. Second is that pillar to pillar distance given for boundary descriptions. On checking up, it is seen that the mistake is only in respect of the distance from pillar 15 to 16. Even there, the distance is correctly given in feet but there is no error in converting to metres. When it is admitted that the application is for an

area which has been thrown open and the boundary description is also a copy of the description enclosed to the Government notification should we pounce upon what are obviously typographical mistake and use them to reject the application. My recommendation would be that in the circumstances of the present case these two defects are not significant and should be ignored.

The third defect seems material. Possession of an Income-Tax Clearance Certificate valid on the date of application is a satisfactory requirement. Dr. Pradhan filed two I. T. C. Cs. which were valid for some period much before the date of application and for the period effective from November 27, 1965. The question is what was the position on September 10, 1965 when the application was filed. Technically an I. T. C. C. valid on that date has not accompanied the application and we do not know whether an I. T. C. C. valid on that date existed or not. This has to be ascertained.

Incidentally the spirit of the law is to ensure whether income-tax arrears have been cleared or not. The act of clearance is perhaps more important than filing of certificate. If the party has cleared off the dues but did not file the certificate would it be a curable or incurable defect? In my opinion Government only needs proof that no I. T. was outstanding on the date of application and if evidence could be adduced to that effect the failure to file the certificate earlier may not be taken advantage of to reject the application, nor even to postpone the date of effective completion of the application. In that case it may be worth recalling that State Government had earlier promised an area to Dr. S. Pradhan. But it could not be given because that area had to be given to the public section under the direction from Government of India. The State Government could offer this area only in lieu of the previously promised area. Taking all factors into consideration it is recommended that Dr. S. Pradhan be given the lease subject to the condition that she should produce within a week a certificate that no income-tax was due on September 10, 1965 from her."

The above note, it is stated, would go to show as to what was the advice given by the Secretary who is the head of the office. Shri Routray asserts that in exercise of his *bona fide* judgment he approved the proposal of the Deputy Minister which was based upon the suggestion of the Secretary of the Department.

Shri Sahu in the course of his affidavit has stated that he has no knowledge that Dr. Pradhan was a family friend of Shri Patnaik or Shri Routray. It is also pointed that there was a commitment made by the previous Government headed by Shri H. K. Mahatab to grant lease to Dr. S. Pradhan. According

to Shri Sahu, he made the note on the file in *bona fide* exercise of his jurisdiction. The State Government could only make the recommendation and the final orders had to be passed by the Central Government.

There is, in my opinion, no substance in the charge contained in this allegation. The resume of facts given above shows that the Secretary of the Department recommended that Dr. S. Pradhan be given the lease subject to the condition that she produced a certificate that no income-tax was due on September 10, 1965 from her. The Secretary in the course of his note also observed that the defects pointed out in the application of Dr. Pradhan were not of material nature. Shri Sahu by his order dated September 6, 1966 accepted the recommendation of the Secretary, and passed an order in accordance with that. The material on record also shows that an assurance had been held out on behalf of the Chief Minister since the time Dr. Mahatab was in power that a mining lease would be granted in Dr. Pradhan's favour. The assurance could not be implemented because the area promised to Dr. Pradhan was given to public sector under the directions of the Government of India. In view of the above background as well as the recommendation of the Secretary of the Department, I find it difficult to hold the respondents concerned guilty of impropriety because of the impugned orders. It may be stated that though an allegation was made in the particulars of allegation that Dr. Sarojini Pradhan was a family friend and supporter of Shri Patnaik and Shri Routray, no affidavit in support of that allegation has been filed on behalf of the State Government. Shri Patnaik has denied that Dr. Pradhan is his family friend or supporter. Shri Routray too has denied this allegation and has stated that he only knows Dr. Pradhan. So far as Shri Sahu is concerned, there is no allegation that he had any personal interest in the grant of lease to Dr. Pradhan.

I would, therefore, hold that the charge contained in this allegation has not been substantiated.

CHAPTER 53

ALLEGATION No. 53

Re :

Grant of Liquor Licences

Allegation No. 53 relates to alleged favouritism in grant of liquor licences. The respondents named in the allegation are Shri Tripathy, Shri Sanganna and Shri Chandramohan Singh.

According to the case of the State Government, on May 14, 1963 Shri Raj Kishore Sahu, Managing Partner of Raj Mahal Hotel, Bhubaneswar, submitted an application to Shri Mitra, Deputy Chief Minister, for grant of a Bar licence in his favour in the premises of the Raj Mahal Hotel. Shri Raj Kishore Sahu was a prominent supporter of Shri Patnaik and Shri Mitra. Shri Raj Kishore Sahu mentioned in the application that he was running the hotel at a considerable loss and if he was not favoured with the foreign liquor Bar licence, he would be forced to close down the hotel. Mention was also made of the fact that the members of the Hotel Enquiry Committee, who had visited the hotel, had expressed great satisfaction with the service provided at the hotel. The Committee also felt that the hotel should have a Bar attached to it. The application of Shri Raj Kishore Sahu was forwarded to the Minister, Revenue and Excise with a note that it deserved consideration. Shri Tripathy, Minister, Revenue and Excise, on May 20, 1963 forwarded it to the Secretary of the Revenue Department and directed that the Revenue Board might be consulted and asked to express opinion about giving a licence of the type given to Puri and Gopalpur hotels. When the application was received by the Revenue Board, a note was put up that the views of the Collector might be obtained. No communication, however, was sent to the Collector. Another note was put up thereafter on June 12, 1963 stating that similar licences had been granted to the B. N. R. Hotel at Puri and the Palm Beach Hotel at Gopalpur and that in those two cases no reference had been made to the Board for its views. It was mentioned that under the Excise Act the Excise Commissioner was the appellate authority and the Board of Revenue was the revisional authority in case of grant of foreign liquor licences, and therefore, the Board had taken the stand in the past that it

should not be asked to express its opinion. All the same it was added in the note that there was necessity to provide a Bar in Bhubaneswar in one of the important hotels and that Raj Mahal Hotel was the leading hotel in New Capital. When the matter was put up before the Member of the Revenue Board on July 10, 1962 he recommended the grant of the Bar licence. The matter was thereafter referred back to the Revenue and Excise Department and was put up before Shri Tripathy. Shri Tripathy then wanted to see the report of the Hotel Enquiry Committee. In the meantime, Shri Rajkishore Sahu addressed a letter dated November 29, 1963 to the Director of Public Relations. The Director of Public Relations forwarded the letter of Shri Rajkishore Sahu with the remarks that Bhubaneswar was a Class I Tourist Centre of India as classified by the Government of India and that non-availability of drinks in hotels discouraged foreign tourists to come to Bhubaneswar. The Director also mentioned that Raj Mahal Hotel was the only public hotel where foreign tourists stayed and, therefore, the application of the proprietor deserved consideration. The report of the Hotel Classification Committee appointed by the Government of India was also sent by the Director of Public Relations to the Revenue and Excise Department by letter dated December 20, 1963. On December 23, 1963 Shri Tripathy passed the following order :—

“A licence for a Bar under similar terms and conditions as have been allowed to Palm Beach Hotel may be granted to Raj Mahal Hotel.”

Accordingly, foreign liquor “ON” licence was granted to the Raj Mahal Hotel, Bhubaneswar.

Two applications, it is stated, were made by Shri S. Kumar Chopra in December, 1963 and January, 1964 for grant of foreign liquor licences. One of the applications was on behalf of Delhi Bar, Rourkela, and the other one as proprietor of Standard Restaurant, Raurkela. In the application on behalf of Delhi Bar, it was mentioned that the Delhi Bar had secured an “ON” licence and wanted “OFF” licence. In the application submitted on behalf of the Standard Restaurant, prayer was made for both “ON” and “OFF” licences. Both the applications were sent directly to the Collector, Sundargarh. A note was then put by the Under-Secretary of the Board of Revenue that the Collector of Sundargarh had made proposals for opening of two “OFF” and two “ON” shops for the year 1964-65. When the Collector of Sundargarh was asked

for his views he recommended the proposal for grant of an "OFF" licence in favour of Delhi Bar and both the licences in favour of the Standard Restaurant. The matter was then considered by the Secretary of the Board of Revenue and he made a note on April 18, 1964 that in view of the recent communal disturbances it was not expedient to grant any new liquor licences at Rourkela. The Excise Commissioner, however, desired that a confidential enquiry might be made from the Collector, Sundargarh regarding his proposals in view of the Communal disturbances. On April 27, 1964 the Excise Commissioner had a discussion with the Chief Minister and Shri Mitra mentioned to him that Shri K. Kumar Chopra was an applicant for a foreign liquor licence at Rourkela and that the Chief Minister was satisfied that Shri Chopra deserved the foreign liquor licence. On May 11, 1964 the matter was put up before Shri Tripathy, Minister of Revenue and Excise, and he passed an order by which one "OFF" licence was granted in favour of Standard Restaurant. It is stated that Shri K. Kumar Chopra and Shri S. Kumar Chopra are both brothers and the shop premises of Standard Restaurant and Delhi Bar are at the same place.

On May 28, 1963 it is stated, Shri Tripathy passed an order that no more foreign liquor licence be granted in Cuttack district and if Paradeep was in need of one foreign liquor licence, the Excise Commissioner might persuade one of the licensees of Cuttack district to shift his shop to Paradeep. Shri Pravakar Sahu, who had secured a foreign liquor "OFF" licence at Choumuhani near the Paradeep Project area, then expressed his willingness to shift his shop from Choumuhani to Paradeep area. The District authorities recommended that Shri Pravakar Sahu might be allowed to shift his shop to Paradeep and the recommendation was accepted by the Board of Revenue. Shri Pravakar Sahu then approached the Chief Engineer-cum-Administrator, Paradeep Port, for a piece of land to open his shop but the Chief Engineer wanted the licence to be given to another person. In the meantime the Collector, Cuttack forwarded eight applications for grant of foreign liquor licence in the Paradeep Port Trust area and out of the eight applicants he recommended the application of Shri Krushna Chandra Dalai. The Board of Revenue forwarded the eight applications to the Revenue and Excise Department. It was also mentioned by the Board that the proposal for making available a site for Shri Pravakar Sahu in Paradeep Port might be dropped. On April 21, 1964 the

Secretary of the Department put up a note as to whether Shri Krushna Chandra Dalai be given the licence at Paradeep or whether Shri Pravakar Sahu should continue at Choumuhani. Shri Tripathy then passed the order dated April 22, 1964, that Shri Dalai might be given a licence as proposed by the Collector. On April 23, 1964 a note was put up as to whether Shri Pravakar Sahu should continue the shop at Choumuhani. Shri Tripathy on April 27, 1964 passed the following order :—

“The shop at Choumuhani should be closed and only an ‘OFF’ licence to Shri Dalai may be given at Paradeep.”

Shri Pravakar Sahu thereafter filed a writ petition in the Orissa High Court.

Auction, it is stated, was held for ‘OFF’ licences for Cuttack town and for Paradeep for the year 1966-67. Dr. Mahendra Kumar Sahu and Shri Krushna Chandra Dalai failed to secure ‘OFF’ licences in that auction. On April 18, 1966 the Collector, Cuttack, stated in his letter to the Excise Commissioner that Dr. Mahendra Kumar Sahu and Shri Krushna Chandra Dalai had applied for issue of ‘ON’ licences for retail sale of foreign liquor for consumption on the vendors’ premises at Buxi Bazar, Cuttack, and Paradeep Port respectively. Although the Collector mentioned that some preliminaries like inviting of objections to the proposed issue of licences had not been gone through, he at the same time expressed the view that there was need for issue of “ON” licences at the two places. A copy of the letter was also forwarded by the Collector to the Secretary, Revenue and Excise Department. The Excise Deputy Commissioner objected to the proposed grant of licences in favour of Dr. Mahendra Kumar Sahu and Shri Krushna Chandra Dalai in his note dated April 28, 1966. He pointed out that foreign liquor ‘ON’ Hotel licences were to be issued to the reputed concerns and running hotels, and that Dr. Mahendra Kumar Sahu and Shri Krushna Chandra Dalai did not possess these qualifications. The Excise Commissioner approved the note of the Excise Deputy Commissioner. After the copy of the Collectors’ letter forwarded to the Revenue and Excise Department, had been received, the Excise Commissioner was asked to give his comments and, as per letter dated May 26, 1966 he expressed his views strongly against the grant of the “ON” licences to Dr. Mahendra Kumar Sahu and Shri Krushna Chandra Dalai. After the receipt of the letter from the Excise Commissioner, the Secretary of the Revenue

and Excise Department considered the matter and put up a note saying that the objections of the Excise Commissioner had been analysed by the Under-Secretary and the only point for consideration was the fact that the number of people who wanted alcoholic drinks at Cuttack and Paradeep, was not insignificant. Shri Chandramohan Singh, Deputy Minister, thereafter approved the grant of the two "ON" licences in favour of Dr. Mahendra Kumar Sahu and Shri Krushna Chandra Dalai on June 15, 1966 in the following terms :—

"For the reasons mentioned at 'A' above, there may be one 'ON' shop at Cuttack and another at Paradeep."

Shri Sanganna approved the above proposal on June 19, 1966. When the matter was put up before Shri Tripathy, he raised the question as to how permits for the liquor were to be issued and as to what should be done if the existing licensees demanded compensation. The matter was thereafter referred to the Secretary, Revenue and Excise Department. Opinion of the Law Secretary was also obtained and he stated that there was no legal bar to the sanction of an "ON" licence. On July 6, 1966 Shri Chandramohan Singh, Deputy Minister, Excise, passed the order that as there was no legal bar the earlier order should stand. The matter was then put up before Shri Sanganna and on July 7, 1966 he observed that he had discussed the question with the Chief Minister. Order was then made by Shri Sanganna that the licences as proposed might issue that very day. The Government's order sanctioning two foreign liquor "ON" licences for 1966-67, one for Cuttack and the other for Paradeep, was accordingly issued. Several representations were thereafter received against the grant of two "ON" licences in favour of Dr. Mahendra Kumar Sahu and Shri Krushna Chandra Dalai. It was pointed out that the grant of the licences might prejudice the four persons holding "OFF" licences. Apprehension was also expressed that those persons might surrender their licences resulting in loss of Government revenue. A note was..... then recorded on the file on July 1, 1966 that as the Government had already taken a decision for grant of "ON" licences there appeared to be "no alternative than to bear the possible loss of revenue, if any."

It is also alleged that Dr. Mahendra Kumar Sahu and Shri Kanhu Charan Dalai, father of Shri Krushna Chandra Dalai, were Councillors of Cuttack Municipality and belonged to the Congress Party. Dr. Sahu was for some time the Vice-Chairman and at another time Chairman of Cuttack Municipality.

The State Government concludes from the above that favouritism was shown by the named respondents in the grant of liquor licences to persons in whom they were interested.

In support of the above allegation, the State Government has filed the affidavits of Shri Iswar Chandra Dora and Inspector Satchchidananda Misra (Vigilance).

Shri Tripathy in the course of his affidavit has denied the correctness of the allegations made against him. According to Shri Tripathy, the Collector was the Licensing Authority. Certain clarifications were sought by the Collector from the Commissioner. The matter was then looked into by the Law Department and it was found that there was no legal bar to the issue of "ON" licences. As such, those licences were issued. Shri Tripathy had no knowledge that the persons, referred to by the Government, were members of the Congress organization. Shri Tripathy or his family members did not derive any pecuniary gain or benefit from the issue of those licences.

Shri Sanganna, likewise, has denied the correctness of the allegation made against him. According to Shri Sanganna, he had no knowledge as to whether the applicant licensees were the members of the Congress organisation. There was no legal bar to the issue of "ON" licences. Shri Sanganna did not know any of the licensees.

Shri Chandramohan Singh too has denied the charge levelled against him. According to Shri Chandramohan Singh, he has checked up from the Congress Party Office and has found that Shri Mahendra Kumar Sahu ceased to be a member of the Congress Party from 1964 and Shri Krushna Chandra Dalai was not a member of the Congress Party. Shri Chandramohan Singh had no personal acquaintance with any one of them. It is further stated by Shri Chandramohan Singh that according to his information one of the above persons, who had been given "ON" licence for Rs. 3,300 per month during the regime of the Congress Government, has recently been given "OFF" licence for Rs. 200 per month by the present Government. The orders passed by him and his colleagues are stated by Shri Chandra Mohan Singh to be fair and proper.

Supplementary affidavit has been filed by Inspector Satchchidananda Misra (Vigilance).

It would appear from the above that this allegation relates to four matters. The first matter pertains to the grant of foreign liquor "ON" licence to Raj Mahal Hotel, Baubaneswar by Shri Tripathy as per order dated December 23, 1963. In respect of this matter, I find that the Member Board of Revenue, to whom the matter was referred,

recommended on July 10, 1963 that the licence in question might be granted. The Director of Public Relations in his communication dated December 9, 1963, while dealing with the grant of licence to Raj Mahal Hotel, observed that Bhubaneswar was one of the Class I tourist centres of India as classified by the Government of India. It was further stated :

“Many foreign tourists are inclined to come to Bhubaneswar because of the fact that from here they can see within a very short period the three most important key tourist centres of the Eastern India, i.e. Bhubaneswar, Puri and Konarak. But non-availability of drinks in the hotels do not encourage them to come to Bhubaneswar. In order to promote tourism and to attract more foreign tourists to this part of the country, which is considered as an important source of earning foreign exchange, Government of India are taking steps in various fields. As one of the measures in that direction Government of India are taking steps actively for introduction of all-India liquor permits for foreign tourists. Since at Bhubaneswar Raj Mahal Hotel is the only public hotel where foreign tourists stay, the application of the proprietor deserves consideration from the above points of view. In the circumstances, the application sent herewith may kindly be favourably considered, and the Hotel Raj Mahal may be allowed to open a Bar under similar terms and conditions as have been allowed to the Palam Beach Hotel at Gopalpur-on-sea.”

The Deputy Secretary and the Secretary of the Revenue and Excise Department as per note dated December 20, 1963 supported the proposal for the grant of foreign liquor “ON” licence in favour of Raj Mahal Hotel in the interest of tourists. It was, accordingly, recommended that the licence be granted for opening a Bar on the similar terms and conditions as had been allowed to Palm Beach Hotel. Shri Tripathy thereafter passed the order dated December 23, 1963 reproduced earlier. I find no impropriety whatsoever in the above order of Shri Tripathy which was based upon the recommendation of the Member, Board of Revenue, the Director of Public Relations as well as the Deputy Secretary and Secretary of the Department.

The second matter, which is the subject of this allegation relates to the grant of an “OFF” licence to Standard Restaurant, Rourkela, as per order dated May 11, 1964 of Shri Tripathy. In this respect I find that on January 9, 1964 Shri S. Kumar, proprietor of Standard Restaurant, made an application to the Excise Commissioner for the

issue of an "ON" and "OFF" liquor licence for that restaurant. It was mentioned in the application that there was a pressing demand for the sale of liquor in Rourkela and the Standard Restaurant had a "most suitable location" for the same. It was further mentioned that the above restaurant was the leading caterer of the town. The Collector to whom the application was referred, recommended acceptance of the application. On April 27, 1964 the Excise Commissioner, Shri Sharangi, met Chief Minister (Shri Biren Mitra) and Shri Sharangi's note dated April 27, 1964 shows that the Chief Minister was of the view that Shri K. Kumar Chopra deserved a foreign liquor licence at Rourkela. Notings were thereafter made on the file and it was observed that on the application of Shri S. Kumar the Collector had recommended the grant of an "OFF" and "ON" licence for the Standard Restaurant, Rourkela and also an "OFF" licence for Delhi Bar & Restaurant, Rourkela. It was also stated that no application had been received from Shri K. Kumar Chopra whose case had been recommended by the Chief Minister. Shri Tripathy thereafter made the order on May 11, 1964 for the grant of an "OFF" licence for the Standard Restaurant. It would follow from the above that the order of Shri Tripathy for grant of licence in favour of Standard Restaurant was in accordance with the recommendation of the Collector. The recommendation of the Chief Minister for grant of licence to Shri K. Kumar Chopra was not accepted. It is no doubt true that Shri K. Kumar Chopra is the brother of Shri S. Kumar Chopra, the fact all the same remains that the recommendation of the Chief Minister was for Shri K. Kumar Chopra and not for Shri S. Kumar Chopra. It is also significant that though the Collector had recommended the grant of both "OFF" and "ON" licence for the Standard Restaurant, Shri Tripathy granted only an "OFF" licence for that restaurant. In the face of all these facts I fail to understand as to how Shri Tripathy can be held to be guilty of impropriety because of the grant of an "OFF" licence to the Standard Restaurant, Rourkela.

The third matter dealt with in this allegation relates to the grant of an "OFF" licence to Shri Krushna Chandra Dalai as per order, dated April 22, 1964 of Shri Tripathy. In this respect I find that out of the eight applications, which were filed for the purpose, the Collector of Cuttack on April 9, 1964 recommended the application of Shri Krushna Chandra Dalai for the grant of foreign liquor licence at Paradeep Port.

The Board of Revenue, which had earlier approved the proposal for the shifting of liquor shop of Shri Pravakar Sahu from Choumuhani to Paradeep Port and for the allotment of land to Shri Pravakar Sahu at Paradeep, dropped the proposal in view of the recommendation of the Collector of Cuttack. This Under-Secretary of the Revenue and Excise Department thereafter put up a note whether the proposal of the Collectors, Cuttack to grant a foreign liquor licence in favour of Shri Dalai be approved and the other proposal be dropped. The Deputy Secretary of the Department then addressed a note to the Secretary. The note along with the orders made thereon reads as under:—

“Secretary,

Under-Secretary's notes from the preceding pages may be seen. Minister, Revenue may be moved to direct whether Shri Krushna Chandra Dalai will be given a F. L. (OFF) licence at Paradeep and Shri Pravakar Sahu will continue at Choumuhani instead of shifting his F. L. Shop from Choumuhani to Paradeep.

Sd.

21-4-1964

M. (R)

For orders

Sd. B. K. Mishra

21-4-1964

Dalai may be given a licence as proposed by the Collector.

Sd. S. Tripathy

22-4-1964. ”

The resume of facts given above shows that the grant of licence in favour of Shri Dalai was in accordance with the recommendation of the Collector of the District. It is, therefore, difficult to draw an inference of impropriety against Shri Tripathy on that account. As the order of Shri Tripathy did not make it clear as to what was his decision regarding the liquor shop of Shri Pravakar Sahu at Choumuhani, the Deputy Secretary addressed a note seeking clarification. Shri Tripathy, who was averse to increasing the number of liquor shops, thereupon directed that the liquor shop at Choumuhani be closed. Shri Pravakar Sahu thereafter filed a writ petition in the High Court regarding the closing of his liquor shop at Choumuhani. The said writ petition is stated to be still pending, and in the circumstances it would not be desirable to express any opinion regarding the order made on April

22, 1964. The Commission indeed is concerned not with the merits of the order but only with one aspect of the matter, viz., whether Shri Tripathy had any ulterior motive and as such was guilty of impropriety. So far as this aspect of the matter is concerned, the answer on the material on record of the Commission has to be in the negative.

The fourth and the last matter dealt with in this allegation relates to the grant of foreign liquor "ON" licences to Dr. Mahendra Kumar Sahu and Shri Krushna Chandra Dalai at Cuttack and Paradeep Port respectively as per orders of Shri C. M. Singh and Shri Sanganna respondents. In this connection I find that though the Deputy Excise Commissioner and the Excise Commissioner opposed the proposal, the Collector of Cuttack supported the proposal. On May 26, 1966 the Secretary of the Excise Department addressed a note to Deputy Minister (Excise), the material part of which along with the orders thereon reads as under:—

" 3. As regards merits, the E. C. has found it difficult to accept the recommendation of the Collector to grant 2 'ON' licences. The reasons have been analysed in the notes of U. S. the only point for consideration is the fact that the number of people who want alcoholic drinks at Cuttack and Paradeep is not insignificant.

4. For orders.

Sd. B. K. Mishra

26-5-1966

For the reasons mentioned at 'A' above, there may be one 'ON' shop at Cuttack and another at Paradeep.

Sd. C. M. Singh

15-6-1966

M. (Excise)

Approved as proposed. C. M. may see.

Sd. T. Sanganna

19-6-1966"

When the papers were put up before the Chief Minister, Shri Tripathy, he raised the question regarding the persons to whom the liquor would be sold and the procedure about the issue of permits. Shri Tripathy also referred to an application received from a person who had secured an "OFF"

licence in Cuttack town in public auction and who had threatened legal action in case the proposed "ON" licences were granted. Shri Tripathy, accordingly, posed the question about the demand of compensation by the persons to whom the licences had already been granted. The matter was thereafter referred to the Law Department. The Law Secretary expressed the opinion that there was no legal bar to the grant of "ON" licences. Shri C. M. Singh and Shri Sanganna thereafter passed the following orders :—

“ Since there is no legal bar, orders at P. 7/N may stand.

The queries of C. M. have been examined above.

Sd. C. M. Singh

6-7-1966

Discussed the question again with C. M.

Please therefore issue licences as proposed today
(7-7-1966)only.

Sd. T. Sanganna

7-7-1966 ”

The above orders were made by Shri C. M. Singh and Shri Sanganna in the exercise of powers vested in them, and though a view can be taken that it would have been better to follow the recommendation of the Deputy Excise Commissioner and Excise Commissioner and not that of the Collector and the Secretary of the Department, I find it difficult to hold Shri Chandramohan Singh and Shri Sanganna guilty of impropriety because of their having preferred the recommendation of the Collector and the Secretary of the Department. The distinction between a *mala fide* order and an error of judgment has, in this connection, to be borne in mind, while a respondent may be held to be guilty of impropriety because of his having made a *mala fide* order, no such finding would be permissible merely because of his having passed an erroneous order. Both Shri Sanganna as well as Shri Chandramohan Singh have denied personal acquaintance with Dr. Mahendra Kumar Sahu and Shri Dalai. There seems to be no cogent ground to disbelieve them in this respect. The mere fact that Dr. Sahu and the father of Shri Krushna Chandra Dalai belonged to the Congress Party, is not sufficient to vitiate the orders of Shri Sanganna and Shri Chandramohan Singh as *mala fide*.

It has also been argued on behalf of the State Government that the grant of the "ON" licences to Dr. Sahu and Shri Dalai could have resulted in the loss of revenue. Reference in this connection has been made to the apprehension expressed by the Excise Commissioner in his letter dated July 9, 1966. There is, however, no material on the record to indicate that the grant of "ON" licences to Dr. Sahu and Shri Dalai actually resulted in the loss of revenue. In the absence of such evidence, it cannot be said that any loss was caused to the State Government as a result of the impugned orders.

I would, therefore, hold that the charge of impropriety contained in this allegation has not been substantiated.

CHAPTER 54

ALLEGATION No. 54

Re

Mahanadi Multipurpose Industries

Allegation No. 54 relates to alleged favouritism by grant of an advance of Rs. 3.28 lakhs to Mahanadi Multipurpose Industries, Cuttack. The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Routray and Shri Mardaraj.

According to the case of the State Government, Shri Gopal C. Patnaik is the Managing Partner of Mahanadi Multipurpose Industries. Shri Biju Patnaik, Shri Mitra and Shri Routray were interested in Shri Gopal C. Patnaik and his concerns. The reason for that was that Shri Gopal C. Patnaik held shares in Utkal Distributors and Kalinga Tubes. Shri Biju Patnaik and his family members too held shares in those companies. The relatives of Shri Mitra and Shri Rautray held shares in Utkal Distributors. Shri Gopal C. Patnaik is the brother-in-law of Shri Kamini Kant Patnaik, who is the Income-tax Lawyer of Shri Biju Patnaik and Shri Mitra and has otherwise also close political associations with them.

Mahanadi Multipurpose Industries, it is stated, used to supply Hume pipes and collars to departments like the Rural Engineering Organization and Public Health. The concern had factory of its own near village Khuntuni. Orders for R C C Hume pipes and collars were placed by the Executive Engineer, Drainage and Sewerage Division, Cuttack, in February and March, 1962 with Mahanadi Multipurpose Industries for supply of R C C Hume pipes and collars. Against the aforesaid orders, an advance of Rs. 3.28 lakhs was paid by the Executive Engineer to Mahanadi Multipurpose Industries on March 31, 1962. An agreement was executed in connection with that advance and it provided *inter alia* as under :—

- “(1) The order for indent of R C C Spun pipes and collars of the Government of Orissa which may be placed with the second party, shall be attended to by the second party.
- (2) The second party shall be entitled to receive for each order placed an advance amounting to ninety per cent of the value of the goods covered by the order on submitting a bill for the same.

- (3) That along with the bill submitted for advance, the second party shall submit a personal surety bond executed by the Managing Partner of the second party in his personal capacity in the form attached to this agreement as annexure.
- (4) That the advance made against any particular order shall be adjusted against the bill or bills to be submitted by the second party for the price of goods supplied against the order and in case the goods are received and supplied in instalments, the amount of advance to be adjusted against his bill in respect of any particular instalment shall represent only 90 per cent of the value of that instalment of goods supplied. The entire supply as per orders placed with the firm is to be completed by 31-3-1963.
- (5) That the second party shall not sell the R C C Spun pipes or collars to any other party unless all pending orders for supply placed by the Government of Orissa for which advances have been given are complied with.
- (6) That in case any particular order cannot be carried out by the second party the advance given against that order shall be refunded forthwith along with the intimation of inability to comply with the order."

Mahanadi Multipurpose Industries, it is stated, did not supply the complete material within the stipulated period, i. e., by March 31, 1963. The firm also did not refund the advance as provided for in the agreement. The firm represented that they could not make the supply due to non-allotment of cement and requested for the allotment of at least 500 bags of cement. One hundred metric tonnes of cement was thereafter supplied to the firm. In spite of this, the firm did not complete the supplies. There was a proposal to take legal action against the firm but the proposal was dropped. By the end of February 1965, the firm made supplies to the extent of Rs. 2,37,710 out of the advance of Rs. 3.28 lakhs. On October 25, 1965 a sum of Rs. 74,290 was outstanding against the firm and a notice was issued to it to supply the material or to refund the advance within two months. On May 30, 1966 the Chief Engineer, Public Health, directed that a registered notice be served on the firm for completing the supply of material and liquidating the amount of advance which amounted to Rs. 46,375 by that time. On July 4, 1967 the Executive Engineer submitted a report that the outstanding advance had been fully recovered and there was no due of the Government outstanding against the firm.

The State Government alleges that the above advance was given to the firm against rules and no action was taken against the firm even though it contravened the agreement by not

supplying the material within time. The firm is also stated to have been favoured by the supply of cement. Shri Biju Patnaik, Shri Mitra and the other named respondents are stated to be responsible for the above impropriety.

In support of the above allegations, the State Government has filed the affidavits of Shri S. Sita Ramayya, Assistant to Chief Engineer, Public Health and Inspector Madhusudan Das (Vigilance).

Shri Biju Patnaik, Shri Mitra, Shri Routray and Shri Mardaraj in the course of their affidavits have denied the correctness of the allegations made against them and have stated that they were not interested in Shri Gopal C. Patnaik and have not shown any favour to the firm in question.

Supplementary affidavits have been filed by Shri Prafulla Chandra Rath, Assistant to the Chief Engineer, on behalf of the State Government, as well as by Shri Patnaik and Shri Mardaraj.

In respect of this allegation I find that no specific act or order of any of the named respondents was assailed in the particulars of allegation. There was also no reference to any act or order of the respondents in the original affidavit and statement filed on behalf of the State Government. Reference has, however, been made in the supplementary affidavit filed on behalf of the State Government to the act of Shri Mardaraj in appending his signatures on March 20, 1962 in token of his approval to the following note of the Secretary, Works Department.

“Minister Works,
Notes at page 2/N explain. Finance Department have now concurred in the draft for payment of advance of 90 per cent of the cost with the order to be placed with the M/s. Mahanadi Multipurpose Industries for RCC pipes required for Cuttack sewerage and storm water drain, Cuttack town. The draft may be approved for issue.

19-3-1962.”

No inference of impropriety, in my opinion, can be drawn against Shri Mardaraj from his having appended the signatures to the above note. The note itself makes clear that the recommendation of the Secretary, Works Department, had also been concurred by the Finance Department. There was,

in the circumstances, nothing wrong on the part of Shri Mardaraj to give his approval to the proposal after the same had been vetted by two departments. The material on record also shows that the Cuttack Sewerage and Drainage Scheme was a Scheme of the Health (L. S.-G.) Department. The Public Health (Engineering) Department took up the execution of the scheme on a departmental charge of 17 per cent. According to Shri Mardaraj, the proposal for giving 90 per cent advance had already been finalized by Finance Department and his approval was a mere technical formality. This plea of Shri Mardaraj in the context of all the facts is not devoid of force.

Nothing has been shown at the time of arguments that Shri Patnaik, Shri Mitra and Shri Routray did anything in connection with the advance of money to the firm in question.

I would, therefore, hold that the charge contained in this allegation has not been substantiated against any of the respondents.

CHAPTER 55

ALLEGATION No. 55

Re :

Inland Dealers, Cuttack

Allegation No. 55 relates to purchase orders placed with Inland Dealers, Cuttack. The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Mardaraj and Shri Mohanty.

According to the case of the State Government, Kalinga Tubes limited is the manufacturer of black and G. I. Pipes. Shri Patnaik was the managing Director and Mrs. Patnaik was a Director of Kalinga Tubes before Shri Patnaik became Chief Minister. After Shri Patnaik became Chief Minister he ceased to be the Managing Director of the Company. Orissa Agents was started on April 1, 1959 and Mrs. Mitra was shown as its proprietor. Orissa Agents was the sole distributor of Kalinga Tubes for the products like G. I. Pipes. Shri Dola Govinda Mohanty was previously an employee of Orissa Textile Mills. Subsequently, Shri D. G. Mohanty was employed by Orissa Agents on monthly salary of Rs. 275. While Shri Mohanty was working in Orissa Agents, another concern known as "Inland Dealers", was started in Cuttack on September 20, 1961 in the name of Shri D. G. Mohanty as its proprietor. After the Inland Dealers came into existence, Shri Mohanty acted in dual capacity as the Proprietor of Inland Dealers and as an employee of Orissa Agents. On some occasions Shri Mohanty used to represent both the concerns at the time of submitting tenders, opening of tenders and acceptance of quotations. Some of the articles in which Orissa Agents and Inland Dealers dealt, were the same. Shri Mohanty on occasions used to submit quotations for the same articles on behalf of both Orissa Agents and Inland Dealers to the same department against the same tender but at different rates.

Kalinga Tubes Limited, it is stated, used to publish its price circulars from time to time of the different articles manufactured by the Company along with cash and other discount. Although the rates of the Kalinga Tubes were fixed for a particular period, Orissa Agents and Inland

Dealers used to quote different rates which were higher than the rates circulated by the Kalinga Tubes. Kalinga Tubes in such cases used to refrain from submitting its quotations and stated that its sole agent, i. e., Orissa Agents, would submit quotations on behalf of the said Company. On occasions it also happened that Orissa Agents after acceptance of the tender would refuse to supply the articles with the result that the Government department had to accept the tender of Inland Dealers even though the quotation of Inland Dealers was higher than that of Orissa Agents. By this process the goods produced by Kalinga Tubes were supplied at much higher rates. Inland Dealers is stated to be a satellite concern of Orissa Agents.

One purchase order No. 6103, dated June 12, 1962 was placed by the Public Health Department with Orissa Agents for supply of six inches G. I. Pipes at the rate of Rs. 15.25 per Rft. Orissa Agents on receipt of this order expressed inability to supply the material. Shri Mohanty, who was representing Orissa Agents, then stated on behalf of Inland Dealers that he could supply the articles on behalf of Inland Dealers at higher rates. Fresh quotations were then called and Shri Mohanty submitted quotations on behalf of Inland Dealers at much higher rates than the rates earlier quoted. The purchase order for the supply of the above mentioned 6" G. I. Pipes at the rate of Rs. 25.75 per Rft. was then placed with Inland Dealers. The Orissa Government in this deal had to pay Rs. 44,100 to Inland Dealers over and above the rates initially quoted by Orissa Agents. The State Government alleges that the method, referred to above, was a clever device to inflate the rates of material supplied to the Government. The officers of the Departments, it is further stated, took no action as they knew of the connection of Shri Mitra and Shri Patnaik with Shri D. G. Mohanty. The State Government concludes from the above that the respondents named in this allegation were guilty of impropriety.

In support of the above allegation, the State Government has filed the affidavit of D.S.P. Shankar Samantsinhar (Vigilance).

Shri Patnaik in the course of his affidavit has denied the correctness of this allegation and has stated that he did not exercise any undue influence in connection with the

transactions in question. He was not even aware of those transactions. Shri Patnaik has also denied that there was any manoeuvre or favouritism shown by him.

Shri Mitra likewise has denied the correctness of this allegation. According to him, he does not know if Shri Dola Govinda Mohanty has ever resorted to any manoeuvre to supply materials to different departments of the State Government at higher rate as alleged. Shri Mitra adds that Orissa Agents and Inland Dealers were not his concerns and he had no connections with Inland Dealers.

Shri Mardaraj too has refuted the charge levelled against him and has stated that in the matter of purchase orders the departmental officers concerned were acting in their own capacity in exercise of the powers enjoyed by them under the P. W. D. Code. Shri Mardaraj did not know of the transactions in question.

Shri Mohanty has denied the correctness of the allegation made by the State Government and has stated that the allegation relates to a period prior to October 2, 1963 when he became Minister. According further to Shri Mohanty he was never concerned with the orders placed with Inland Dealers.

Shri Dola Govinda Mohanty too has filed his affidavit in respect of this allegation and according to him he started his business concern, "Inland Dealers" on his own initiative and without the knowledge of Shrimati Mitra. It is further stated that Inland Dealers was neither a *benami* business concern of Shri or Shrimati Mitra, nor was it a satellite concern of Orissa Agents. Shri D. G. Mohanty adds that he was enjoying the profits and bearing the loss of Inland Dealers and the tenders on its behalf were purely his own.

Although this allegation initially gives the impression of being related to a series of transactions, it in fact deals with one transaction. Arguments too have been addressed only in respect of that transaction. So far as that transaction is concerned, I find that in response to a tender notice issued by the Superintending Engineer of Public Health, Bhubaneswar Circle, for supply of 6" diameter steel tubes, Orissa Agents through its employee, Shri D. G. Mohanty, submitted a quotation on May 10, 1962 of Rs. 15.25 per Rft. Shri D. G. Mohanty also submitted a quotation on behalf of Inland

Dealers on May, 11, 1962 for the same pipe at the rate of Rs. 16.16 paise per Rft. On June 18, 1962 the Superintending Engineer placed an order with Orissa Agents for supply of 4,000 Rft. tubes at the rate of Rs. 15.25 paise per Rft. On June 26, 1962 Shri Mihir Berham, Commercial Manager of Orissa Agents, addressed a letter to the Superintending Engineer regretting inability due to unavoidable circumstances to supply the pipes (i.e., the tubes in question). On July 3, 1962 a note was put up on the file that as Orissa Agents had expressed inability to supply the material Inland Dealers, whose quotation of Rs. 16.16 Paise per Rft. was the second lowest, might be asked to supply the same. The Superintending Engineer thereupon directed that Inland Dealers might be asked to supply at the lowest rates. On July 5, 1962 Inland Dealers addressed a letter to the Superintending Engineer, which reads as under—

"Kindly refer to our quotation for the above. We beg to state that in the meantime the price of the above size G. I. pipe has gone up. The present price is Rs. 25.85 nP. per Rft. Ex. Our stores at Cuttack and exclusive of Orissa Sales Tax.

In case we be favoured with your esteemed order, we can supply any quantity from our ready stock subject to prior sale."

On receipt of the above letter, the Superintending Engineer made a note on its margin.

"Cannot accept. Get fresh quotations."

Fresh quotations were thereafter called by the Superintending Engineer as per tender notice dated July 13, 1962. Fifteen firms submitted their quotations including Inland Dealers. Orissa Agents was not asked to submit a quotation. Inland Dealers in its letter quoted a rate of Rs. 25.75 P. per Rft. for Kalinga Tube of 6" diameter. On July 27, 1962 the Superintending Engineer placed an order with Inland Dealers for supply of 4,000 Rft. of 6" dia tubes at the rate of Rs. 25.75 Paise per Rft. When the Chief Engineer of the P. H. Department came to know of the above order placed by the S. E. with Inland Dealers at the rate of Rs. 25.75 Paise per Rft. he directed the Superintending Engineer to take steps to stop supply of the material by Inland Dealers if they did not agree to supply at the rate of Rs. 18.60 Paise per Rft., which rate had been agreed to by Orissa Agents in July, 1962 in respect of another supply made to the Public Health Department. The quotation for that supply too had been made by Shri D. G. Mohanty on behalf of Orissa Agents.

On September 24, 1962 the Superintending Engineer placed an order with Orissa Agents for supply of 5000 Rft. of 6" dia tubes at the rate of Rs. 18.60 Paise per Rft. Orissa Agents as per letter dated September 26, 1962 expressed inability to supply the pipes due to heavy orders in hand.

The above facts go to show that Shri Dola Govinda Mohanty was playing a dual role, one as an employee and representative of Orissa Agents, and the other as the proprietor of Inland Dealers. In the particular case, which is the subject of this allegation, he submitted quotations in response to the tender notice on behalf of both Orissa Agents and Inland Dealers. Subsequently, when Orissa Agents, with whom the order was placed, expressed inability to supply the material and the Superintending Engineer proposed to place the order with Inland Dealers, the concern (Inland Dealers) revised its quotation and raised the rate from Rs. 16.16 paise to Rs. 25.75 Paise. The Superintending Engineer thereupon invited fresh quotations and placed the order with Inland Dealers for supply of material at the rate of Rs. 25.75 Paise, presumably because the quotation of Inland Dealers was the lowest. When the Chief Engineer came to know of the order he directed that order be placed at the rate of Rs. 18.60 Paise which had been agreed to by the Orissa Agents in the case of another supply. An order was thereafter placed with Orissa Agents but the concern expressed its inability to make the supply. As no supplies in pursuance of the order placed by the Superintending Engineer are shown to have been made by Orissa Agents or Inland Dealers, it cannot be said that those two concerns derived any pecuniary advantage in the transaction. There is also no cogent material to indicate that the activities of Shri Dola Govinda Mohanty as proprietor of Inland Dealers were within the knowledge of the respondents, and they abetted or connived at the same.

I would, therefore, hold that the charge contained in this allegation has not been proved against the respondents.

CHAPTER 56

ALLEGATION No. 56

Re:

Purchase of Trucks and Trailers

Allegation No. 56 relates to alleged impropriety in the purchase of trucks (also described as tractors) and trailers by the Orissa State Commercial Transport Corporation (hereinafter referred to as the OSCTC) for the purpose of transporting iron-ore to Paradeep Port. The respondents named in the allegation are Shri Patnaik, Shri Tripathy, Shri Routray and Shri Chittaranjan Nayak.

According to the case of the State Government a proposal was made sometime in early 1962 for purchase of 112 trucks of 25 tons capacity with trailers attached thereto for transport of iron-ore from the mine-head to Paradeep Port. The trucks were meant to run on the Express Highway which was then under construction. Shri Patnaik, who was then Chief Minister tried to push through the programme of the purchase. The indigenous concerns like the Tata Engineering and Locomotive Company intimated that they were going to produce Mercedes Benz vehicles with a carrying capacity of 22 tons and the same could be supplied in about a year's time. Ashok Leyland sent intimation that they were going to manufacture heavy vehicles with a carrying capacity of 9 tons. It was, however, decided to purchase W-15 trucks and semi-trailers from Mitsubishi Nippon Heavy Industries, Ltd., Japan (hereinafter referred to as the Mitsubishi). These vehicles had a carrying capacity of 9 tons on a full trailer and 17 tons on a semi-trailer and had a maximum speed of 25 miles per hour on a tarmac road with a gradient of 1 in 50. The State Government alleges that such roads are not available and on ordinary roads the above vehicles were practically useless. Before December 1962 the purchase of the indigenous trucks was done through the Defence Department but under the directions of Shri Biju Patnaik the *modus operandi* was changed and it was decided that the Orissa Government should deal directly with the Japanese firm. This was made clear in letter dated January 16, 1963. Shri Patnaik then suggested that he would initially place an order for about 200 number of W-15 trucks as a part of iron-ore barter and requested Mitsubishi for participation in manufacture of W-15 trucks in India. The Japanese concern replied

that it involved a policy decision and that the matter be talked over with Mr. Nyui who was expected in India for negotiating the contract. Shri Patnaik then left for Japan and United States of America.

The Government of India in the meantime issued instruction for going in Leyland's Beever indigenous 30 ton truck-cum-trailer but no heed was paid to this instruction. The Japanese concern suggested that the Letter of Intent should be placed with the said concern and that the Finance Ministry be asked to supply the Yen credit. It was also mentioned that such a procedure would develop a combined fight by the Orissa Government and Mitsubishi so that the Finance Ministry might be prevailed upon not to insist upon the purchase of Leyland.

The Government of India, it is stated, was not ready to give foreign exchange and wanted the purchase of indigenous Leyland products. A number of telegrams were then received from the Japanese concern. The Japanese concern also showed its interest in the mining and the export of iron-ore to Japan. Ultimately it was decided to purchase 93 trucks from Japan and only 19 trucks from Leyland.

Question was also taken up about the purchase of trailers. No tenders were called and negotiations were started with an Australian concern V.G. Mc-Grath Private, Ltd. (hereinafter referred to as Mc-Grath Company or the Australian Company). The concern has also been described on the record as "Mc-Grath International". The Government of India on August 12, 1966 wrote a letter stating that negotiations with the Australian Company should not continue since Indian concerns could produce similar trailers. Mention was made in this connection of Mahendra Owen and Leyland. Despite that, orders for supply of 50 trailers were placed with the Australian Company. The order for purchase was approved by Shri Chittaranjan Nayak and Shri Routray on December 22, 1966, and Shri Tripathy on December 23, 1966. The State Government also agreed that 50 per cent of the cost price would be paid to the Australian Company within 14 days of the execution of the agreement. This was done without enquiring into the credentials of the Australian Company. A huge advance was thereafter paid. After the payment of the advance the Australian concern intimated on September 19, 1967 that it could not manufacture the trailers for want of certain imported parts.

The cost of the Australian trailer was Rs. 1,50,000, whereas the cost of a trailer manufactured by Leyland was Rs. 1,15,000. An extra amount of Rs. 35,000 per trailer was paid to the Mc-Grath Company resulting in loss of Rs. 17,50,000 in the purchase of 50 trailers.

In the meantime, it is stated, 93 Japanese trucks at a cost of 2 crores came but they lay idle with the staff since trailers were not there and even the roads were not completed.

The State Government concludes that the above transactions were entered into with a corrupt motive. Liability is sought to be fastened on the respondents named in this connection.

In support of the above allegation the State Government has filed the affidavits of Inspector Mohd. Haroonal Rashid (Vigilance) and Inspector Gourang Patra (Vigilance).

Shri Patnaik in the course of his affidavit has denied the correctness of the allegation made against him. According to Shri Patnaik the order for Mitsubishi trucks was the result of a policy decision by the Government. It was the current thinking of the then Government to establish a factory at Paradeep for manufacture of these trucks in collaboration with the Japanese. A project of this nature apart from providing gainful employment to the people of Orissa would also have solved the problems of transport to Paradeep as well as of supply to the Defence Department. Other ancillary advantages would have also flown from Project of this magnitude. As free foreign exchange was not readily available, the State Government headed by Shri Patnaik intended to implement the scheme on a barter basis by the export of iron-ore to Japan through Paradeep Port. The Clearance of the Planning Commission as well as of various other Central Ministries was obtained. When Shri Patnaik relinquished office, the Project was allowed to languish. Three Japanese trucks were purchased under orders of Orissa Government to test their capacity and performance. As regards the other events, referred to by the State Government, Shri Patnaik states that they took place after he ceased to hold office.

Shri Tripathy has refuted the allegation made against him. According to Shri Tripathy the purchase of trucks and trailers in question was made on the recommendations of the Technical Officers of the Government of India and the State Government and he found nothing wrong in the purchase.

Shri Routray in the course of his affidavit has stated that he does not remember having dealt with the papers relating to the purchase of trucks from Japan. He had, however, occasion to deal with the matter relating to the purchase of trailers from Australia. This was a technical matter and as such orders were passed on the advice of the officers concerned. Extra care was taken to obtain the advice of the Expert Technical Committee of the Government of India. There was no question of *mala fide*. According further to Shri Routray the lukewarm attitude of the present Government is responsible for the non-completion of the Express Highway.

Shri Chittaranjan Nayak has also controverted the allegations of the State Government. According to Shri Nayak he expressed his opinion on the file in the light of the official notes and for the best interest of the State. Shri Nayak adds that the decision to purchase 50 trailers was taken for the following reasons :—

- (i) The purchase had been recommended by a Committee of Technical and Administrative Officers of the Government of India as well as of the State Government;
- (ii) The trailers were available on attractive deferred payment basis;
- (iii) Foreign exchange was available on barter deal;
- (iv) Indigenous manufacturers were not sure of their delivery schedule and availability of foreign exchange for importing major parts like axle.

The purchase, it is stated, was ultimately approved by a Committee constituted by the present Government on June 28, 1967. As regards the purchase of trucks from Japan, it is stated, the same was in pursuance of a Cabinet decision.

Supplementary affidavit has been filed by Shri Patnaik

In respect of this allegation I find that near about April, 1962 a post of Chief Transport Officer was created to work out details of the transportation scheme for transporting iron-ore of 2 million tons from mine-head to Paradeep Port. Colonel S. K. Ray joined as Chief Transport Officer. On April 23, 1962 a note was addressed to the Chief Secretary by Shri Gian Chand, Joint Secretary, Commerce (Ports) Department, stating that they were all working on a tight-time schedule, and it was, therefore, necessary to determine the size

and specifications of the vehicles to be utilized for carrying iron-ore to Paradeep. Mention was also made of the need of starting negotiations with the manufacturer for supply of the vehicles in time. Shri Sivaraman, Chief Secretary, thereafter made a note on April 24, 1962, suggesting an inquiry about Leyland trucks. On May 24, 1962 a meeting was held in the room of the Chief Secretary wherein a reference was made to the shortage of foreign exchange. It was decided that the Chief Transport Officer should work out the details with regard to the vehicles for consideration of the Government. A meeting, attended by Shri Manubhai Shah, Minister of International Trade, Shri Patnaik, the Ambassador of Japan and the Commercial Counsellor and Commercial Secretary of Japan, was held on June 13, 1962, about the development of Orissa with particular reference to Paradeep. In the course of that meeting the broad outlines of the scheme for development of the resources of Orissa and the export of iron-ore and other minerals to Japan were discussed. It was then decided to have a technical survey. One of the things mentioned during the course of the discussion was that an Express Highway of 92 miles was under construction between mining areas and the port of Paradeep and would be ready within 24 months. A transport equipment consisting of about 150 to 200 heavy trucks of 25 tons capacity, including trailers, was stated to be required for the transport of 3 million tones of iron-ore to Paradeep with a view to export the same to Japan. On June 20, 1962 Colonel Ray submitted a detailed note that the total capital investment on the truck-cum-trailer vehicles for transport of iron-ore would be Rs. 1,91,82,518 if the decision was to go in for Leyland trucks, Rs. 1,53,56,640 in case of Tata Mercedes-Benz trucks, and Rs. 1,35,00,000 for Mitsubishi-W. 15 trucks. Out of the above amount, the foreign exchange required was stated to be of the value of Rs. 46 lakhs. Reference was also made in the note to the fact that Mitsubishi-W. 15 trucks were likely to be accepted for production by the Ministry of Defence. The final recommendation of Colonel Ray was that if they could secure foreign exchange, it would be best to go in for Mitsubishi trucks. In the alternative he suggested Tata Mercedes Benz trucks. Colonel Ray thereafter visited Bombay, Poona, Ahmedabad and Deolali in connection with the finalization of the design of the load carrier vehicle. He was also present at the time of the trial of a W. 15 truck which had been imported by the Defence Department. According to the report of Colonel Ray, Mitsubishi-W. 15 truck performed very well at the time of the trial. It was also observed during the trial of the truck at

Ahmednagar that one of its half shafts had broken when the vehicle got stalled going down a slope and it was desired to put it in reverse with a low reduction gear. The taking of the vehicle up the slope with a gradient of 19 degree in reverse in that manner was, according to Colonel Ray, against the manufacturer's instruction as no vehicle in service would have to perform such a task. In conclusion, Colonel Ray observed that the technical trial of the truck had shown satisfactory result and the defects noticed could be eliminated by minor alterations in design. On September 24, 1962 a telegram was sent to Colonel Ray by the Chief Secretary stating that the Defence Department was going in for a different vehicle. The suggestion of Colonel Ray that he might be allowed to go to Japan in connection with the purchase of vehicle was also turned down by the Chief Secretary.

On December 10, 1962 Shri Sivaraman, Chief Secretary, stated in the course of his note :

“ Chief Minister desired that we may bargain for 200 trucks and follow up with Mitsubishi's offer so that this can be included in the Japanese deal.”

On December 22, 1962 Colonel Ray in a note observed that the Chief Minister had called him at his office and told him to go ahead with negotiations with the Japanese firm for purchase of W-15 truck and semi-trailer. The Chief Minister also expressed the desire that the assemblage of the trucks and the manufacture of trailers should take place in India. The Chief Minister in that connection suggested that order be placed for 6 trial units of Mitsubishi trucks and trailers for carrying out trial in India. On December 29, 1962 Shri Patnaik sent a letter to the Secretary, Ministry of Transport and Communication, asking for licence to import three units of Mitsubishi W-15 trucks with semi-trailers for the purpose of trial in India. A meeting was held by the representatives of Mitsubishi with Shri Patnaik on January 16, 1963. Shri Patnaik then stated that he would initially place an order for 200 numbers of W-15 trucks as a part of iron-ore barter and requested Mitsubishi for equity participation in manufacture of those trucks in India. Shri Patnaik also stated that the components, which were required to be imported from Japan, would be covered by exporting vehicles from India to the adjacent countries. The representative of Mitsubishi then stated that those propositions depended upon the policy decision of the Company and as such the Head Office had decided to send the Manager, Vehicle Export Division, to India in the beginning of February, 1963. On

February 11, 1963 the Chief Secretary in a note observed that the cost of transport of iron-ore from Daitari to Paradeep by Mitsubishi trucks worked out to be Rs. 11.80 per ton and not Rs. 9 per ton as advised by Colonel Ray. It was also mentioned that the cost would be Rs. 10 per ton by transport in Tata Mercedes Benz Trucks. The Chief Secretary suggested that a firm decision be taken so as to have the required number of trucks by 1965. Shri Patnaik thereupon made the following note:—

“ I am at present discussing possibilities of manufacture of Mitsubishi Trucks in Orissa. This may wait for the present.

Sd. B. Patnaik

12-2-1963”

On March 26, 1963 the Chief Secretary in another note stated that there appeared to be no prospect of the establishment of a new factory for the manufacture of trucks and the collaboration of the Defence Department in the same. He further stated that the Finance Minister had indicated that foreign exchange would not be available for Mitsubishi trucks unless it was linked up with iron-ore export. The entire situation was stated to be fluid. Some suggestions were made for the selection of a site for the assemblage of trucks and the training of persons. On March 30, 1963 Shri Patnaik approved the suggestions of the Chief Secretary and stated that deal with Mitsubishi might be finalized after his trip to Japan sometimes towards end of May. In August, 1963 Mitsubishi offered free of cost to the Chief Transport Officer, Orissa, the one truck which had been imported by the Defence authorities for trial provided the State Government reimbursed the Defence authorities with the customs duties amounting to Rs. 37,626 paid for that truck. This offer was accepted by the Government of Orissa. On September 20, 1963 Shri Patnaik in a note stated that his decision was that 150 trucks would come from Japan in completely knocked-down condition as a barter. On July 6, 1964 Shri Sivaraman, Chief Secretary, in a letter to the Secretary, Ministry of Transport, referred to the proceedings of a meeting held on March 19, 1964 and stated that in connection with the transport of iron-ore from Daitari Mines to Paradeep Port, various types of trucks had been considered. Two types of vehicles, viz., Ashok Leyland Comet and Mitsubishi were put on trial. Ashok Leyland Comet tractor-trailers were found, it was stated in the letter, to be unsuitable. Mitsubishi

tractor/trailers were subjected to vigorous trials and the trial reports were enclosed with the letter. According to the trial report the Mitsubishi trucks were put on trial during the period from January 24, 1964 till April 26, 1964. The trucks were driven for more than 10,000 kilometers with loads sometimes of 25 tons, sometimes of 30 tons and on other occasions without any load. The performance of the trucks was found to be satisfactory and no major defect was discovered. Some defects of a very minor nature were found in the truck and suggestions were made for eliminating those defects. As a result of the trials the cost of transport was found to be Rs. 11.88 in a Mitsubishi 25-ton truck, Rs. 11.68 in a Mitsubishi 30-ton truck and Rs. 12.64 in a Leyland Beaver 30-ton truck. It was also mentioned in Shri Sivaraman's letter that the landed cost of Ashok Leyland Unit was approximately Rs. 60,000 more than Mitsubishi Unit. Request was made that a meeting be called for early decision as to the type and make of heavy duty vehicles to be used for transporting iron-ore to Paradeep over the Express Highway. What transpired subsequently is clear from the summary of discussion held on September 26 and 27 of 1966 at New Delhi. Those, who participated in the meeting, were Joint Secretary, Ministry of Commerce, Senior Industrial Adviser and Development Officer of Directorate General of Technical Development, General Manager (Ores) of Minerals and Metals Trading Corporation, Secretary Commerce Department of Orissa, and three representatives of OSCTC. It is stated in the course of that summary record of the discussion :—

“ The present position was that though import licences have not yet been issued, foreign exchange clearance had already been given for (a) the import of 112 Mitsubishi tractors from Japan (against parallel sale of iron-ore), both contracts having in fact been concluded, and (b) for the import of 100 three-axle Mc. Grath Trailers from Australia (against deferred payment terms, which also have been approved) for which contract was about to be concluded. .

4. The choice of tractors and trailers suitable for the purpose, and the possibility of obtaining them from indigenous suppliers, had been examined at considerable length by a Working Group (appointed by the Government of India) in course of 1965. It had recommended on the 28th August, 1965 that Hippo tractors (to be assembled by Messrs. Ashok Leyland, Madras) and trailers to be manufactured by Messrs. Mahindra Owen, Bombay, could serve the purpose. As assessed then by that Working Group, the tractors would have entailed foreign exchange of Rs. 66.84 lakhs and the trailers foreign exchange of Rs. 10.2 lakhs (in pre-devaluation terms).

5. By the time the recommendation was made, however, the hostilities of 1965 had started. Apart from suspension of aid and several other lines of credit, increased Defence requirements of an indeterminate nature supervened. So the problem arose of finding the foreign exchange component of the indigenous supplies (from the sources mentioned above), which could not be met from the extremely limited normal allocations that could be made for the manufacture of vehicles at that time. The position was reviewed by the Committee of Secretaries on Iron-Ore Exports at a meeting held on the 14th October, 1965. It was noted that there was no prospect of so much of free foreign exchange (or aid) being available for this purpose, due to other inescapable and priority commitments then (including Defence). It was also noted that the Emergency situation (existing then) raised serious doubt even about the rate at which the proposed local assemblers/manufacturers could deliver (within their installed capacity) the requisite number of vehicles in time. On the other hand, it was agreed, the most critical factor in commencing exports *via* Paradeep was the arranging of the requisite number and type of tractors/trailers to carry ore to the Port. Accordingly, it was decided to negotiate the purchase of the vehicles from Japan against sales of iron-ore *via* Paradeep.
6. Negotiations in this regard were initiated through the MMTC. As regards the choice of tractors/trailers to be imported; the MMTC were assisted by a Group including representatives of the DGTD; this Group also maintained close liaison with the user (OSCTC) keeping in view the time schedule regarding the commencement of ore exports *via* Paradeep.
7. As a result of such further examination by the end of February, 1966 it was possible to finalize the choice as between imported makes) on Mitsubishi tractors (of Japan. A parallel deal for selling some ore *via* Paradeep to meet the foreign exchange cost, was also concluded by the MMTC immediately thereafter. As regards the trailers to be imported after careful consideration of technical data the types available from Japan (Mitsubishi and Mitsui) were not found so advantageous as the Mc. Grath trailer offered from Australia; while no ore could be sold to Australia to pay for the trailers, (as Australia herself exports ore) the Australian supplier could be persuaded to offer deferred payment terms that were acceptable to the Ministry of Finance (DEA). On 26th February, 1966 foreign exchange clearance was given to the conclusion of negotiations for the import of 112 Mitsubishi tractors and 100 Mc. Grath trailers, apart from ancillaries (like spare parts, turn tables for the trailers, etc.).
8. Following that authorization, in detailed negotiations some marginal advantages were further secured by the Orissa Government representatives concerned from the intending foreign suppliers. A Letter of Intent was issued by them to

Mitsubishi in April, 1966 followed by a formal contract in August, 1966. As regards the trailers, a Letter of Intent was similarly issued by them to Mc. Grath in May, 1966; the contract has not yet been concluded, though it is in the final stages of negotiation."

The pros and cons of different proposals were thereafter discussed in detail and unanimous decisions were arrived at as under:—

"TRACTORS

- (a) Instead of importing 112 Mitsubishi tractors from Japan, 93 Mitsubishi tractors will be imported. An Import Licence (for the entire 93) will be issued immediately;
- (b) the remaining 19 tractors required (which number of tractors required for the initial fleet) would, instead of import, be indigenously ordered by the State Government with M/s. Ashok Leyland (That firm has undertaken to make available 19 units ex-works Madras in course of January, 1967.);
- (c) any further tractors that might be required (in connection with the additional ore movement mentioned above) should be decided upon as early as possible by the State Government and such further orders also placed on M/s. Ashok Leyland in time to get priority in their delivery programme in subsequent months of 1967;
- (d) though the number of Mitsubishi tractors to be imported would thus get reduced from 112 to 93, to ensure uninterrupted operation of the fleet, the spares wreckers, workshop and other ancillary equipment (up to the foreign exchange ceilings that had been approved) to be imported would remain unchanged;
- (e) the State Government representatives will suitably explain to the local representatives of Mitsubishi that, instead of the contracted 112 tractors, imports are being licensed for 93 though the ancillaries (spare parts, etc.) would remain unchanged. They should also emphasise on Mitsubishi that the time schedule already agreed to by Mitsubishi (but now up to the delivery of 93 units) should be strictly adhered to;

Trailers

- (f) Instead of importing 100 Mc. Grath trailers from Australia order for 88 should be placed with them out of which, again, the firm order (to be backed by immediate import licence) would be for 50 trailers but option will be retained (till 31st December 1966) for confirming the order for the remaining 38 units also. The purpose of dividing the order (for the 88 trailers to be imported) into two such lots is that before confirming the balance (of 38), some of the first lot of arrivals would have been tried on the road (before the end of December);

- (g) notwithstanding the reduction in the number of units to be imported (from 100 to 88), the spares to be imported would remain the same (within the foreign exchange ceiling already authorised for the spares) ;
- (h) but, instead of importing 117 turntables, in all 100 turntables be imported out of which, again, 60 would constitute the immediate firm order (to be backed by immediate import licence) and 40 hold over under similar option as in (f) above ;
- (i) to match the 19 Hippo tractors, 21 two-axle trailers should be ordered on Messrs. Mahindra Owen by the State Government (that firm has undertaken to commence deliveries of the trailers by the end of February, 1967); and
- (j) in view of the time schedule, and other technical considerations, the alternative of placing some orders for three-axle trailers on Messrs. Mahindra Owen (and, to that extent, further reducing the number of Australian trailers to be imported) was carefully considered; it was unanimously agreed that the said alternative would not be desirable."

93 Mitsubishi tractors were thereafter imported from Japan and orders for the supply of 50 trailers were placed with Mc. Grath Company.

It would appear from the above that the import of 93 Mitsubishi tractors from Japan and the order for supply of 50 Mc. Grath trailers were in accordance with the recommendation of a Committee of Experts of the Government of India and the State Government. In the circumstances, I fail to understand as to how the respondents can be held to be guilty of impropriety because of the transactions in question. It is plain that in a matter of this type the respondents had to depend upon the advice of the experts. It also cannot be said that the respondents had personal interest in purchasing the trucks and trailers from any particular concern. The fact that it was a Technical Committee appointed by the Government of India which came to the conclusion that the tractors to be purchased should be those manufactured by Mitsubishi Company and the trailers to be purchased should be those manufactured by the Australian Company, is further clear from the following note dated August 2, 1966 of Shri Gian Chand, Secretary of the Commerce Department—

- "2. When we approached the Government of India in the month of September, last year, for allotting us foreign exchange for acquiring tractor trailers from Japan, the Government of India originally informed us that we should arrange for a 'barter' deal as free foreign exchange for purchasing this equipment

was not available. Accordingly, we approached the firm M/s. Mitsubishi Shoji Kaisha Ltd. of Japan from whom a quotation for supply of tractor-trailers had been received and who had also supplied us three sample tractor-trailers which had been found satisfactory to arrange barter deal. This Japanese firm took up the matter with their principals in Japan and made an offer that against export of iron-ore through Paradeep Port, they would supply these tractors and trailers. This position was intimated to the Government of India who set up a small Technical Committee under the Chairmanship of Joint Secretary, Ministry of Transport, to consider the question of importing tractor-trailers from Japan against this barter deal. The Committee met a number of times and considered the offer which the State Government had received from Mitsubishi Shoji Kaisha Ltd., for supply of tractors and trailers and also the offers which had been made to the Government of Orissa by two Indian firms, viz., Ashok Leyland and M/s. Mahindra Owen for supply of tractors and trailers. After thoroughly discussing the matter in a number of sittings, the Committee ultimately recommended that the tractors should be purchased from Japan and the trailers from Australia. In this connection, proceedings of the meeting held on the 7th January 1966, may be perused at flag 'M'. Later on, MMTC arranged the sale of iron-ore of three lakh tons to the Japanese Steel Mills and wrote to us to take action in accordance with the recommendations arrived by the Technical Committee constituted for the purpose of recommending purchase of tractor-trailers by the Orissa State Commercial Transport Corporation. Accordingly, negotiations were held with the two Japanese firms, viz., M/s. Mitsubishi Shoji Kaisha Ltd. and M/s. Mitsui & Company and with V. G. McGrath Pvt. Ltd. of Australia. After detailed negotiations with the two Japanese firms, ultimately in consultation with MMTC, the Orissa State Commercial Transport Corporation have selected M/s. Mitsubishi Shoji Kaisha Ltd., for supply of tractors. Necessary approval of Government to placing orders and issue of Letter of Intent was taken in Notes and minutes at pp. 5—9/n of the linked file.

3. So far as trailers are concerned, detailed negotiations were carried with the Australian Suppliers with whom a deferred payment arrangement has been finalized by the Government of India."

The Government of India also approved of the purchase of tractors from Mitsubishi and the trailers from Australia. This is borne out by letter dated March 17, 1966 from the General Manager of Minerals & Metals Trading Corporation of India, who stated in the course of that letter :—

"On the basis of the decision taken by the Technical Sub-Committee in the meeting held on the 23rd February, 1966 the

Government of India conveyed their approval on 26th February, 1966 for the purchase of Tractors from Japan (Mitsubishi or Mitsui Nissan), and also for the purchase of complete Trailers from Australia."

Reference has been made on behalf of the State Government to the interest taken by Shri Patnaik in the placing of orders with Mitsubishi. In that respect I find from the material on record that Shri Patnaik was anxious that Mitsubishi should establish a factory for manufacture of trucks in Orissa. The Defence Department had also at one time thought of the manufacture of Mitsubishi trucks in India. Shri Patnaik wanted to overcome the foreign exchange difficulty by export of iron-ore on barter basis. It is obvious that if Shri Patnaik's scheme for the establishment of a truck manufacturing factory in Orissa had materialized, it would have had a considerable impact on the economy of Orissa. It would have also opened avenues of gainful employment for a large number of people in Orissa. The barter system would have further secured a market in Japan for the iron-ores of Orissa. Shri Patnaik, however, could not succeed in getting a factory for the manufacture of trucks established in Orissa, but the effort made by him in this respect, being essentially in the interest of the State, cannot be decried. The proposal was, however, accepted ultimately for the import of Mitsubishi trucks on a barter basis in exchange for the export of iron-ore to Japan from Paradeep Port. The effect of this decision was to utilize the new Port and to derive practical benefit from it. As things are the actual orders for the import of Mitsubishi trucks and Mc. Grath trailers were placed long after Shri Patnaik had ceased to hold office.

It has been argued on behalf of the State Government that the representative of Mitsubishi Company on coming to know that the purchase of Ashok Leyland trucks was also under consideration, sent a series of letters and telegrams to Colonel Ray pleading for the purchase of Mitsubishi trucks. It was stated in those letters and telegrams that the Company was prepared to offer reasonable terms and the Japanese Ambassador was also prepared to work for the finalization of the deal. Suggestion was also made to place a Letter of Intent with Mitsubishi so that any objection by the Finance Ministry against the import of trucks and the purchase of indigenous trucks might be overcome. The above communications by the representative of Mitsubishi Company can, in my opinion, be explained by his anxiety and keenness to secure order of trucks for that Company. It is, however, urged on behalf of

the State Government that Colonel Ray also took considerable interest for placing orders with Mitsubishi Company. It is, in my view, not necessary to go into this matter because what we are concerned with is whether the respondents are guilty of any impropriety and not whether Colonel Ray took any interest in the placing of orders with Mitsubishi Company. As things are, it was not merely Colonel Ray who showed his preference for Mitsubishi trucks, the Technical Experts of the Government of India also came to the same conclusion.

So far as the trailers are concerned, it has been urged on behalf of the State Government that indigenous trailers were cheaper compared to the Australian trailers. In this respect I find that the Technical Committee constituted by the Government of India duly considered the pros and cons of acquiring trailers from indigenous firms, vis-a-vis import from Australia, and came to the conclusion that it would be better to import the trailers from Australia. They also ruled out of consideration the trailers manufactured by Kalinga Automobiles on the ground that they had been found to be defective and the technical report was clearly against those trailers. Indeed, the nothings on the file show that Shri Tripathy, Shri Routray and Shri Nayak were not in favour of placing an order for as many as 50 Australian trailers but they gave way in view of the unanimous report of the technical experts of the Government of India. In the face of all these circumstances, the above-named respondents cannot be held to be guilty of any impropriety because of the order placed for import of Mc. Grath Trailers. The fact that Mc. Grath Company did not subsequently fulfil its commitments, would not affect the propriety of the orders of the respondents which were strictly in accordance with the recommendation of the technical experts. It may also be stated that no evidence has been produced to show that any advance was paid to Mc. Grath Company or that the respondents made any order for that purpose.

Argument has also been advanced on behalf of the State Government that no tenders were invited. In this respect I find that on August 1, 1967 the Industries Minister of the present State Government stated in reply to a question in the State Legislative Assembly:—

“ No tender for supply of these tractors was called for either from inside or outside the country. The question of purchasing tractors from Japan was recommended by a Technical Committee appointed by Government of India. The

State Government accepted this recommendation and advised the OSCTC who finally placed orders for these tractors. The main consideration that weighed with the Technical Committee for deciding in favour of Mitsubishi Tractors was that:—

- (i) these tractors were tried on road by the Orissa Government and were technically and operationally found suitable for the purpose of transporting iron-ore;
- (ii) these tractors were on a barter basis in exchange of iron-ore to be exported to Japan."

The above reply constitutes a complete answer to the argument now advanced.

I have given the matter my consideration, and am of the view that no charge of impropriety, as contained in this allegation, has been substantiated against any of the respondents.

CHAPTER 57

ALLEGATION No. 57

Re:

Transactions with Kalinga Tubes, Ltd.

Allegation No. 57 relates to alleged loss suffered by the State Government in transactions with Kalinga Tubes Ltd. The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Mardaraj and Shri Mallik.

According to the case of the State Government, Kalinga Tubes Ltd. was registered under the Companies Act on December 1, 1950 with seven share holders, one of whom was Shri Patnaik. The capital of the Company was Rs. 25 Lakhs divided into 25,000 shares of Rs. 100 each. The first Board of Directors had five members including Shri Patnaik. It was Shri Patnaik who started the Company and he continued to be its Chairman from its inception till he became the Chief Minister in 1961. His wife, Shrimati Gyan Patnaik, was also one of the Directors of the Company. The members of the family of Shri Patnaik owned a large number of shares of the Company. After Shri Patnaik became Chief Minister, Shrimati Gyan Patnaik continued to remain a member of the Board of Directors for a while and thereafter their son, Shri Prem Patnaik became Director of the Company. Shri Patnaik became Chief Minister on June 23, 1961 and took charge of a number of Departments, including Finance, Industries, Mining & Geology, Irrigation & Power, Planning Branch of Planning & Co-ordination Department, and Ports. After Shri Patnaik became Chief Minister, a number of circulars were issued and resolutions passed in respect of purchases to be made on behalf of the State Government. Those circulars and resolutions have been reproduced and discussed in detail while dealing with allegation No. 2 and need not be reproduced again. It is sufficient to state that the State Government relies upon those circulars and resolutions for the purpose of this allegation also.

Kalinga Tubes Ltd., it is stated, entered into rate contracts with the D. G. S. & D. for the light and medium quality of pipes for the first time on April 10, 1962, for heavy pipes in 1963 and for poles on January 1, 1964. After Shri Patnaik

became Chief Minister, the different Departments of Orissa Government made the following purchases from Kalinga Tubes :—

	Rs.	P.
1. Electricity Department ..	14,30,253	37
2. Chief Engineer, Aero-Engine Factory ..	9,32,713	25
3. Irrigation Department ..	7,69,375	58
4. Public Health Department .	6,70,067	70
5. Engineer - in - Chief, Electrical Project.	3,97,793	73
6. Public Works Department ..	1,15,387	00
7. Director of Lift Irrigation ..	34,000	00
8. Transport Controller ..	22,230	68
9. Industries Department ..	6,604	00
Total ..	43,78,425	31

The purchases by the Electricity Department included the purchases of 8 meter and 10 meter tubular poles, the details of which are as under :—

Indenting Officer	Purchase Order	Type and quantity of poles	Amount
(1)	(2)	(3)	(4)
			Rs. P.
1. Chief Engineer, Electricity.	No. 15592/Tech. dt. 26-7-1962	10 meter—1500 8 meter—2500	7, 6,300.00
2. Superintending Engineer, Cuttack.	No. 1874, dated 9-3-1963	8 meter— 700	86,940.00
3. Superintending Engineer, Electrical, Cuttack.	No. 2326, dated 23-3-1963	8 meter— 300	37, 60.00
4. Superintending Engineer, Electrical, Berhampur.	No. 3041, dated 14-3-1963.	8 meter—200	24,840.00
5. Superintending Engineer, Electrical Circle, Berhampur.	No. 4970, dated 1-5-1963.	8 meter—200	24,840.00
6. Superintending Engineer, Electrical Circle, Berhampur.	No. 6680, dated 25-6-1963.	8 meter—200	24,840.00
Total ..			9,25,020.00

Investigation with regard to the above purchase orders was made by Shri Bhatnagar, Director of Inspection, and he found a number of irregularities. The State Government relies in particular upon the following irregularities:—

No quotations or tenders were invited. Negotiations were held with Kalinga Tubes only. It was explained to the Director of Inspection that delivery terms of Kalinga Tubes were very attractive as compared to 22 to 24 months delivery period indicated by the Indian Tubes Company. The Indian Tube Company had, however, indicated the above delivery period for a different type of pole in August, 1961, while the purchase under consideration related to July, 1962. Another reason that was advanced before the Director of Inspection for the purchase of 8 meter poles from Kalinga Tubes was that no comparative size pole was manufactured by the Indian Tube Company. This assertion was found to be incorrect, because in fact such poles were manufactured by the Indian Tube Company as was apparent from the list attached to the letter, dated October 25, 1960 of that Company. Although the price paid for a 10 meter pole to Kalinga Tubes was Rs. 277·20 P., there was a comparable quotation in the rate contract of the Indian Tube Company with D. G. S. & D. of Rs. 231·75 P. for a 10·363 meter pole. For a pole of 8 meter size Kalinga Tubes was paid at the rate of Rs. 124·20 P. per pole which was 10 per cent higher than a pole of the comparable size manufactured by Indian Tube Company. Kalinga Tubes stipulated at the time orders were placed that delivery could be "immediate ex-stock". The delivery, however, commenced from October 1962 instead of July, 1962 and continued till July, 1963. Many of the poles were delivered about 1 to 4 months after the period for which the articles were required. No penalty clause for late deliveries was inserted in the purchase order. Although the order was for supply of 2,500 eight meter poles actually 3,200 such poles were delivered. Payment of Rs. 87,000 representing the price of 700 excess poles was made without any purchase order. In the case of 10 meter poles only 990 poles were supplied instead of 1,500 for which order had been placed by the Chief Engineer. Till February, 1964 only 46 per cent of the material supplied was utilized. The State Government accordingly alleges that there was no immediate necessity to purchase such a large quantity of material without calling for competitive tenders.

Apart from the purchase orders detailed above, the other purchases made from Kalinga Tubes, it is stated, were vitiated by deviation from Financial Rules. The price charged for

tubular poles by Kalinga Tubes was at the rate of Rs. 1-80 per kilogram as against Rs. 1-65 per kilogram charged by the Indian Tube Company. In some of the orders the rates of the D. G. S. & D. were not availed of although Kalinga Tubes had entered into rate contract with the D. G. S. & D. If the purchases had been made at the D. G. S. & D. rates, the price paid would have been much lower. According to the State Government, there would have been a saving of at least Rs. 5 lakhs in the goods which were purchased from Kalinga Tubes for an amount of Rs. 43,78,425-31 Paise if the goods had been purchased at the rate contract of the D. G. S. & D.

The State Government asserts that the different departments and subsidiary organizations of the Government of Orissa placed orders with Kalinga Tubes Ltd., in order to enrich a Company in which the share investment of Shri Patnaik and the members of his family was substantial. Shri Patnaik, Shri Mitra, who succeeded, Shri Patnaik as Chief Minister, Shri Mardaraj, who was Minister, Works and Shri Mallik, who was Deputy Minister-in-charge, are stated to be responsible for those transactions which resulted in huge financial loss to the State Government.

In support of the above allegations, the State Government has filed the affidavits of Shri S. Sita Ramayya, Assistant to Chief Engineer, Public Health and Inspector Gokulananda Das (Vigilance).

Shri Patnaik in the course of his affidavit has denied the allegations of the State Government. According to Shri Patnaik, all purchases of pipes by Government from the Kalinga Tubes Ltd., were made either at the D. G. S. & D. rates or at the Company's circular prices. The total purchase by the Government represented less than 2 per cent of the Company's total sales for the relevant period. Kalinga Tubes as such did not rely on Orissa Government's purchase for the conduct of its business or for its profitability. As regards the special Audit Report, it is stated, the Company's reply thereto was placed in the Assembly in September, 1965. A copy of that reply has also been filed. Shri Patnaik asserts that he could not be expected to be responsible for supervising each and every sundry purchase made by different officials at different levels all over the State. During his tenure in office, he never asked any official of the State to show an undue favour to any firm or company, much less to the company with which he was associated. Reference has also been made to the fact that the State Government in its

allegation relating to the Orissa Agents stressed the desirability of purchasing goods from the Company at its circular prices.

In reply to the Audit Report, it has been stated that prior to the placing of orders with Kalinga Tubes the Electricity Board purchased Poles from Indian Tube Company as per D. G. S. & D. rates, vide order dated February 11, 1961. After that there was a move to procure poles having different dimensions. It was then noticed that price for the required type of poles was not included in the rate contract. The price quoted by Indian Tube Company was, however, found to be satisfactory and as such Government approval was obtained to place order. At that stage Indian Tube Company expressed its inability to supply materials within a reasonable period vide letters dated August 17, 1961, August 19, 1961 and September 15, 1961. In those letters, it was pointed out that commencement of delivery earlier than 22 to 24 months from the date of order would not be possible. The endeavour to procure poles from Indian Tube Company having failed, the offer of Kalinga Tubes was studied. Original rates quoted by Kalinga Tubes were found to be high and after negotiations those rates were reduced. Orders were thereafter placed with Kalinga Tubes. Another point made in the reply is that the prices of 8 meter and 10 meter poles were not included the D. G. S. & D. rates. It is also stated that 58 per cent and not 46 per cent of 8 meter poles purchased from Kalinga Tubes were utilized till February, 1964.

Shri Mitra too has denied the charge levelled against him. According to Shri Mitra the allegation that orders were given to Kalinga Tubes Ltd. by the State Government under his influence was absolutely false and baseless. Shri Mitra has also denied that the circulars relied upon by the State Government were issued to facilitate the impugned transactions. According further to Shri Mitra, he had absolutely no knowledge of the impugned transactions.

Shri Mardaraj in his affidavit has controverted the correctness of allegation made against him. According to Shri Mardaraj, he had no say in the matter nor had he any occasion to know about the alleged purchases. The transactions were handled from time to time by different officers and were not referred to him, because it was not necessary to do so.

Shri Mallik likewise has denied the correctness of the allegation.

Affidavit of Shri R. Venkateswaran, Secretary of Kalinga Tubes Ltd. has also been filed in respect of this allegation. According to Shri Venkateswaran, Kalinga Tubes Ltd. is a public Company. It was incorporated in 1950 and on March 31, 1961, its authorised capital was Rs. 1 crore divided into one lakh Equity Shares of Rs. 100 each. The entire capital of the Company had been issued and was fully paid up on that day. Shri Patnaik and the members of his family held on March 31, 1961, 18,076 Equity Shares amounting to 18 per cent of the paid-up capital. In 1962-63, as a result of sales made by Shri Patnaik the other members of his family held only 10.25 per cent Equity Shares. Shri Patnaik was the Managing Director of the Company and Shri Loganathan was its Chairman. After Shri Patnaik resigned from the Directorship of the Company and became the Chief Minister, no other person was appointed as Managing Director. The Company never gave any agency or sole agency of its business to any person. Messrs. Orissa Agents were appointed authorised dealers of the Company in Orissa since August, 1959. The Company was, however, at liberty to appoint other dealers. The tubular poles produced by the Company are stated to be of superior quality and enjoyed advantages over other form of similar support. The tubular poles produced by the Company are further stated to be the only poles which have been purchased by foreign buyers. During the relevant period the Company manufactured 1,33,000 Tubular poles and the State Electricity Board purchased only 6,126 poles from the Company, i. e., less than 5 per cent of the total Indian supplies. The Director General of Supplies & Disposals did not enter into rate contract with the Company for poles at the commencement of the production. The Company also manufactured black pipes and galvanised pipes. There was no rate-contract for black pipes. As regards galvanized pipes, the rate-contracts were entered into by the Company with the D.G.S. & D. in April, 1962, May, 1963 and October, 1963 for different sizes. The sales of pipes to the Government of Orissa by the Company were at D.G.S. & D. rate-contracts where they were applicable and in other cases the supplies were made at the Company's list prices on the same terms as the Company was selling such pipes to the other parties in India. The Company is further stated to have sold goods during the period from April 1, 1961 to March 31, 1967 of the value of Rs. 32.25 crores. The sale to Orissa Government constituted only 14 per cent of the total sales by the Company during that period.

In respect of this allegation, I find that out of the total supplies made by Kalinga Tubes to the various Departments of the Government of Orissa, material of the value of more than Rs. 18 lakhs was supplied by Kalinga Tubes to those Departments during the years 1964 and 1965 at the rate contract entered into by the Company with the Director-General of Supplies & Disposals. This is clear from the affidavit of Shri Venkateswaran and has not been controverted by the State Government. The orders, which have been assailed at the time of argument on behalf of the State Government, are for the supply of poles of the value of Rs. 11,32,020, which were placed on behalf of the State Electricity Board with Kalinga Tubes. As arguments have been addressed only in respect of these orders, it would be necessary to give the requisite details. The following are the particulars of those orders :—

Indenting Officer	Purchase order	Type and quantity of Poles	Amount Rs.
1. Chief Engineer, Electricity.	No. 15592/Tech., dated 26-7-1962.	10 meter—1500	7,26,300
2. Superintending Engineer, Cuttack.	No. 1874, dated 9-3-1963.	8 meter—700	86,940
3. Superintending Engineer, Electrical, Cuttack.	No. 2326, dated 23-3-1963.	8 meter—300	37,260
4. Superintending Engineer, Electrical, Berhampur.	No. 3041, dated 14-3-1963.	8 meter—200	24,840
5. Superintending Engineer, Electrical Circle, Berhampur.	No. 4970, dated 1-5-1963.	8 meter—200	24,840
6. Superintending Engineer, Electrical Circle, Berhampur.	No. 6680, dated 25-6-1963.	8 meter—200	24,840
7. Superintending Engineer, Electrical Circle, Cuttack.	No. 17217, dated 20-11-1963.	Heavy Gauge 8 meter—1000	1,80,000
8. Superintending Engineer, Electrical Circle, Cuttack.	No. 9617, dated 10-12-1963.	Heavy Gauge 8 meter—150	27,000
Total			11,32,020

It may be stated that orders at Nos. 2 to 6 were extension orders, i. e., orders in extension of order at No. 1. These orders have also been mentioned while giving the State Government case. Order No. 8 was in extension of order No. 7. Regarding the above orders, I find that note dated September 6, 1961 of the Superintending Engineer, Technical of Orissa Electricity Department, shows that till that date Indian Tube Company Ltd. was the sole producer of tubular poles in India. The Indian Tube Company Ltd. had a rate contract with the Director-General of Supplies and Disposals for the poles. On April 15, 1961 an order was placed for supply of the poles with Indian Tube Company by the Superintending Engineer, Electrical Circle, Berhampur. On August 17, 1961, a letter was addressed by the Indian Tube Company to the Superintending Engineer, Electrical Circle, Berhampur, stating that the Company was unable to maintain the deliveries for the materials produced on its Seamless Mill at Jamshedpur till May / June, 1962. Request was made to extend the date of delivery till June 30, 1962. Copies of the above letter were sent by the Company to the Chief Engineer, Electricity Department Orissa and others. On August 19, 1961, Indian Tube Company addressed the following letter to the Chief Engineer, Electricity, Orissa :—

“We acknowledge with thanks receipts of your telegram, dated 17th August reading as follows :—

“17010 YOUR LET FJSH 22/238 NINETEENTH JULY 61
YOUR QUOTATION DATED TWENTIETH APRIL STOP
PLEASE COMMUNICATE YOUR GUARANTEED DELI-
VERY PERIOD FOR ENABLING ISSUE DETAILED
ORDER”

and confirm having sent you the following telegram to day :—

“POLES YOURTEL 17010 AUGUST SEVENTEENTH STOP
CURRENT DELIVERY READY EX-WORKS COMMEN-
CING IN 22/24 MONTHS REFER OUR LET AUGUST
TENTH.”

You will have noted from our letter, dated 10th August addressed to the Superintending Engineer (Technical) Orissa Electricity Department, Puri that our current delivery is ready for inspection / despatch ex-works commencing in 22 / 24 months from receipt of your formal order complete in all respects and we could complete an order for 1100 poles Ref.143 in about 6 weeks thereafter.

“If you are interested in the materials offered, we strongly suggest that the order should be placed without delay so that it can be entered on the works before our delivery deteriorates any further.”

The following note, which was made on the margin of the above letter, was approved by the Chief Engineer:—

“Two years delivery is a very long period and we may not consider this offer. The tube factory at Choudwar is likely to come into production in this period and we can get our requirements from this.

This may be approved.”

On September 6, 1961, Shri Gantayat, Superintending Engineer, Technical of Electricity Department, addressed the following letters to Indian Tube Company:—

“With reference to the above, I would inform you that in view of your very long delivery we are no longer interested in placing order for supply of another lot of 1,100 Nos. of steel tubular poles.”

Copy of the above letter was forwarded by the Superintending Engineer, Technical to the Superintending Engineer, Electrical Circle, Cuttack / Berhampur, with the following note:—

“Copy to the Superintending Engineer, Electrical Circle, Cuttack Berhampur for information and necessary action. 600 Nos. of tubular poles were ordered on the above firm who at present appear to be the sole producer of tubular Poles in India *vide* this office purchase order No. 3461, dated 11-2-1961.

Another lot of 1,100 Nos. of poles of size 6"×5"×4"×30' long was proposed to be ordered for use in the coastal district, such as Balasore, Cuttack, Puri and Ganjam which are subjected to higher wind pressure. After obtaining Government orders for purchase of these tubular poles on a single tender basis, it is now seen that the firm is no longer able to adhere to the delivery terms originally quoted by them. In fact, they now state that these poles can only be ready for inspection in their works after 22/24 months from the date of receipt of our order. Thus, there is no point in placing any additional order with this firm for supply of tubular poles urgently required by us. It is expected that meanwhile the tube factory at Choudwar may go into production whence we can get our requirement from them.

“Under the above circumstances, the field division may be advised to use joists or rails of suitable sections in places where they intended to use tubular poles,”

On September 15, 1961 Indian Tube Company addressed another letter to the Superintending Engineer, Technical, Electricity, Orissa, in the course of which the Company Stated:

“When we quoted you originally against this requirement, our order book on our Seamless Mill, which produces the tubes for these poles, was very much smaller than it is now. Further more, we have recently been experiencing serious production difficulties on this Mill which have resulted in a substantial loss of output.

This loss of output has again been reflected in a backlog of orders which should have already been produced. Energetic steps have been taken to restore the normal working efficiency of the Mill and the effect of these should become apparent very shortly.

We think you will agree that it would be most unwise for us to accept your order on the delivery quoted to you originally if there is no possibility of our being able to supply materials in accordance with it. We feel that it is more helpful to you to put the position quite plainly so that you know where you stand at this stage rather than later.”

On the margin of the above letter, the following note was addressed to the Chief Engineer:—

“Letter put up for your information. Whatever may be circumstances, we cannot book our for 24/24 months delivery.

Sd.

16-9-1961.”

The Chief Engineer thereupon wrote

“We may try to get this from K. Tubes.

Sd.

16-9”

Quotations were then called from Kalinga Tubes. After those quotations were received, the Superintending Engineer, Technical addressed the following note to the Chief Engineer, Electricity:—

“Quotation from Messrs. Kalinga Tubes Ltd. offering step drawn tubular poles to be manufactured very soon at their Choudwar factory may kindly be seen below:— (L-04/C and 210/C.

As their prices were on a preliminary consideration, higher than the prices of tubular poles manufactured by Messrs.

Indian Tube Company, who are on rate contract with D. G. S & D; they have been requested to furnish detailed particulars of the thickness, strength and other points to enable closer comparison. These have now been furnished and it is seen that the weights of poles as manufactured by them are generally heavier than similar sizes of poles of Messrs. Indian Tube Company mainly for the reason they have used the same thickness throughout the length of pole. This is not necessary from strength consideration (as the strength of poles at the top portion can be much less than strength at the bottom section) and so this increase the actual weight of poles and hence the cost per pole as payable by the consumer is also increased as they have based their cost at the uniform rate of Rs. 2 per Kilogram.

Messrs. Kalinga Tubes are probably just now manufacturing the first lot of poles and it appears they have not formulated any price based on actual costing. They may probably do it after executing a few orders and having a better appreciation of the actual costing data as would be obtained at their factory. In view of the above it may be possible for them to review their prices more in line with the prices of similar size of poles on rate contract. It is therefore for consideration, if we may address the firm on the above lines and to request them to see if they can supply the poles at about Rs. 1.65 per Kg. which is the rate for the pole manufactured by Indian Tube Company for which they have a rate contract. This would bring their price in parity; as the extra freight payable by us from Tatanagar to destination will more or less compensate for the increased salestax which will be payable by us for the supplies taken delivery at Choudwar, viz., 7—1.6 per cent extra.

In case they are not able to review the prices, we may, if approved, place a trial order with the above firm for poles 8 metres long which can be used by us only for our L. T. lines in the 10 Lbs. per sq. in wind pressure areas of the State. M/s. Kalinga Tubes have indicated very early delivery of poles.

Submitted for consideration and orders.

Sd.

26 6-1962

S.E., Technical. "

The Chief Electrical Engineer passed the following order on the above note:—

“We may get some poles as per our requirements from M/s. Kalinga Tubes. It will be possible to get these quickly from them.

Sd.

26-6-1962. ”

A note was thereafter addressed by the Chief Engineer to the Chairman of the State Electricity Board on June 30, 1962. The note of the Chief Engineer along with the note of the Chairman of the Board read as under:—

“*Chairman,*

The purchase of the Tubular poles from Kalinga Tubes based on a single quotation may be approved. These poles will be available from immediate stock, whereas other suppliers like Indian Tubes will take 22 months approximately.

Sd.

30-6-62.

Member (Finance)

Any remarks ? We want the Poles urgently.

Sd.

2-7-1962. ”

On July 12, 1962 the Superintending Engineer, Technical and the Member Finance, State Electricity Board, went to Calcutta and had discussion with the representatives of Kalinga Tubes Ltd. The result of that discussion is clear from the note dated July 23, 1962 recorded by the Member (Finance) of the Electricity Board and the Superintending Engineer, Technical. The said note reads as under:—

“Superintending Engineer, Technical and Member, Finance State Electricity Board, proceeded to Calcutta on the 12th instant for discussion with Messrs. Kalinga Tubes Ltd. with a view to see if there can be a reconsideration of the prices of their tubular poles. The matter was discussed on the 13th and 14th and it was impressed on them that compared to the cost of rail poles and joists, tubular poles generally are higher in cost and compared to the rate contract, rate for tubular poles of Messrs. Indian Tube Co. the rate now offered by Messrs. Kalinga Tubes is about 20 per cent higher. Two special features of their offer are that their method of manufacture is superior and their delivery, from immediate production, is very attractive, compared to 22—24 months

delivery indicated by Messrs. Indian Tube Company. It was, however, pointed out that the State Electricity Board can accept their offer and place major orders for poles in case their price is attractively reasonable and that if the rate is comparatively justifiable we may go in for large scale use of tubular poles for our transmission and distribution lines even in preference to other types of supports. They have requested for an idea of the number of poles which can be ordered on them. It was indicated to them that this depends on the final price offered by them and the range of their manufacture. It can however be estimated about 20,000 poles of different sizes can be ordered during the present financial year if the price is justifiable and attractive.

Messrs. Kalinga Tubes have indicated on the 14th that they would like to once again review their costs and will be intimating us the final price on the 16th.

On the 16th Messrs. Kalinga Tubes have intimated that after discussion with their higher authorities and taking all factors into consideration they have decided a special rate of Rs. 1·8 per Kg., which works out to a reduction of about 10 per cent on their original offer for their tubular poles offer. They also stated that they would be confirming the same in a letter.

The letter of the Company may kindly be seen below. As proposed earlier initial order for 4,000 poles as per quantities already finalized at p. 48 and 49/N may be placed on Messrs. Kalinga Tubes straightway”

On July 26, 1962 an order was placed by the Chief Engineer, Electricity with Kalinga Tubes for supply of 2,500 numbers of 8 metre long poles at the rate of Rs. 124·20 Paise per pole, and 1,500 numbers of 10 metre long poles at the rate of Rs. 277·20 Paise per pole. The total value of the 4,000 poles was mentioned to be Rs. 7,26,300. The wall thickness of the poles was specified to be 3·65 millimetres for 8 metre poles and 5·4 millimetres for 10 metre poles. The delivery was stated to be immediate ex-stock. It was also mentioned in the order that a through hole of 17 millimetre diameter should be provided in each pole at 0·3 metre above ground level for earthing arrangement. Extension orders were thereafter placed for supply of 700, 300, 200 and 200 numbers of 8 metre poles on March 9, 1963, March 23, 1963, March 14, 1963, May 1, 1963 and June 25, 1963 respectively at the rate of Rs. 124·20 Paise per pole. On November 4, 1963 the Superintending Engineer, Electrical Circle, Cuttack, addressed a letter to the Chief Engineer stating that 400 numbers of 8 metre heavy gauge poles were required for City Distribution Division,

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Cuttack, in connection with the extension of street lights, as discussed with Chairman of Cuttack Municipality. The Superintending Engineer also sent with his letter quotations obtained from Kalinga Tubes for the poles. It was also mentioned by the Superintending Engineer that he had learnt that 500 poles of each dimension were available in stock with the Company. Order was thereafter placed by the Superintending Engineer on behalf of the Chief Engineer with Kalinga Tubes for supply of 400 numbers of 8 metre heavy gauge poles for Cuttack and 600 numbers of such poles for Bhubaneswar at the rate of Rs. 180/-per pole. The wall thickness of the pole was stated to be 5.4 millimetres. On December 10, 1963 an extension order for the supply of 150 numbers of 8 metre heavy gauge poles at the rate of Rs. 180/-per pole was placed with Kalinga Tubes by the Superintending Engineer, Electrical Circle, Cuttack. On March 24, 1964 a letter was addressed by the Superintending Engineer, Technical, Orissa State Electricity Board to Kalinga Tubes in the course of which it was stated :—

“It is understood you have supplied only 376 Nos. of 8 M. Pole as per the above order to City Distribution Division from ready stock.

As per the delivery clause of the purchase order you should have supplied the materials without delay. In view of your failure to commence supply of the remaining 624 Nos. of poles the order to supply the rest 624 Nos. of poles is hereby cancelled.”

It would appear from the above that the Chief Engineer, Electricity and the other Engineers went in for the purchase of the poles manufactured by Kalinga Tubes when they found that the Indian Tube Company, which was the only other Indian Company manufacturing poles, had stipulated a delivery period of 22 to 24 months. The notes made by the Superintending Engineer on the letters received from the Indian Tube Company were to the effect that the period of 22 to 24 months was very long and that they would have to secure supplies from Kalinga Tubes. The fact that the poles were needed urgently was also emphasised by the Chairman of the Electricity Board in his note dated July 2, 1962. It is further clear from the material on record that the officers of the State Electricity Board did not accept the rate of Rs. 2 per Kilogram which had been quoted by Kalinga Tubes. The Superintending Engineer, Technical and the Member, Finance, State Electricity Board, then went to Calcutta office of Kalinga Tubes and as a result of discussion got the rate reduced

from Rs. 2 per Kilogram to Rs. 1.80 per Kilogram. It is also on the record that when the Superintending Engineer, Technical found that the rate of Kalinga Tubes was higher than the rate of Rs. 1.65 per Kilogram of Indian Tube Company, he asked for detailed particulars of thickness, strength and other matters to make comparison. The Superintending Engineer also expressed his doubt about the utility of uniform thickness throughout the length of the Kalinga Tubes pole. The Superintending Engineer's subsequent note shows that as a result of discussion he was satisfied about the superior method of manufacture of Kalinga Tubes poles. According to the material on record those poles "consist of a single piece step drawn steel tubular pole without any swaging or welding and are in one jointless length and have no rivet edges joints or welds where moisture can collect leading to corrosion." The Superintending Engineer, Technical, accordingly recommended that if the rates of Kalinga Tubes were comparatively justifiable, the State Electricity Board might go in for use of those tubular poles for transmission and distribution lines even in preference to other types of supports. The material on record also indicates that when Kalinga Tubes failed to deliver 624 poles out of 1,000 poles for Cuttack City Distribution Division, the Superintending Engineer did not hesitate to cancel the order in respect of those 624 poles. In the face of the circumstances, mentioned above, I find it difficult to hold that any undue favour was shown to Kalinga Tubes because of the orders placed with it by State Electricity Board for supply of poles.

No objection, in my opinion, can be taken to the negotiations of Superintending Engineer, Technical and Member, Finance, State Electricity Board with Kalinga Tubes in the Calcutta office of the Company for reduction of the price of the poles. According to the letter dated May 14, 1965 from the Office of the Comptroller and Auditor-General of India to Shri R. P. Padhi, Additional Development Commissioner, Orissa "where large scale purchases have to be arranged from certain manufacturers, it is not unusual (and it is indeed desirable) that endeavours should be made to settle a special rate by negotiation."

I may state that at the time the above orders were placed with Kalinga Tubes, the Company was not on rate contract for poles with Director-General of Supplies and Disposals. The Company entered into a rate contract with

the Director-General of Supplies and Disposals in respect of pole with effect from January 1, 1964. The rate contract for 8 metre long pole of 3.65 millimetre wall thickness was on a sliding scale from Rs. 116.55 Paise to Rs. 129.88 Paise per pole depending upon the number of poles ordered. The rate contract for 8 meter long pole of 5.4 millimetre wall thickness was on a sliding scale from Rs. 168.92 P. to Rs. 188.22 P. per pole depending upon the number of poles ordered. The rate contract for 10 meter long poles of 5.4 millimetre wall thickness was on a sliding scale from Rs. 260.13 P. to Rs. 289.86 P. per pole depending upon the number of poles ordered. It was also mentioned in the rate contract that the poles at the time of supply would not be drilled. The above rate contracts are not of much avail because, as stated above, those rate contracts were not in existence at the time orders for the poles in question were placed and came into being much later.

Although the State Government had alleged that the Indian Tube Company had asked for a delivery period of 22 to 24 months in respect of poles other than of 8 and 10 metres length, no cogent material has been produced to show as to what was the length of the poles in respect of which the Indian Tube Company had asked for a period of 22 to 24 months. Indeed, the letters of Indian Tube Company, reproduced above, tend to show that there was a serious production difficulty of a general type in the mill and not merely in respect of a pole of particular dimension, and the same had resulted in substantial loss of output and backlog of pending orders.

Reference has been made on behalf of the State Government to the delay in delivery of the poles by Kalinga Tubes. In that respect, I find that the orders, which were placed with Kalinga Tubes, were F. O. R. Kalinga Works siding Charbatia. According to the reply filed by the State Government in September, 1965 in the State Legislative Assembly, Kalinga Tubes had intimated on August 8, 1962 that the poles were ready for inspection and supply and the delay in lifting the poles had been due to unforeseen transport troubles. Kalinga Tubes, in my opinion, cannot be held liable for that delay.

Contention has also been advanced on behalf of the State Government that only 46 per cent of the poles purchased by the State Electricity Board from Kalinga Tubes were utilized till February, 1964, as shown by the Audit Report. In that

respect, I find that according to the reply of the State Government 58 per cent and not 46 per cent of the poles were utilized till February, 1964. It was also stated that the audit had assumed that the poles transferred to other divisions had not been utilized. Such an assumption, according to the reply was in correct. Be that as it may, I am of the view that it was for the Engineers of the Electricity Department to assess their requirements of the poles. The fact that a number of poles ordered by them remained unutilized would not by itself be sufficient to vitiate the orders placed by the Electricity Board with Kalinga Tubes. It may also be mentioned in this context that before placing orders with Kalinga Tubes the authorities of State Electricity Board had estimated their requirement for the financial year 1962-63 to be 20,000 poles. The orders placed with Kalinga Tubes were, however, for much smaller number of poles.

Although it is not necessary to draw a comparative statement about the poles supplied by Kalinga Tubes and those manufactured by Indian Tube Company in view of the fact that the delivery period of Indian Tube Company was 22 to 24 months, I may take note of an argument advanced on behalf of Shri Patnaik that the wall thickness of 10 metre pole of Kalinga Tubes was 5.4 millimetres with a work-load of 230 Kilograms, while that of Indian Tube Company for 10.363 metre pole was 4.47 millimetres with a work-load of 213 Kilograms. It has also been urged on behalf of Shri Patnaik that the purchase of poles from Indian Tube Company would have entailed extra cost for the transport of those poles from Jamshedpur to Orissa. As stated above, it is not necessary to go into these matters.

In the final analysis, I find:

1. Orders for poles were placed with Kalinga Tubes by the authorities of the State Electricity Board in the context of the inability of the Indian Tube Company (the only other manufacture of indigenous poles) to make supply of the poles before a period of 22 to 24 months from the date of order.
2. The authorities of the State Electricity Board were of the view that they could not afford to wait for a period of 22 to 24 months in view of the urgent need of the poles.

3. The Superintending Engineer, Technical, who had earlier some doubt about the utility of uniform thickness of the poles held discussion on the point and his note shows that he was satisfied about the superior method of manufacture of the poles produced by Kalinga Tubes before orders were placed for the supply of those poles.
4. The Member Finance and Superintending Engineer, Technical of the State Electricity Board did not accept the rate of Rs. 2 per Kilogram quoted by Kalinga Tubes but got the same reduced to Rs. 1.80 per Kilogram as a result of discussion.
5. When Kalinga Tubes failed to deliver 624 poles within time, the Superintending Engineer did not hesitate to cancel the order placed for those poles with Kalinga Tubes.

The above facts, in my opinion, militate against the inference that the orders placed with Kalinga Tubes were vitiated by an impropriety or that the officers of the State Electricity Board showed any undue favour to Kalinga Tubes because of its connection with Shri Patnaik.

So far as Shri Mitra, Shri Mardaraj and Shri Mallik are concerned, nothing is shown to have been done by them with regard to the impugned transactions. I would, therefore, hold that the charge of impropriety contained in this allegation has not been proved.

CHAPTER 58

ALLEGATION No. 58

Re :

Kalinga Engineering Works, Cuttack

Allegation No. 58, relates to Kalinga Engineering Works, Cuttack. The respondents named in the allegation are Shri Mitra, Shri Mardaraj, Shri Mohanty and Shri Tripathy.

According to the case of the State Government, a foundry under the name of Kalinga Engineering Works (hereinafter referred to as KEW) was set up on plots Nos. 5 and 10 at Chahata, in Tulsipur area of Cuttack town, belonging to Shrimati Easwaramma Mitra, wife of Shri Mitra. The foundry came into existence in 1962 and actual production started in 1963. The foundry manufactured G. I. pipes, sanitary tanks, overhead galvanized sheet tanks and various other kinds of sanitary fittings. The foundry was set up initially by Shrimati Easwaramma Mitra and Shri K. C. Panda, who was one of the partners in the concerned named "Allied Dealers". The firm Allied Dealers was sub-distributor of Orissa Agents which was shown to be the sole proprietary concern of Shrimati Easwaramma Mitra. Shri Mitra was Deputy Chief Minister from June 23, 1961 to October 1, 1963, and Chief Minister from October 2, 1963 to February 20, 1965. Initial capital of Rs. 63,750 of KEW was contributed by Shrimati Mitra during 1962-63. Later on she wanted to withdraw the amount and it was shown to be a loan to Shri K. C. Panda. A deed of partnership was thereafter executed on September 2, 1963 and Shri K. C. Panda, Shri B. K. Palai and Shri Manmohan Lal were shown to be the partners. Shri K. C. Panda and Shri Manmohan Lal were also partners of Allied Dealers. Kalinga Engineering Works was registered under the Orissa Sales Tax Act on July 19, 1963 and under the Partnership Act on October 1, 1963. The total capital shown to have been invested in the concern was Rs. 1,25,000 and the respective contributions of the partners were :—

Shri K. C. Panda	..	Rs. 63,750
Shri B. K. Palai	..	Rs. 31,250
Shri Manmohan Lal	..	Rs. 30,000

Shri A. B. De, who was an employee of the Orissa Agents became the Manager of KEW in May 1963. After the firm was registered, the sum of Rs. 63,750 of Shrimati Mitra was shown as a loan to Shri K. C. Panda to be paid back by Allied Dealers. No lease deed was executed even though the firm put up a semi-permanent structure on the land of Shrimati Mitra. The State Government claims that although Shri Mitra and Shrimati Mitra were not ostensibly concerned with KEW, yet they continued to be financially interested in the firm.

KEW, it is further stated, was favoured with purchase orders in the years 1963, 1964, 1965 and 1966 by various departments of the Government of Orissa. A number of irregularities were committed in placing those orders with the firm. No quotations were invited. Orders were placed according to the request of the firm and not according to the requirements of the departments. The rates quoted by the firm were invariably accepted and sometimes these were enhanced at the request of the firm. In some of the purchase orders prices were not specified. Orders were also placed for material even without immediate requirement of the same and the material lay unutilized for long periods. The total value of the material supplied by the firm to Public Health Engineering Department was to the tune of Rs. 8.45 lakhs, that supplied to the Chief Engineer, Roads and Buildings Rs. 1,70,600 and to the Chief Engineer, Irrigation Department Rs. 1,32,708.

The State Government concludes from the above that besides Shri Mitra, Shri Mardaraj, who was Minister-in-charge of Works and Buildings branch of Works Department, Shri Mohanty, who was Minister, Works and Transport Department, and Shri Tripathy, who was in charge of Works and Transport Department from September 3, 1966 till October 5, 1966, are responsible for the aforesaid irregularities.

In support of the above allegations, the State Government has filed the affidavits of Shri S. Sita Ramayya, Assistant to Chief Engineer, Public Health and Inspector, Madhusudan Das (Vigilance).

Shri Mitra in the course of his affidavit has denied the correctness of the allegation. According to Shri Mitra his wife did not set up any foundry named KEW at any time. Shri Mitra has also denied that the business of Shrimati Mitra was really his business. As regards the transactions between KEW and various departments of the State Government,

Shri Mitra stated that he is not aware of them nor of any irregularity committed in respect of those transactions. No favouritism, according to Shri Mitra, was shown by him at any time. As regards Shri K. C. Panda and Shri Manmohan Lal, it is stated, when a file was sent to Shri Mitra disclosing two *prima facie* cases, one under section 420, Indian Penal Code, and another under section 420 read with section 511, Indian Penal Code, he approved the action proposed by the Department for starting criminal prosecution against Shri Panda and Shri Manmohan Lal. Their houses were thereafter searched and they were convicted in the two cases. Shri Mardaraj in the course of his affidavit has stated that he had no occasion to know about the alleged transactions. Shri Mardaraj has denied the correctness of the charges levelled against him.

Shri Mohanty too has denied the correctness of the allegations made against him. According to Shri Mohanty all the transactions, referred to in the allegation, were dealt with by officers of the concerned Departments and the papers relating thereto were never put up before him. No influence was exercised by him.

Shri Tripathy in his affidavit has likewise denied the correctness of the allegations made against him. According to him he had no knowledge of the matter.

Shri K. C. Panda has also filed affidavit in respect of this allegation. According to Shri Panda, Shrimati Mitra never wanted to be a partner of KEW. On the other hand as Shri Panda was not in a position to pay the money borrowed by him from Shrimati Mitra from time to time during 1962-63, he proposed that she might become a partner in KEW so that the money borrowed from her be adjusted towards her share capital. Shrimati Mitra, however, declined to do so and asked for the refund of the amount. The amount taken from Shrimati Mitra was thereafter "mostly discharged". As there was dispute with Shrimati Mitra regarding the extent of the land and the premium to be paid the lease deed was not registered and the matter remained in the realm of controversy, Shri Panda has denied that in the matter of goods supplied by the firm no tenders were invited or any favour was shown to their concern. Reference has also been made to the fact that three criminal cases were started against Shri Panda under the orders of Shri Mitra.

Supplementary affidavit has been filed by Inspector Madhusudan Das (Vigilance) on behalf of the State Government. Shri Mitra too has filed his affidavit along with the affidavit of Shri S. K. Sen, Accountant of Orissa Agents.

In respect of this allegation I find that the affidavits and documents filed on behalf of the State Government show that the foundry of KEW was set up in 1962 and the actual production started in 1963. KEW supplied material during the years 1963 to 1966 of the value of Rs. 8.45 Lakhs to the Public Health Engineering Department, of Rs. 1,70,600 to the Chief Engineer, Roads and Buildings, and of Rs. 1,32,708 to the Chief Engineer, Irrigation Department. According to the State Government, the orders for the supply of those materials were vitiated by a number of irregularities and deviation from the rules. No tenders of quotations were invited and orders were placed in compliance with the request of the firm without looking to the requirements of the Departments. The rates quoted by the firm were also invariably accepted. In support of the above allegation the State Government has filed documents relating to some of the orders in order to show pattern of dealings with KEW. From the material placed on record I find that on March 25, 1963 the Superintending Engineer, Public Health Circle, addressed a letter to KEW. Reference in that letter was made to the letter dated March 16, 1963 of KEW. The firm was requested to supply cast iron specials as per list attached. The list contained the details of the material to be supplied as well as the rates. On May 18, 1963 a letter was addressed by KEW to the Superintending Engineer, Public Health Circle, Bhubaneswar, the material part of which reads as under:—

“We have the pleasure to inform you that the following C. I. specials of Class ‘B’ are lying ready at our Works. We shall be highly obliged if you would kindly arrange to take them for your departmental works. We are agreeable to supply them at the same rate at which you purchased them last from us.”

The details of the material were also given in the letter.

On May 27, 1963 the KEW addressed letters to the Executive Engineer of Public Health Divisions, Cuttack, Bhubaneswar, Sambalpur, Berhampur and some rural Sanitary Divisions, enclosing therewith the copy of letter dated May 18, 1963 sent to the Superintending Engineer. Request was made to the Executive Engineer to enlist KEW as one of the manufacturers of C. I. Pipes and specials and to favour that firm with enquiries.

On May 31, 1963 the Superintending Engineer, Public Health, invited quotations from 11 concerns including KEW for cast iron specials and valves so as to reach him on June 6, 1963. On June 27, 1963 a comparative statement was prepared. The same has, however, not been filed.

On July 5, 1963 an order was placed by the Superintending Engineer, Public Health, with KEW for supply of materials of different types. Before that on the draft of the letter the following note was made on June 30, 1963—

“No requirement from any E. E. has been received. If desired, at least one special may be procured. The Nos. of specials may please be given.

Sd. Illegible
30-6”

The details of the materials appear to have been given thereafter by the Superintending Engineer. On July 6, 1963 the Manager of KEW sent a reply to the Superintending Engineer stating that the indented material was lying ready with the firm and the same might be taken delivery of.

On September 7, 1963 KEW addressed a letter to the Executive Engineer, Sambalpur Public Health Division, stating that the firm had supplied cast iron specials to the Executive Engineer, Cuttack for overhead tanks. The Executive Engineer, Sambalpur Public Health Division, was asked if he needed those materials for overhead tanks. The Executive Engineer, Sambalpur Public Health Division thereafter placed an order on September 18, 1963 for supply of dozen items of each type.

On December 18, 1963 KEW addressed the following letter to the Executive Engineer, Berhampur Public Health Division :—

“Kindly refer to your order No. 6616, dated 27-11-1963 wherefrom you will please find that we have been asked to supply Bellmouth with and without puddle @ 4 Pcs. from each size against 10 Pcs. from each size of Duck Foot Bends and 2' fit. D/F Pipe with puddle. In course of discussions with your goodself by our Shri Panda, it was learnt that you would actually require 10 Pcs. from each size of Bellmouth with and without puddle. Accordingly, we have already commenced our supply. We would, therefore, request you to kindly place your formal order for the excess quantity.

Further, you will please find that order for the supply of 20" dia. x 2 ft. long D/F Pipe with puddle has not been placed although you require all size from 4" to 12". Presuming that you would also require this particular size of material, we have commenced supply. This item may also please be included in your order".

On receipt of the above letter, the Executive Engineer made the following note on January 25, 1964 on the margin of the letter :—

"Issue orders".

An order was thereafter placed with the firm.

On January 25, 1964 KEW in the course of his letter to the Executive Engineer, Berhampur, Public Health Division, stated :—

"We take pleasure to inform you that as discussed with your goodself, we are arranging to supply the following C. I. specials at an early date".

The description of the material was also given in the letter. On receipt of the above letter the Executive Engineer made a note on the letter "Place orders at the rates already approved by the Superintending Engineer". An order was thereafter placed for supply of five items.

On January 31, 1964 the Executive Engineer, Public Health, Berhampur, placed two orders with KEW for supply of materials of various types at the rates mentioned in the letter to the S. D. O., Water-supply, Berhampur Subdivision.

On February 13, 1964 KEW addressed a letter to the Executive Engineer, Berhampur, in the course of which it was stated:—

"Kindly refer to the discussions that you were pleased to have with the undersigned regarding supply of certain C. I. Specials, not covered by your order. As desired, we have supplied the following specials, which may kindly be approved".

The Executive Engineer made a note on the margin of the letter "Accepted". Order in accordance with the above was placed with KEW on February 19, 1964.

On March 4, 1965 KEW addressed a letter to the Executive Engineer, Berhampur, Public Health Division, stating that pursuant to the telephonic talk that he had with the sister concern, Allied Dealers, the firm (KEW) was arranging to supply the material.

On May 24, 1966 the Chief Engineer allowed the request of KEW for extension of time till June 30, 1966 against the orders placed with that firm.

On September 9, 1966 the Executive Engineer, C. P. H. Division, placed an order with KEW for supply of material, the details of which were given in the letter at ex-Factory rates.

On September 15, 1966 the Chief Engineer, Public Health, placed an order with KEW for supply of materials of various types at the rates specified in the letter. The rates mentioned in the letter were revised when KEW pointed out that the current rate of some of the items was higher.

It would appear from the above that except on one occasion (i. e., May 31, 1963) no tenders or competitive quotations were invited in connection with the supply of material and orders were placed straightway with KEW. On occasions KEW approached the Executive Engineers about the availability of the stocks and orders for those stocks were placed with KEW at the rates mentioned by it. On a few occasions supplies were made first and formal orders were placed with KEW subsequently. Sometimes the materials were supplied and the Executive Engineer concerned was requested to place the order. The Executive Engineer would then comply with the request. The course adopted in dealings with KEW was thus in violation of the rules for purchase of materials. Those rules have been dealt with in allegation No. 2 and need not be gone into again.

It may be stated that Utkal Foundry Engineering Works Co., Ltd., Sambalpur, and Rourkela Fabrications Ltd. were Pilot Project Companies of the State Government. The State Government invested substantial amounts in the shares of those companies. The Additional Director of Industries was the Chairman of the Board of Directors of both the companies. On February 21, 1963

the Additional Director of Industries, Orissa, addressed a letter to the Chief Engineer, Public Health, Orissa, requesting that orders for supply of pipes and G. I. Tanks might be placed with those companies. The Chief Engineer, Public Health sent a copy of the above letter to the Superintending Engineer with the endorsement that Utkal Foundry Engineering Company had good capacity to supply pipes and specials, and orders might be placed with that Company if it did not involve any financial or other complications. In spite of the above, no order seems to have been placed with the above-mentioned two Pilot Project Companies of the State Government. On the contrary, KEW seems to have been favoured with the various orders.

According to the State Government the reason for the favour shown to KEW was that Shri Mitra was Deputy Chief Minister, Orissa, from June 23, 1961 to October 1, 1963, and Chief Minister from October 2, 1963 to February 20, 1965 and because his wife, Shrimati Mitra, had financial interest in KEW. There is, in my opinion, substance in the above contention. The material on record shows that the Foundry under the name of Kalinga Engineering Works was set up in 1962 on plot Nos. 5 and 10 at Chahata, in Tulsipur area of Cuttack town, belonging to Shrimati Mitra. Shri A. B. De, who was an employee of Orissa Agents, became the Manager of KEW. It is further clear from the record that the initial capital of Rs. 63,750 for KEW was contributed by Shrimati Mitra during 1962-63. According to Shri K. C. Panda, Managing Partner of KEW, he borrowed money from Shrimati Mitra during 1962-63. As he was not in a position to pay back the money to Shrimati Mitra, he proposed to her that she might become partner in the business of KEW so that the money borrowed from her might be adjusted towards her share capital. Shrimati Mitra declined to join as a partner and on March 23, 1963 she addressed a letter to him expressing her unwillingness to become a partner and asking for the return of the loan amount. Shri Panda adds that the amount of loan has been "mostly discharged". Shri Panda is, however, contradicted by Shri S. K. Sen, Accountant of Orissa Agents, according to whom Shri Panda has still to pay an amount of Rs. 31,050.41 Piase to Orissa Agents. Shri Panda has also stated that the land in question was taken from Shrimati Mitra but the lease deed could not be registered, because there was some controversy with regard to the area of the land and the premium to be paid. It is, in my opinion, difficult to believe that Shrimati Mitra would give

her land to Shri K. C. Panda on lease and allow a semi-permanent structure to be put thereon without even settling the terms of the lease and the execution of a formal deed of lease. There is nothing to show that any rent of the site was paid by KEW to Shrimati Mitra. It is also difficult to accept the statement that the amount of Rs. 63,750 was given as a simple loan by Shrimati Mitra to Shri K. C. Panda when, according to his own admission, he was not in a position to invest money for the establishment of the Foundry. This would show that Shri K. C. Panda was not a man of much means and he himself states that he was not in a position to pay back the money borrowed by him from Shrimati Mitra.

It does not seem likely that Shrimati Mitra would give a huge amount as simple loan to a person of the financial status of Shri K. C. Panda without any security. No copy of any document has been produced to show that the amount of Rs. 63,750 paid by Shrimati Mitra was in fact a loan to Shri K. C. Panda.

Although KEW commenced its business earlier, no deed of partnership in respect of KEW was executed till September 2, 1963. By that date business of Orissa Agents had been closed and Shrimati Mitra did not want to give an impression of having started another business. Shri K. C. Panda and two others were shown in the partnership deed as partners of KEW. Significantly the amount shown to have been invested by Shri K. C. Panda was exactly the amount paid by Shrimati Mitra.

I have given the matter my consideration, and am of the view that the three circumstances, viz., the establishment of the Foundry of KEW on the site belonging to Shrimati Mitra without any lease deed and without any indication of payment of rent, the payment of Rs. 63,750 by Shrimati Mitra to Shri K. C. Panda for the commencement of the business of KEW, and the appointment of an employee of Orissa Agents, admittedly a proprietary concern of Shrimati Mitra, as the Manager of KEW show that Shrimati Mitra had a financial interest in KEW.

Reference has been made on behalf of Shri Mitra to the fact that when a file was sent to him disclosing two *prima facie* cases under Sections 420 and 420 read with 511, Indian Penal Code, he approved the action proposed by the Department for starting criminal prosecution against Shri K. C. Panda and Shri Manmohan Lal. Those prosecutions were in respect of the dealings of another concern of Shri Panda and Shri Manmohan Lal, namely, Allied Dealers, and not on

account of the dealings of KEW. The above circumstances would not, in my opinion, go to show that Shrimati Mitra had no interest in KEW.

So far as Shri Mardaraj, Shri Mohanty and Shri Tripathy are concerned, there is nothing to show that they passed any order or did anything else in connection with the dealing with KEW. The charge against these three respondents consequently remains unsubstantiated.

To sum up my conclusions, I find that :

- (1) Shrimati Mitra had financial interest in KEW. The foundry of KEW was set up in 1962 on the site belonging to Shrimati Mitra without any lease deed. There is nothing to show that any rent was paid for the site. Shrimati Mitra contributed Rs. 63,750 in connection with the commencement of business of KEW. An employee of Orissa Agents, proprietary concern of Shrimati Mitra, was appointed Manager of KEW.
- (2) Orders of the value of more than Rs. 11 lakhs were placed by various Departments of the State Government with KEW. Out of them, the orders of Public Health Engineering Department were to the tune of Rs. 8.45 lakhs.
- (3) In most of the cases, no tenders were invited and the orders were straightway placed with KEW. On occasions it was KEW which approached the Engineers concerned about the availability of the materials manufactures by the firm. The orders were then placed for the supply of those materials with KEW. Sometimes the materials were supplied by KEW earlier and the Executive Engineers concerned were requested to place order for the said materials. The Executive Engineers then complied with the request. All this was contrary to the rules for the purchase of materials.
- (4) KEW was favoured with the above orders because of the interest in that concern of Shrimati Mitra, wife of Shri Mitra, who was Deputy Chief Minister, and subsequently Chief Minister of Orissa.
- (5) No impropriety is shown to have been committed by Shri Mardaraj, Shri Mohanty and Shri Tripathy. The charge against them has, therefore, not been substantiated.

CHAPTER 59

ALLEGATION No. 59

Re :

Advance of huge sums to Patnaik & Company

Allegation No. 59 relates to advance of huge sums to Patnaik & Company without verification of its assets, and to alleged favouritism in the realization of the advance. The respondents named in the allegation are Shri Patnaik, Shri Tripathy, Shri Mardaraj and Shri Mallik.

According to the case of the State Government, Patnaik & Company is a Private limited company. The shareholders of the Company are the members of the family of Shri Gopal Chandra Patnaik and he is the Managing Director of the Company. Shri Gopal Chandra Patnaik is a shareholder in Utkal Distributors (P), Ltd. He also holds shares as a beneficiary of the Central Bank of India in Kalinga Tubes. Shri Biju Patnaik was a Director of Kalinga Tubes and was also at one time a shareholder in Utkal Distributors. As such, Shri Gopal Chandra Patnaik and Shri Biju Patnaik have close business relations. Shri Gopal Chandra Patnaik was also the Managing Director of Mahanadi Multipurpose Industries, Ltd. All these concerns had business dealings with the various departments of the Government of Orissa.

Orders for supply of vehicles to the Chief Engineer, Roads & Buildings, State Electricity Board, Chief Engineer, National Highways, Chief Engineer, Rural Engineering Organization, Transport Controller and the Orissa Road Transport Company amongst others were placed with Patnaik & Company. A meeting was held on August 30, 1961 within two months after the assumption of office by Shri Biju Patnaik in the room of the Additional Development Commissioner and it was decided that some vehicles be purchased immediately for which sanction order should be issued that very day. It was also decided in that meeting that if the parties with whom orders were to be placed would require any advance for expeditious execution of the orders, such advance up to 50 per cent of the amount of order be paid. This decision was communicated to the Chief Engineers on the same day. Patnaik & Company through Shri G. C. Patnaik thereafter applied on that day to the Chief Engineer,

the Transport Controller and the Additional Chief Engineer Irrigation for 50 per cent advance in respect of the orders placed with the Company for supply of vehicles and construction of bodies. The application of Patnaik & Company was forwarded by the Chief Engineer that very day to the Secretary of Works Department. A draft agreement form was then submitted to the Finance Department on the lines of the contract with Utkal Distributors. The Finance Department submitted the file to the Chief Minister with the recommendation to agree to the proposal as a special case. Shri Patnaik on that very day, i. e., August 30, 1961, signed the note in token of the approval. As normally the assets of the party taking advance are to be verified by the District Magistrate, the Chief Engineer then stated that in case of Patnaik & Company and Utkal Distributors the formality of verification by District Magistrate was waived. On November 10, 1961 Shri Biju Patnaik made a note that as Patnaik & Company had purchased State Loan Bonds worth Rs. 50 lakhs they should receive preferential treatment from Government. It was also mentioned in that note that as Utkal Distributors and Patnaik & Company had each purchased State Loan Bonds worth Rs. 50 lakhs, such parties must necessarily receive Government patronage. It was also stated that both the parties would suffer loss of nearly Rs. 1½ lakhs each, and that though the Government could hardly recompense them it could afford to be at least fair and therefore give them preferential treatment.

The Transport Department, it is stated, paid Rs. 2,50,000 representing the 50 per cent cost of 11 chassis and bus bodies to Patnaik & Company in accordance with instructions issued by the Works Department on August 30, 1961. Subsequently, on December 8, 1961 the Secretary made a note that Shri Mardaraj, Minister Transport, wanted that instead of payment of 50 per cent advance to Patnaik & Company, 100 per cent might be paid on receipt of chassis.

On August 20, 1964 the Chief Engineer wanted sanction for purchase of some vehicles. An order was then issued by the Government on August 22, 1964 that the purchase order be placed with Patnaik & Company and 90 per cent advance be given. The State Electricity Board placed orders with Patnaik & Company for supply of vehicles. Before that when the matter was discussed in the Board it agreed to sanction 90 per cent advance to the Company. This was done on the basis of discussion held with the Finance Secretary who then

stated that the Government too had given the same facility to Patnaik & Company. The Board also decided to waive the condition regarding the verification of the assets of the Managing Director and Chairman of the Company by the District Magistrate. Likewise 90 per cent advance was paid to the above Company in respect of orders for vehicles placed by the Chief Engineer, National Highways, Rural Engineering Organization and Transport Controller. Ultimately it was found that out of the amount of Rs. 46,33,417.58 paise paid as advance to Patnaik & Company by different departments, a sum of Rs. 7,12,670.83 paise still remained unadjusted. An amount of Rs. 2,59,632.48 paise was due to State Electricity Board from the above mentioned Company out of the advance of Rs. 4 lakhs given by the Board to the Company, and a suit for recovery of that amount was filed by the Board.

When the question of the recovery of huge advances outstanding against certain Company was taken up by the Finance Department in May 1966 the Finance Secretary submitted a note to the Additional Chief Secretary stating that there was no satisfactory response from Patnaik & Company. It was suggested that the Company be black-listed and all the Departments be asked not to make payment to the Company until Government advances were fully recovered. A representation was then made by Shri Gopal Chandra Patnaik that due to huge losses sustained by him in the loan bonds scheme of the Government he was given to understand that he would be compensated by the purchase of vehicles from him to the extent of 70 per cent requirement. It was submitted that as the required number of vehicles were not purchased, he could not fully adjust the advance. Another representation was therefore submitted on behalf of Patnaik & Company. On February 26, 1967 Shri Tripathy passed an order that the matter be decided by the new Government. Subsequently, on that day Shri Tripathy made a further order stating that the matter need not be deferred for decision by the new Government and that he would discuss the matter with the Additional Chief Secretary and Additional Secretary (Finance). A note was then put up by the Additional Secretary (Finance) on March 2, 1967 stating that the question of recovery advances in respect of Patnaik & Company was discussed further with the Chief Minister on the personal representation of Shri Gopal Chandra Patnaik and that after discussion it was indicated by the Chief Minister that a period of one year might be allowed to the Company. Shri Gopal Chandra Patnaik had represented that he might be accommodated by

way of recovery from purchases at the rate of 3 per cent but the Additional Chief Secretary pointed out that this was a very low rate and it might take several years for full recovery to be affected. It was then suggested that the recovery should be made at the rate of at least 10 per cent and the entire outstanding amount be recovered within a period of one year. It was further mentioned that in effect it would mean recovery at the rate of 10 per cent on all purchases from the Company by all the Departments of Government within the period of one year, i. e., 1967-68. If purchases were not adequate, the Company would be prepared to pay otherwise so that the full recovery might be completed within that period. The State Electricity Board was also to revise its instructions asking all Departments of Government to withhold payments to the Company pending adjustment of the advances. The aforesaid note was endorsed to the Chief Minister by the Additional Chief Secretary and Shri Tripathy made a note thereon on March 2, 1967 as follows :—

“ There cannot be anything fairer than this. The proposal is accepted.”

In accordance with this decision a circular was issued on the following day. In that circular it was directed that all requirement of vehicles of the various Departments should be placed with Patnaik & Company till March 1968 and that 10 per cent of the cost of the vehicles should be kept back from the bills of the Company for clearing outstanding advances. It was further stated that by this process it might be possible to adjust the entire amount by the end of the year. The State Electricity Board was likewise requested to place the orders and adjust 10 per cent from each bill. Despite all that, it is stated, there is still an outstanding balance of Rs. 7,12,670-83 paise against the Company.

The State Government concludes from the above that Shri Patnaik and Shri Tripathy as Chief Ministers, Shri Mardarajas Minister and Shri Mallik as Deputy Minister, unduly favoured Patnaik & Company.

In support of this allegation the State Government has filed the affidavits of Inspector Madhusudan Das (Vigilance), Shri Dasharathi Misra, Accounts Officer in the Express Highway Department and Shri Prafulla Kumar Das, Assistant Financial Adviser-cum-Under-Secretary in the Works and Transport Department.

Shri Patnaik in the course of his affidavit has denied the correctness of the allegation. According to Shri Patnaik, no special favour was shown to the Company in question. The Company purchased State Loan Bonds worth Rs. 50 lakhs in 1961 and at that time it was decided by the Government that such parties, who assisted the State by purchasing State Loan Bonds of huge amounts and incurred loss thereby, should be helped without adversely affecting the interests of the State. This was done to encourage purchase of State Loan Bonds. The allegation that the State Government was put to loss by sanctioning advances to Patnaik & Company has been described as wrong and baseless. As regards the mode of recovery it is stated that there was nothing wrong with that. This mode before being approved by the Chief Minister was recommended by the Finance Department.

Shri Tripathy too has denied the correctness of the allegation made against him. According to Shri Tripathy, Patnaik & Company represented to him that the Company was given advances for the purchase of State Loan Bonds worth Rs. 50 lakhs. Shri Tripathy after getting the matter checked up found that the Company had not received adequate patronage which was promised to it at the time when the Company had stood by the Government to keep its prestige in subscribing to the loans floated by the Government which resulted in huge loss to the Company. Shri Tripathy thereafter accepted the proposal to grant a period of one year so that the recovery could be affected at the rate of 10 per cent from each bill of the Company for clearing the outstanding advances. The party was stated to be quite solvent. It has been denied that any loss was caused to the Government.

Shri Mardaraj has likewise denied the charge levelled against him. According to Shri Mardaraj, the order for paying advance up to 50 per cent of the value of the order placed was not discussed with him. It was passed by the Chief Minister who was in charge of the Finance Department. Shri Mardaraj as a matter of fact objected to the system of paying advance to the intending suppliers and a note was put on the file that instead of payment of 50 per cent advance he wanted that 100 per cent be paid on receipt of chassis. The system of paying advance was also, it is stated, in vogue when the Ministry headed by Shri Nabakrishna Choudhury and Dr. H. K. Mahtab was in power, Shri Mardaraj disclaims liability for the advances paid to Patnaik & Company.

Shri Mallik has controverted the charges levelled against him and has stated that the orders passed were justified in view of the circumstances of the case and the recommendations of the senior officials of the Government.

Shri Gopal Chandra Patnaik too has filed his affidavit in respect of this allegation. According to Shri G. C. Patnaik he was persuaded by Shri Biju Patnaik in the last week of August, 1961 to purchase $4\frac{1}{4}$ per cent Orissa Government Loan Bonds 1972 to the extent of Rs. 50 lakhs by borrowing from the Banking Institution. Shri G. C. Patnaik was assured that in the event of his helping the State Government in purchase of State Loan Bonds the Government would give preferential treatment by purchasing 70 per cent of its motor vehicle requirements. Further assurance was given that regular payment of 50 per cent advance would be given for each order placed with Patnaik & Company. The Government of Orissa thereafter issued a circular dated August 30, 1961 communicating the decision of the Government to the payment of 50 per cent advance towards the purchase of vehicles. Two advances—one of Rs. 2,82,822 and another of Rs. 2,50,000 were received on the strength of the said circular on 2nd and 3rd September 1961 in connection with the order for purchase of vehicles. Shri G. C. Patnaik deposited Rs. 5 lakhs with the State Bank of India on September 4, 1961 towards 10 per cent of the loan amount as security as per the Bank terms. Patnaik & Company thereafter effected supply of vehicles, Shri G. C. Patnaik was forced again to purchase $4\frac{3}{4}$ per cent Orissa Government Loan Bonds, 1967 of Rs. 50 lakhs in 1964 by borrowing from Banking Institutions since the State Government authorities apprehended that it would not be possible to reach the prestige target of Rs. 8 crores for those bonds. Patnaik & Company was thereafter given further advances amounting to Rs. 8,72,681.58 Paise. The Company made a deposit of Rs. 10 lakhs towards 20 per cent of the loan amount as security on August 24, 1964. The State Government did not honour the commitment with regard to purchase of 70 per cent of the total requirements of vehicles for Orissa State Government Transport Organization and Orissa Transport Co., Ltd., and the actual purchase orders placed with Patnaik & Company came to about 26.31 per cent. Shri G. C. Patnaik raised a loan of Rs. 33,11,500 in 1961 and of Rs. 39,75,000 in 1964 for purchase of Orissa Government Loan Bonds. Shri G. C. Patnaik had to pay higher rate of interest on the loan taken from the banks than is payable on Orissa Government Loan Bonds. In the case filed by the State Electricity Board

it is stated a compromise decree has already been obtained. The business of Patnaik & Company is further stated to have been completely paralysed as a result of the Government action.

Supplementary affidavits have been filed by Inspector Madhusudan Das (Vigilance) and Shri Indramani Kanungo, Assistant Financial Adviser-*cum*-Under-Secretary, Works and Transport Department, on behalf of the State Government as well as by Shri Biju Patnaik.

In respect of this allegation I find that a meeting, attended by the Additional Development Commissioner and Chief Engineers, Irrigation, Roads & Building, and Express Highway, was held in the room of the Additional Development Commissioner on August 30, 1961 in connection with the purchase of ten jeeps and two trucks for Chief Engineer, Irrigation, four jeeps and six diesel trucks for Chief Engineer, Roads & Buildings and two jeeps and four one-ton pick-up vans for Express Highway. It was then decided that if the parties with whom orders were to be placed would require an advance for expeditious execution of the orders, such advance up to 50 per cent of the value of orders might be given on their executing necessary bonds including mortgage of personal property. It was also decided that the Finance Department might be requested for concurrence in the proposal. The same day after the papers were received by the Finance Department the Deputy Secretary of the Department addressed the following note to the Chief Minister :—

“As a Special case F. D. may agree to the proposal subject, however, to a small modification that for supplies to be made by M/s. Patnaik & Company by October, 1961 the recovery may be at 10 per cent as prayed for by M/s. Patnaik & Company, and for supplies to be made after October, 1961 upto March, 1962 the recovery will be at 60 per cent to 75 per cent. Works Department will modify the form accordingly.

Sd. D. Mohapatra

30-8-61 ”

Shri Patnaik signed the above note in token of his approval on August 30, 1961.

On November 10, 1961 a file relating to Utkal Distributors was put up before Shri Patnaik. Shri Patnaik then passed the following order :—

"I think my verbal order was for recovery @ 5 per cent. Necessary alterations may be made in the order to C. E. This party has purchased Rs. 50 lakhs State Loan Bonds and necessarily such parties must receive Government patronage. This also goes for Patnaik & Company (Automobile people) for supply of trucks, who also purchased Rs. 50 lakhs State Loan Bonds.

Both the parties would suffer loss of nearly Rs. 1½ lakhs each. Government can hardly recompensate them but Government can afford to be at least fair and give them preferential treatment.

In the case of Utkal Distributors the recovery should be made @ 5 per cent till advance is cleared up to not 31st March, 1962 but October, 1962.

The party (U. D.) does not need any advance for future supplies. Preference, however, should be given to this party for placing orders of controlled or otherwise of steel items."

On December 6, 1961 it was stated in the course of a note on the file of the Works Department—

"C. M. desires (vide Minutes dated 10-11-1961 at p. 45/N of the linked file) that as M/S. Patnaik & Company have purchased State Loan Bonds worth Rs. 50 lakhs they should receive preferential treatment"

The State Government has impugned the two orders of Shri Patnaik, August 30, 1961 and November 10, 1961 as also the direction referred to in note dated December 6, 1961. It is difficult, in my opinion, to spell out an inference of impropriety on the part of Shri Patnaik from the aforesaid orders and note. As would appear from the above, a decision was taken by the Additional Development Commissioner and the Chief Engineers that 50 per cent advance of the value of orders should be paid for expeditious supply of trucks and other vehicles. The Deputy Secretary, Finance recommended the acceptance of the proposal subject to the modification that for supplies made by Patnaik & Company the recovery should be at the rate of 10 per cent for two months and thereafter at the rate of 60 to 75 per cent till March, 1962. Shri Patnaik accepted the recommendation. His order dated November 10, 1961 shows that though he further reduced the rate of recovery to 5 per cent, he also indicated that the advance from Patnaik & Company was to be

cleared off by March 31, 1962. This fact was also made explicit in the agreement dated January 5, 1962 which was executed by Patnaik & Company and the State Government. It was mentioned in that agreement that the entire amount of advance was to be recovered by the end of March, 1962. The order dated November 10, 1961 as well as the note dated December 6, 1961 go to show that as Patnaik & Company had purchased State Loan Bonds of the value of Rs. 50 lakhs and had suffered financial loss on that account, Shri Patnaik wanted the State Government to compensate the Company by giving it preferential treatment. Shri Patnaik appears to have taken that view of the matter in exercise of his powers, and whether one agrees with him or not it is difficult to hold that his decision was unreasonable or *mala fide*, especially in view of the fact that the target date for the entire recovery from Patnaik & Company, according to the order of Shri Patnaik, was March, 31, 1962. It may be mentioned in this context that the present Government of Orissa has also adopted the policy of making advance payment upto 80 per cent of the value against the orders for investment in Government loan bonds vide letter dated August 31, 1967 of Superintendent, Orissa Government Press.

Apart from the above, it is not shown that Shri Patnaik passed any order in the matter. As regards the payment of 90 per cent advance, the entire thing appears to have been done at the level of the Secretaries and no order is shown to have been passed by any of the respondents named in the allegation.

So far as Shri Mardaraj is concerned, it is not shown that he passed any order or did anything else to pay advance to Patnaik & Company. On the contrary, note dated December 8, 1961 indicates that Shri Mardaraj wanted that instead of the advance, full price should be paid on receipt of chassis.

Likewise, it has not been shown that Shri Mallik passed any order in connection with the payment of advance to Patnaik & Company. The State Government has, however, assailed the orders made by Shri Tripathy regarding the recovery of advance from Patnaik & Company. In this respect I find that the Government affidavit gives the amounts of advance paid to Patnaik & Company as well as the amounts outstanding against that Company.

The amounts would be clear from the following statement:—

Serial No.	Department	Amount of advance	Year of advance	Amount of outstanding against the company
		Rs.P.		Rs.P.
1.	Chief Engineer, Roads & Buildings.	2,85,822.00	1961	80,986.00
		2,01,205.00	1964	2,01,205.00
2.	State Electricity Board.	4,00,000.00	1964	2,59,632.48
3.	Chief Engineer, National Highway.	63,329.58	1964	57,847.35
4.	Rural Engineering Organization.	2,08,147.00	1964	1,13,000.00
5.	Transport Controller.	2,50,000.00	1961	
		4,84,910.00	1962	
		3,86,810.00	1962	
		4,29,520.00	1962	
		10,01,701.00	1963	
		9,21,973.00	1964	
		46,33,417.58		7,12,670.83

On January 31, 1966 Patnaik & Company made a representation to the Finance Secretary to the effect that the Company had purchased Orissa Government State Loan Bonds in 1961 of the value of Rs. 50 lakhs on the assurance that the entire requirements of commercial vehicles for Roads & Buildings, Power & Irrigation Departments, and 70 per cent of the requirements for Transport Department would be supplied by Patnaik & Company. The Government, however,

did not fulfil its commitment. It was further represented that in 1964 Patnaik & Company had been asked to stand by the Government by subscribing to the State Loan Bonds of the value of Rs. 50 lakhs. Although the Company purchased those bonds also and suffered huge loss thereby, the Company was not given the requisite orders for supply of vehicles. Request was, accordingly, made for placing further orders for supply of all vehicles with the Company and for deduction of 3 per cent from the cost of each vehicle for adjustment towards the outstanding advance. A representation was also made by Patnaik & Company on February 2, 1966 to the Chairman, Orissa State Electricity Board. The Board, however, decided to file a suit against the Company after giving it notice. On May 16, 1966 Shri K. S. Bawa, Finance Secretary, addressed a note to the Additional Chief Secretary wherein he referred to the amounts paid as advance to 11 firms and companies of Orissa and which amounts were still outstanding. Patnaik & Company was one of those 11 concerns. The Finance Secretary pointed out that notice had been served on Patnaik & Company, and there had been no favourable response. He also mentioned that a civil suit would be time taking measure and might not exert adequate pressure. Suggestion was made for black-listing the concerns.

On May 24, 1966 Patnaik & Company sent a letter to the Chief Minister, Shri Tripathy, along with a copy of the representation made to the Finance Secretary and requested for favourable consideration. Shri Tripathy passed an order on May 26, 1966 that the matter might be discussed with him by the Additional Chief Secretary on the following day. The Additional Chief Secretary thereafter made a note on May 27, 1966 that vigorous steps should be taken for the realization of the outstanding arrears. Regarding Patnaik & Company it was said that there had been discussion at the residence of the Chief Minister about the mode of recovery and that Patnaik & Company would submit a petition within a few days indicating the manner of repayment for orders of Government. The above note was signed by Shri Tripathy on May 30, 1966. On August 3, 1966 Shri K. S. Bawa addressed a note to the Additional Chief Secretary stating that no offer had been received from Patnaik & Company. It was further added—

“According to their original offer, they want to adjust the outstanding advances of about Rs. 7 lakhs at the rate of 3 per cent from future orders. This is a ridiculous offer and cannot be entertained,

According to the information supplied by M/S. Patnaik & Company, Ltd., an amount of Rs. 60,261·87 paise appears to be outstanding out of advances given in 1961 and more than Rs. 6 lakhs is outstanding out of advances given in 1964. There are serious doubts about the intention of this party in clearing the Government dues. As a test of *bona fide*, we may request them to adjust completely 1961 advances by 15th of August 1966 after which only his representation can be taken into consideration.

Draft placed below for favour of approval."

The above note was signed by Shri R.P. Padhi, Additional Chief Secretary, in token of his approval on August 6, 1966. On January 14, 1967 the Managing Director of Patnaik & Company made the following representation to the Chief Minister:—

"In response to our representation made to your goodself vide our letter No. 738, dated the 24th May 1966 in the matter of recoupment of advances made to us in connection with the purchase of Orissa State Loan to the extent of Rupees one crore, you were kind enough to call a meeting at your residence, which was attended by the Development Commissioner, the Finance Secretary, the Works and Transport Secretary and the undersigned. In the said meeting, it was on principle decided that the recovery of the advance outstanding against us would be made against purchase of vehicles, the percentage at which recovery would be made would be decided later after detailed examination.

The Finance Secretary in his letter No. 27013/F-FIA, dated 9th August 1966, copy enclosed, asked us to completely adjust the 1961 advances by 15th September 1966 and after the said adjustment is made, our representation in respect of the 1964 advances would be taken into consideration. Accordingly we adjusted the outstanding advance amounting to Rs. 60,261·87 by supply of one jeep and truck within the stipulated time.

We are greatly surprised to learn that Government in the Irrigation & Power Department have in the meantime issued instructions to different Government authorities in the State to stop payment on account of supply of vehicles, spare parts and petrol and oil etc., due to us, when the entire matter of recoupment of advance is under consideration of Government. As a result of such instructions, our business has almost been paralysed. In view of the decision taken by you the other day that the recovery would be made against purchases, and our immediate compliance in making adjustment of a huge amount as per instructions of Finance Secretary, we would request that the instructions issued by the Government in Power & Irrigation Department, may please be countermanded. We

request also the quantum of percentage for recovery on supply bills may please be fixed at 3 per cent as per our representation dated 24th May 1966."

On February 8, 1967 the Finance Secretary addressed a note to the Chief Secretary wherein he referred to the request made by Orissa State Electricity Board that no payment in cash be made to Patnaik & Company pending adjustment of the advance of the Board. The Additional Chief Secretary thereafter addressed the following note on February 10, 1967 to the Chief Minister :—

"I regret that for want of time this could not be discussed with C. M. on the 7th. The preceding note by Secretary, Finance Department, may kindly be perused. I do not know if there were any verbal promises made at the time of sanctioning the advances to M/s. Patnaik & Company, because he asserts that he has utilized the advance for purchase of Orissa State Government Bonds. However, he should make earnest efforts to repay the advances out of supplies made by him. It is not possible to give him time indefinitely to repay the loans.

2. The more immediate question is whether he will be allowed further time to repay the loans taken from the Orissa State Electricity Board in 1964. I think, the party should be advised to contact the Electricity Board and come to terms with them. It would be desirable for Chief Minister finally to decide the exact terms and conditions for the repayment of the loans as this does not appear to be very clear from the papers in this file. The matter was thereafter discussed and on March 2, 1967 notings were made on the file by the Additional Secretary, Finance and the Additional Chief Secretary. Those notes along with the order of Shri Tripathy read as under—

"Addl. C. S.—

Notes and orders from P. 11-ante will recall the case. "The matter was further discussed with C. M. after the Cabinet meeting today in C. M.'s residence on the personal representation of Shri G. C. Patnaik, Managing Director of Patnaik & Company (Private) Ltd. After discussion it was indicated by C. M. that time for a period (of one year 1967-68) may be allowed to the firm to pay up the outstanding advances. The Managing Director of the firm represented that he may be accommodated by the way of recovery from purchases at the rate of 3 per cent. Addl. C. S. pointed out that this is a very low rate and it might take several years for the full recovery to be effected. It was then suggested that recovery should be made at the rate of at least 10 per cent and that the entire outstanding amount be fully recovered within the period of one year. In effect, it would mean recovery at the rate of 10 per cent of all purchases of vehicles made from

the firm by all Departments of Government within the period of the year 1967-68. If purchases will not be adequate, the firm should be prepared to pay up otherwise to effect the full recovery within that period.

2. The Orissa State Electricity Board had requested all Departments of Government and Heads of Departments and Corporations to withhold payments to the firm pending adjustment of their advances. The Electricity Board may also be informed of the above decision so that they may issue revised instructions accordingly. May be submitted to C. M. for approval.

Sd/- G. N. Das

2nd March 1967

C. M.

Sd/- R. P. Padhi

2-3-1967

There cannot be anything fairer than this. The proposal is accepted.

Sd. S. Tripathy

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I have given the matter my consideration and am of the view that orders made by Shri Tripathy in respect of the recovery of the advance from Patnaik & Company are not vitiated by any impropriety. As would be clear from the above, a huge amount was due from Patnaik & Company for the advances paid to that Company. The Finance Secretary expressed view against the advisability of filing a suit because such a procedure entails delay. Patnaik & Company initially pleaded for recoupment of the advance at the rate of 3 per cent from the future supplies. The above proposal was found to be not acceptable. Later as a result of discussion the Company was made to agree to the recovery at the rate of 10 per cent of all purchases from the Company by the various Departments of the Government within the year 1967-68. The proposal made in this respect was a considerable improvement on the earlier proposals. The new proposal also visualized that if the purchases were not adequate the Company would otherwise make the payment to clear off the amount due. As the proposal on the face of it appeared to be reasonable, no exception, in my opinion, can be taken to the acceptance of the proposal by Shri Tripathy. It has to be borne in mind that the matter with which Shri Tripathy had to deal with was not of paying advance to Patnaik & Company

but of devising ways to recover the money already paid as advance. The proposal approved by him was with a view to safeguard the Government money. The fact that the scheme contained in the said proposal was not subsequently acted upon would not affect the propriety of the scheme. As regards the position at the time of argument it is stated that a little less than Rs. 2 lakhs is due to the State Government and an amount of about Rs. 1,78,000 is due to the State Electricity Board. In all an amount of about Rs. 3,78,000 is stated to be due from Patnaik & Company as against the amount of over Rs. 7 lakhs which was earlier due from the Company.

Reference on behalf of the State Government has been made to the following order dated September 15, 1966 of Shri Tripathy on the question of giving advances :—

“I asked the Secretary, Works and Transport Department to stop giving advances for raising Government loan forthwith and take immediate steps to recover the advances. The advance should not be interest-free nor it should be a guarantee to enable him to get more and more contracts for supplies from Government for a future period and that too for long periods. This will be more or less a kind of monopoly to some selected suppliers. Send this to Finance Department soon”.

The above order seems to have been made by Shri Tripathy on the basis of the experience gathered as a result of earlier advances for the payment of which he, in any case, was not responsible.

I would, therefore, hold that the charge of impropriety contained in this allegation has not been proved.

CHAPTER 60

ALLEGATION No. 60

Re:

Alleged Interference in the Administration of Local Bodies

Allegation No. 60 relates to alleged misuse of power and undue interference in the administration of local bodies like Zilla Parishad, Panchayat Samitis and Grama Panchayats. The respondents named in the allegation are Shri Mitra, Shri Tripathy, Shri Brundaban Nayak and Shri Deo.

According to the case of the State Government Shri Natabar Pradhan was an active member of the Congress Party in Phulbani district. He was elected Sarpanch of Boudgarh Grama Panchayat. As Sarpanch Shri Pradhan became a member of the Panchayat Samiti. As member of the Panchayat Samiti Shri Pradhan was elected Chairman of the Panchayat Samiti. As Chairman of the Panchayat Samiti he became a member of Zilla Parishad. As member of the Zilla Parishad Shri Pradhan was elected Chairman of Phulbani Zilla Parishad. On August 30, 1961 Boudgarh Notified Area Council was constituted. As a result of the formation of the Notified Area Council, the Grama Panchayat of Boudgarh was dissolved. On dissolution of the Grama Panchayat, question arose whether Shri Pradhan, who was Sarpanch of Boudgarh Grama Panchayat and who by virtue of such a position was elected as Chairman of Zilla Parishad, should continue in office as Chairman of the Zilla Parishad. Since the Panchayat, which Shri Pradhan was representing, was no longer in existence, the matter was referred to the Government for decision and on September 11, 1962 the file relating to the matter was submitted to the Deputy Chief Minister, Shri Mitra. The file was not returned by him to the Department. Another part file was opened for the same purpose and on November 2, 1962 it was submitted to Shri Brundaban Nayak, Deputy Minister, Community Development. The said file was not returned by Shri Nayak to the Department. As such, Shri Pradhan continued to be the Chairman of the Zilla Parishad.

The second case relates to Keonjhar Zilla Parishad. Shri Pranath Bhuian was the Chairman of the aforesaid Zilla Parishad. A requisition for no-confidence motion was received by the Collector on July 20, 1964 and on August 19, 1964 a resolution of no-confidence was passed against Shri Bhuian. The

same day Shri Bhuian submitted a revision petition to the Minister, Panchayati Raj. Shri Brundaban Nayak was in those days Minister for Panchayati Raj. On that petition of Shri Bhuian a stay order was passed by the Government on August 27, 1964. The case of the State Government further is that the requisition for the meeting to consider vote of no-confidence against Shri Bhuian had been sent amongst others by the Chairman of Jhumpara Panchayat Samiti, Saharpara Panchayat Samiti and Bansapal Panchayat Samiti. On August 1, 1964 requisition for vote of no-confidence against Chairman of Jhumpara Panchayat Samiti was received. On August 3, 1964 similar requisitions were received for vote of no-confidence against Chairman of Saharpada and Bansapal Panchayat Samitis. August 16, 1964 was fixed as the date for the meeting to consider the resolutions expressing want of confidence against Chairman of Jhumpara and Bansapal Panchayat Samitis, while August 18, 1964 was fixed to consider the resolution in respect of Chairman of Saharpara Panchayat Samiti. As against that, the special meeting to consider the resolution expressing lack of confidence against Shri Bhuian was fixed for August 19, 1964. The no-confidence resolutions in respect of the three Chairmen, i.e., of Jhumpara, Bansapal and Sharpada Panchayat Samitis, could not be passed, but the resolution against Shri Bhuian was passed. On September 2, 1964 after the stay order Shri Bhuian issued an order saying that he had resumed office. As there was some difference between the Law Department and the Panchayati Raj Department as to whether Shri Bhuian could act as a Chairman, the Government passed an order that Vice-Chairman would function as Chairman till the disposal of the revision petition.

The third case relates to Kutra Panchayat Samiti in Sundergarh district. Shri Birendra Bhagat was Chairman of the aforesaid Samiti. On May 20, 1963 a resolution about want of confidence was passed against Shri Bhagat. Notification about the resolution was published on May 25, 1963. On June 20, 1963 Shri Jaya Singh Bariha was elected Chairman of Kutura Panchayat Samiti. The resolution dated May 20, 1963 against Shri Birendra Bhagat was cancelled by the Government and it was communicated to Sundargarh District Office on October 30, 1964. A review petition was then filed by Shri Jaya Singh Bariha on December 1, 1964. On receipt of this petition, advice of the Law Department was sought as to whether the petition was maintainable. The Law Department gave its opinion that the petition of Shri

Bariha was not maintainable. In spite of that opinion an order for stay of the execution of the cancellation order was sent on December 11, 1964 as a result of which Shri Bariha continued in office.

In order to dispose of the review petition of Shri Bariha, Shri Brundaban Nayak wanted that a show-cause notice should be issued to Shri Bariha. This proposal was approved by Shri Tripathy on May 9, 1965. Although the departmental officials were of the view that the review petition merited dismissal, Shri Tripathy wanted a discussion on the matter. On November 11, 1965 Shri Tripathy passed an order that Shri Deo should give a personal hearing to Shri Bariha and the matter be disposed of expeditiously. Shri Deo, however, delayed the matter and heard Shri Bariha on November 3, 1966. Shri Bhagat did not put in appearance. On March 1, 1967 Shri Tripathy rejected the petition of Shri Bariha and directed the vacation of the stay order. The State Government concludes from the above that undue favour was shown to Shri Bariha.

The fourth case relates to Boden Panchayat in Kala-handi district. It is stated that a resolution of no-confidence was passed against Shri Jagadananda Joshi, Chairman of the aforesaid Panchayat Samiti on January 14, 1964. Shri Joshi filed a revision petition before Shri Brundaban Nayak challenging the aforesaid resolution and praying for stay of its execution on February 4, 1965, the above resolution was cancelled. The order cancelling the resolution was issued on February 25, 1965. Shri Joshi thus continued in office for a period of more than one year after the resolution. After February 25, 1965 another vote of no-confidence was passed against Shri Joshi on May 26, 1965.

The fifth case relates to Arakhpur Grama Panchayat in Cuttack district. Shri Jagannath Lenka was the Sarpanch of the aforesaid Panchayat, Shri Jagannath Lenka is the son of Shri Dhanu Lenka, who was a Congress M. L. A. from 1961 to 1967. On March 19, 1963 a notice was issued against Shri Jagannath Lenka on the allegation that an amount of Rs. 2,600-53 paise received by him towards Gram Fund had not been credited to the Gram Fund. Shri Lenka also could not produce cash amount of Rs. 612-19 paise. This notice was served on the Sarpanch on April 9, 1963. As the department was of the view that no explanation had been submitted by Shri Jagannath Lenka it recommended that he be removed from the office of the Sarpanch and debarred from election for two years. The

proposal was approved by Shri Brundaban Nayak on July 8, 1963, and a Government notification was issued on July 23, 1963. After the notification Shri Jagannath Lenka sent a representation dated August 13, 1963 alleging that the explanation had already been sent by him. He prayed for the cancellation of the notification. The matter was discussed by the Secretary and the Chief Minister. The Secretary then pointed out two lines of approach; one for rejection of the representation and the second for further investigation. While dealing with second line of approach it was pointed out that *ex parte* order had been passed without taking into consideration the explanation of the Sarpanch. In the meantime, Shri Jagannath Lenka resigned from the office of the Sarpanch and pleaded that if the Government had not heard him, it might at least refrain from removal proceedings and accept the resignation. The matter was considered by the Chief Secretary. He was at first of the view that the Government had no power to review its previous order but subsequently on December 11, 1963 the Chief Secretary put up the following note:—

“I am thankful to the Chief Minister for pointing out that there seems to be a Great injustice in the matter. I have since called upon Shri J. Lenka, the Sarpanch, show whether he has not any proof that in fact he has sent a reply to the notice. He has produced for my perusal an under certificate of posting receipt of Arakhpur Branch Post Office dated 24th April 1963. This shows that the reply must have been in the Department at the time Government took a decision in the matter. Unfortunately the reply is not traceable in the Department. I have called upon the Panchayat Sarpanch to produce an affidavit in the matter and submit a copy of the explanation he had given. I feel that the Department should pursue the explanation and then take final orders of the Government. Meanwhile if no third party interests have intervened, as advised by Law Department, the matter can be reopened. My advice at this stage would be that on the necessary affidavit Government may cancel the previous orders and order an enquiry. Incidentally, the Sarpanch has made certain grave allegations about corrections in the accounts by the Auditor”.

On June 2, 1964 the notification regarding the removal of Shri Lenka was cancelled.

Some general allegations of interference in respect of other Grama Panchayats have also been made but no particulars in respect of those allegations have been put in by the State Government.

In support of the above allegations the State Government has filed the affidavits of Shri Prakash Narain Gurtoo and Shri Raj Kishore Patnaik, Under-Secretaries in the Department of Community Development and Panchayati Raj.

Shri Mitra in the course of his affidavit has denied the correctness of the allegations made against him. According to Shri Mitra the file relating to Shri Natabar Pradhan was not detained intentionally but remained lying in office due to an oversight without the knowledge of Shri Mitra. Shri Mitra has described the allegation in respect of Shri Bhagat, Chairman, Kutra Panchayat Samiti, as false and motivated. As regards Shri Jagannath Lenka, it is stated that as his explanation in response to the Show-Cause Notice had not been taken into consideration before order for his removal was issued, the matter was discussed on official level and the Law Department was consulted. It was then decided to drop the removal proceedings.

Shri Tripathy in his affidavit has stated that whatever was done by the Government was fair and proper and there was no misuse of power and undue interference in the administration of local bodies.

Shri Brundaban Nayak in his affidavit has stated that he does not recollect the circumstances and reasons on account of which the file relating to Phulbani Zilla Parishad remained with him. There was no ulterior motive for the delay. As regards the other orders, Shri Nayak states that they were passed by him in *bona fide* exercise of his power and not because of any ulterior motive.

Shri Deo in his affidavit has stated that on being asked by the Chief Minister to give personal hearing to Shri Jaya Singh he summoned both parties for sake of natural justice. Each time when the matter was fixed for hearing one or the other party was absent. On one or two occasions the matter had to be adjourned because of the illness of Shri Deo and because of the serious condition of his son, who was involved in an accident and remained unconscious for 28 days. Shri Deo had added that he had no personal interest in the matter and the parties concerned were not even known to him. There was no question of misuse of power and undue interference in the administration of local bodies.

After hearing the learned counsel for the parties I am of the view that there is no substance in this allegation. So far as the case of Boudhgarh Grama Panchayat is concerned, no documents have been produced by the State Government, and it is stated that the file relating to the same is not traceable. In the absence of the file it cannot be said as to when, if at all, the relevant papers were put up before the respondents concerned and whether they caused any delay in the matter.

As regards Keonjhar Zilla Parishad I find that there is nothing to show that the respondents did anything in the matter of fixing dates for the meetings to consider the requisitions of no confidence in the Chairman of the Zilla Parishad and the Chairman of Jhumpara, Saharpara and Bansapal Panchayat Samitis. The entire thing seems to have been done at the level of the district officials. Reference has, however, been made on behalf of the State Government to the stay order passed by Shri Nayak on August 27, 1964 on the petition of Shri Bhuian. In that respect I find that the office notes show that the Under-Secretary as well as the Joint Secretary of the Department had recommended that till the decision of the petition filed by Shri Bhuian the stay order might be granted. Shri Nayak signed the proposal of the Joint Secretary in token of his approval. No inference of impropriety can be drawn against Shri Nayak on that account. Question subsequently arose as to who should act as the Chairman of the Zilla Parishad. An order was then made that till the disposal of the revision petition of Shri Bhuian, the Vice Chairman of the Parishad should act as Chairman. The order in this respect was obviously not in favour of Shri Bhuian.

Coming to the case of Kutra Panchayat Samiti I find that the stay order of December 11, 1964 was issued not by Shri Nayak but by the officials of the Department. Shri Nayak signed the note on the file, which was sent to him in this connection, only on December 26, 1964. The order made by Shri Tripathy that personal hearing be given to Shri Bhuian before the disposal of his petition cannot be deemed to be improper as the object of that order was to obviate any procedural irregularity. Regarding the delay in the disposal of the matter by Shri Deo, I find that the delay has been explained by Shri Deo, in his affidavit. The purpor of that affidavit has been reproduced earlier and need not be repeated over again. It has not been shown to me that the reasons given by Shri Deo, are not well-founded.

The next case relates to Boden Panchayat Samiti. Nothing has been shown to me at the time of arguments from which an inference of impropriety may be drawn against the respondents.

The last case pertains to Arakhpur Grama Panchayat. It has been argued on behalf of the State Government that the respondents should not have allowed review of the order dated July 8, 1963 of Shri Nayak whereby Shri Jagannath Lenka was ordered to be removed from the office of Sarpanch and debarred from election for two years. In this respect I find that the above order was made on the assumption that Shri Lenka had submitted no explanation in response to the Show Cause Notice. Shri Lenka thereafter represented that he had submitted an explanation and produced postal receipts in support of his contention. The official of the Law Department and the Chief Secretary, who were earlier of the view that no review was permissible, thereupon expressed the opinion that the Government in such a contingency had an inherent right to reviewing the earlier order in the interest of justice. The earlier order was thereafter reviewed. There was in my opinion, no taint of impropriety in the course adopted.

I would, therefore, hold that the charge of impropriety contained in this allegation has not been proved against the respondents.

CHAPTER 61

ALLEGATION No. 61

Re :

Interference in the investigation relating to the death of Miss Pillu Bahen Sidhwa

Allegation No. 61 relates to alleged interference in the investigation relating to the death of Miss Pillu Bahen Sidhwa. The respondents named in the allegation are Shri Mitra, Shri Routray, Shri P. V. Jagannath Rao and Shri Sanganna.

According to the case of the State Government, an Exhibition was arranged by the Tribal & Rural Welfare Department at the time of the All-India Congress Committee Session at Bhubaneswar in January 1964. A Government jeep, O. R. K. 619, which was at the disposal of Shri Sanganna, was taken to Khandagiri, a place of sightseeing near Bhubaneswar, on the evening of December 28, 1963. It met with an accident at about 6 P. M. near Khandagiri. Miss Pillu Bahen Sidhwa, a Sewadal volunteer aged about 25 years, who was travelling in that jeep, received injuries. Shri R. K. Patnaik, who was the Assistant District Panchayat and Tribal Welfare Officer, Cuttack and had been transferred to Bhubaneswar as Information Officer, was also in that jeep. Shri N. N. Roy, Superintendent of Police, was at that time coming towards Bhubaneswar. He removed Miss Sidhwa and Shri R. K. Patnaik to the Capital Hospital. Miss Sidhwa died in the hospital at 10 P.M. the same night. Report about the accident was given to the police. The police at first treated Shri K. C. Barik, one of the drivers, as an accused. Subsequently, the Investigating Officer was changed and Shri R. K. Patnaik was arraigned as an accused. Shri R. K. Patnaik was ultimately acquitted in that case on November 3, 1966.

The case of the State Government further is that after Miss Sidhwa had been removed to the hospital, the Chief Minister Shri Mitra, the Home Minister Shri Routray, the Health Minister Shri Rao along with Shri Bijoy Pani, President of the Pradesh Congress Committee, went to the hospital. After the death of Miss Sidhwa, Shri Mitra did not direct the body to be subjected to post-mortem examination but only directed that an inquest be held. Shri Jagannath Rao, who had previously been a Civil Surgeon, also did not ask for post-mortem examination. It is said that the same was done with a view to facilitate the suppression of the cause of the death of Miss Sidhwa. The dead-body was thereafter

removed to Bombay. There was agitation in newspapers that the death of Miss Sidhwa was suspicious, and was due to some indecent assault on her. It was also mentioned that there had been a murder and the facts had been concealed to shield some important person.

The State Government concludes from the above that the respondents named above interfered in the course of investigation in order to suppress the truth.

In support of the above allegation the State Government has filed the affidavit of Shri Basant Kumar Dutta, Deputy Superintendent of Police.

Shri Mitra in his affidavit has denied the correctness of the allegation made against him. According to Shri Mitra, there was no interference in the course of investigation by him. When the Chief Secretary recommended the suspension of Shri R. K. Patnaik in connection with the criminal case Shri Mitra passed the necessary orders for the purpose.

Shri Routray too has denied the correctness of the allegation made against him. According to Shri Routray, at the time Miss Sidhwa was brought to the hospital, he was not present in Bhubaneswar. At about 9 P.M. on that day he was told at Cuttack by a high police officer about the accident. Next day he came to Bhubaneswar and learnt that the dead-body had been removed by car to Jharsuguda to be sent from there to her family at Bombay for the customary rites of Parsi community. When a question about the post-mortem examination was raised he enquired from the police and learnt that the police was satisfied, in the circumstances of the case and after inquest, that Miss Sidhwa had died as a result of the accident. A request had also been made to the police not to get the body disfigured by autopsy.

Shri Jagannath Rao has also denied the allegation against him that he did not ask for post-mortem examination with a view to facilitate suppression of the cause of death. According to Shri Routray, he was not expected to say anything regarding the post-mortem examination.

Shri Sanganna in his affidavit has stated that on the date of accident he was out on tour. It was only on return that he came to know of the tragic death of Miss Sidhwa.

It has not been shown in respect of this allegation that he respondents passed any order or did anything from which on inference of impropriety or interference with investigation

may be drawn against them. It has, however, been pointed out on behalf of the State Government that some of the respondents visited the hospital after Miss Sidhwa had been removed there. In this respect I find that Miss Sidhwa was Sewadal volunteer of Bombay who had come to Bhubaneswar in connection with the Congress Session. As she received fatal injuries as a result of the accident, the respondents concerned seem to have gone to the hospital to show their sympathy. No exception can be taken to that. Reference has also been made on behalf of the State Government to the fact that no post-mortem examination was performed on the body of Miss Sidhwa. So far as this aspect of the matter is concerned, I find that the report of the Superintendent of Police shows that the body was not sent for post-mortem examination as some of the leaders of Sewadal organization represented that Miss Sidhwa's body would be sent by train to Bombay as per telephonic conversation with her mother and they would not like her body to be disfigured by autopsy. The report also referred to the inquest made in the hospital in the presence of Dr. Gantayat and Dr. Dutta, and the examination of injuries by Dr. Panda soon after Miss Sidhwa's admission in the hospital, and it was observed that post-mortem examination was not considered necessary for coming to a correct finding about the cause of her death. There is nothing to indicate that the respondents did anything in the matter.

I, therefore, hold that there is no substance in the charge contained in this allegation.

CHAPTER 62
ALLEGATION No. 62
Re:

Orissa Agents

Allegation No. 62 relates to dealings with Orissa Agents. The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Routray, Shri Mardaraj and Shri Mallik.

According to the case of the State Government, Shri Mitra and his wife Shrimati Easwaramma Mitra were persons of very slender means. In 1959 when Shri Mitra was a member of the Orissa Legislative Assembly, he started concern 'Orissa Agents' in the name of his wife. The concern 'Orissa Agents' was appointed agent of Kalinga Tubes Ltd. and Kalinga Industries Ltd., in which companies Shri Patnaik, his wife and children had substantial interest. In June, 1961 Shri Patnaik became Chief Minister of Orissa and Shri Mitra became Deputy Chief Minister. Orissa Agents was doing very small business till Shri Mitra became Minister.

After Shri Patnaik became Chief Minister, a number of circulars were issued by the Orissa Government laying down the policy which was to guide the officers in making purchases on behalf of the State Government. The details of these circulars have been given while dealing with allegation No. 2. One of these circulars, which was dated November 17, 1961, directed that all goods for the State of Orissa should be purchased through local dealers and in any case where it was necessary to place direct orders with firms outside the State prior concurrence of the Finance Department should invariably be taken. It was also stressed that any deviation from the above instructions would make the officer concerned personally liable for the consequential loss of sales tax revenue to the State. Orissa Agents in order to facilitate sale of their goods to Government of Orissa, then got itself appointed as agent of several important industrial concerns. One of such concerns, Jenson and Nicholson (India) Ltd., Paint Merchants of Calcutta, wrote to the Government of Orissa that since articles were to be purchased from Orissa firms they were appointing Orissa Agents as their agent. The business of Orissa Agents also remained confined mostly to supplies to Government and semi-Government bodies in Orissa. The standing rules of the Finance Department in the matter of purchases at that time were:—

- (a) purchases shall be made on condition that delivery shall be made in Orissa on payment of rupees,

- (b) tenders will be invited to supply articles exceeding Rs. 1,000,
- (c) plants, machinery, iron and steel articles shall be ordinarily obtained from firms approved by Director-General of Supplies and Disposals. Purchase must be in a most economical manner. Stores should not be purchased much in advance of the actual requirement,
- (d) purchase orders should not be split up in order to avoid the necessity of obtaining sanction from higher authorities. Advertisement should be inserted in *Orissa Gazette* and newspapers for purchase of the value of more than Rs. 10,000. Government approval should be obtained for any purchase of Rs. 10 lakhs or more. Security deposit should be taken in case of all purchase orders. Thirty days time should be given for submission of offers in tender notices. There should be penalty clause in all contracts.

It is stated that after the Ministry headed by Shri Patnaik came into power and Shri Mitra became Deputy Chief Minister, Orissa Agents was flooded with purchase orders from the different departments of the Government of Orissa. In the matter of these purchases all rules were given a go-bye to the detriment of the interests of the State. Quotation was seldom invited and exorbitant prices were paid. Goods manufactured by Kalinga Tubes and Kalinga Industries were pumped into the Government Stores at excessive costs without any necessity for the purchase being there. The rate contract of D. G. S. and D., which was operative in all State Departments, was not followed and huge Government money passed into the pockets of Orissa Agents as middle-man's profit.

One of the purchase orders placed with Orissa Agents by the Chief Engineer, Public Health dated August 20, 1962 was for Rs. 19,53,000. It was an order for supply of one lakh rft of 6" diameter G. I. Glass 'A' pipes. Shri Mardaraj was at that time the Public Health Minister. For the above purchase tenders were invited, but, it is stated, very little time was given to submit tenders. Tender notice of the above purchase was published on July 15, 1962 in Cuttack papers and on July 17, 1962 in Calcutta papers. The quotations were opened on July 21, 1962. The notice mentioned that the person whose tender would be accepted would have to give one per cent

security. In spite of the limited time, 39 quotations were received but security could not be deposited by most of them even though they undertook to pay the same. On that ground 29 tenders were rejected. Ten tenders including that of Orissa Agents were taken into consideration. The tenders of Orissa Agents, however, mentioned 'B' class pipes and not 'A' class pipes. The security deposit of Orissa Agents was also short by Rs. 1,690. The tender of Orissa Agents in spite of the above defects was accepted and those of others were rejected. The rate quoted by Orissa Agents was Rs. 18.60 per rft. ex-factory which meant that the delivery was to be taken at the gate of Kalinga Tubes. The circular price of Kalinga Tubes for 'A' Class G.I. pipes 6" diameter was Rs. 11.96 per rft., while the D. G. S. and D. rate for similar tubes of Indian make was Rs. 9.14 per rft. only. Amongst the tenders rejected for want of requisite security deposit were those of Messrs. Aminchand Pyarelal who had quoted a rate of Rs. 14.75 per rft. and Binayak Trading Corporation which had quoted a rate of Rs. 14 per rft.

Another purchase order dated June 12, 1962 issued by the Superintending Engineer, Public Health, was for supply of 4,000 rft. 6" diameter G. I. Pipes of the value of Rs. 1,08,100. In respect of this purchase order limited tenders were called in May, 1962. The quotation of Orissa Agents at Rs. 15.25 Paise was accepted and the order was placed with the concern. At that time price of the above-mentioned pipes was mentioned in the circular of Kalinga Tubes as Rs. 11.95 Paise per rft. The D. G. S. & D. rate was Rs. 9.14 rft. On June 26, 1962 the concern 'Orissa Agents' intimated its inability to make the supply. An order was thereafter placed with Inland Dealers, whose quotation of Rs. 16.16 Paise was the second lowest. Inland Dealers then intimated that the price of G. I. pipes of the above size had gone up and quoted a fresh rate of Rs. 25.85 Paise. Order for the above-mentioned G. I. pipes was placed on July 27, 1962 with Inland Dealers at the rate of Rs. 25.75 Paise. This order is subject of allegation No. 55.

Seventeen purchase orders Nos. 7823, 9278, 9281, 9284, 9287, 9307, 9310, 10645, 10648, 10651, 10657, 10660, 10663, 10775, 11108, 11111 and 11114 of the amount of Rs. 16,54,800 were placed by Public Health Department during the period from July 25, 1962 till October 19, 1962 with Orissa Agents for supply of material manufactured by Kalinga Tubes. The purchase orders, it is stated, were split in order to avoid the necessity of Government sanction. The price paid was almost

double the rate of the firms having rate contracts with D. G. S. & D. The above articles were purchased despite the intimation sent by the Chief Engineer in his letter dated August 29, 1962, that the stock position was very heavy.

Another set of nine purchase orders of the total amount of Rs. 4,92,600 were placed by the Public Health Department with the Orissa Agents for supply of material manufactured by Kalinga Tubes. This was done despite the fact that the rates quoted by Orissa Agents were higher than those quoted by others. A number of other purchase orders were placed by the Public Health Department with the Orissa Agents for supply of goods manufactured by Kalinga Tubes. The details of these orders are given in the particulars of allegations and the affidavit filed on behalf of the State. One set of these orders Nos. 2659, 2662, 2739, 2743, 2750, 2768, 2775, 2779 and 2785 for an amount of Rs. 8,26,200 were placed on 15th and 16th March, 1962. The rates of the Indian Tube Company, which had a rate contract with the D. G. S. & D., were the lowest, but the orders were not placed with that Company and were placed with Orissa Agents. The difference between the two rates resulted in over-payment of about Rs. 3,25,000. Orissa Agents sublet the order to their sub-dealers, Allied Dealers, without the consent of the Departmental authorities.

The Public Works Department placed orders of the value of Rs. 1,55,000 with Orissa Agents. There could have been a saving of Rs. 55,000 it is stated, if the above goods had been purchased at the D. G. S. & D. rates. Orders for supply of paints at excessive costs are also stated to have been placed with Orissa Agents. The details of those orders are given in the affidavit filed on behalf of the State Government. The paints were purchased sometimes without necessity and even though they did not conform to the specifications.

Orders for supply of pipes and other materials were placed with Orissa Agents by the Irrigation Department, Industries Department, Electricity Department, Chief Engineer, Paradeep Port and Director of Lift Irrigation. The purchase orders on behalf of the Irrigation Department were of the amount of Rs. 3,83,586. The two orders on behalf of the Industries Department were for supply of timber for Khadi and Village Industries Board of the value of more than Rs. 1,60,000. The orders on behalf of Director of Lift Irrigation were for a total amount of about Rs. 3,92,000. The State Government alleges that many irregularities were committed while placing the above purchase orders with Orissa Agents. In some cases the concern was allowed to revise its tenders. After the

tenders had been opened, the rates for items for which others did not quote were increased and the items for which lower rates were quoted by others were allowed to be reduced by Orissa Agents. Excessive prices were paid and the requirement of Article 299 of the Constitution for entering into contract was not complied with. These irregularities continued till August 5, 1963 when Orissa Agents closed its business.

The transactions of Orissa Agents with the different Departments of the Government, before and after the Ministry headed by Shri Patnaik came into power in June, 1961, it is stated, would appear from the following table :—

Year	Total Amount of the Transactions	
	Rs.	
1959-60	..	2,61,000
1960-61	..	3,00,000
1961-62	..	14,66,000
1962-63	..	42,69,000
		62,96,000

According to the Audit Report 1965, the total value of purchase orders placed with Orissa Agents during the period from August, 1959 to March, 1963, was Rs. 69.52 Lakhs. Of these materials of the value of Rs. 66.64 Lakhs were products of Kaling Tubes. The reply of the State Government to the Audit then was that the payment made to Orissa Agents was of much smaller amount presumably because full supplies were not made in pursuance of the orders. Letter dated 26th June 1965 of Finance Secretary, Orissa to the Accountant-General shows that though orders placed by Public Health Department with Orissa Agents were of much higher amount, the value of actual supplies received amounted to Rs. 34.75 Lakhs without sales tax and Rs. 36.47 Lakhs including sales tax.

The gross-turnover of the Orissa Agents was given by Shrimati Easwaramma Mitra to the Sales Tax Department as under :—

Gross turnover for 1960-61	..	Rs. 84
Gross turnover for 1961-62	..	Rs. 1,74,498
Gross turnover for 1962-63	..	Rs. 23,56,179

The State Government concludes from the above that there has been gross impropriety in the nature of misappropriation, breach of trust, malfeasance, misfeasance and favouritism and the responsibility for that devolves on the respondents named above.

In support of the above allegations the State Government has filed the affidavit of Inspector, Hema Kanta Sahu (Vigilance) and Shri R. N. Patnaik, Under-Secretary, Home Department.

Shri Patnaik in his affidavit has denied the allegations against him. According to Shri Patnaik, Orissa Agents was appointed agent of Kalinga Tubes and Kalinga Industries for some of the products in 1959 when Shri Patnaik was the Managing Director of the former company and Chairman of the latter Company. After Shri Patnaik became Chief Minister, he liquidated his shareholdings in those two companies. The circular dated November 17, 1961 contained a policy decision of the Government to provide a fillip to the business of the local manufacturers and traders by extending State patronage. It was also intended to earn revenue for the State Government in the shape of Sales Tax. As difficulties were pointed out by some departments in the implementation of that policy, it was decided to allow purchases from outside the State with prior permission of the Finance Department. The circular also led to the opening of branch offices by leading manufacturers in Orissa. This fact ensured gainful employment to the local people. The decision to give preference to small-scale industries, it is stated, was taken during the time of the President's Rule when Shri Sukhthankar was the Governor. It was, according to Shri Patnaik, a sheer coincidence that the orders to implement that decision were issued in August 1961 after he had assumed office. Similar decisions were taken by the other States.

Shri Mitra too in the course of his affidavit has denied the allegations made against him. According to Shri Mitra, it was incorrect that he was the real proprietor of Orissa Agents even though his wife was shown as proprietor of the same. He has in this connection relied upon the opinion dated May 30, 1964 of the Chief Election Commissioner given under Article 192 of the Constitution. The opinion was given in the following circumstances :

A petition dated September 13, 1963 was addressed by Shri Nrusingha Charan Mohanty of Cuttack that Orissa Agents was the concern of Shri Biren Mitra

but he was running the same *benami* in the name of his wife. As Orissa Agents entered into contracts for supply of goods to the departments of Orissa Government, the petitioner claimed that Shri Mitra had become disqualified for being a member of the Legislative Assembly under Article 191 (e) of the Constitution. The main contention of the petitioner in that petition was that Shri Mitra was the real owner and his wife was a mere *benamidar* or a name-lender. The petitioner in that connection relied, *inter alia*, upon a statement made by Shri Mitra in the Legislative Assembly on March 30, 1962. The aforesaid statement was printed and published in official reports of the Assembly Debates as under:—

“Shri Biren Mitra (Minister): Mr. Speaker, Sir I have a personal explanation to give here because certain insinuations were made against me as a member of the Cabinet by Mr. Harihar Patel, Hon'ble Member from Sundergarh, that certain favours were shown to some firms in which I am connected. Sir, I may say that this firm has been dealing with the supply of G. I. pipes for the last three years, when the Coalition Ministry were there. For the last 3 years they have been supplying, as the lowest tenderers as authorised agents of Kalinga Tubes, to the Government of Orissa, even during the Coalition Ministry.

With regard to the present tender, I may say even local firms applied and out of them three backed out saying they have no stock. Four were left. Out of them the rates of one firm were very high and two others who quoted less agreed only to supply 25,000 feet and the other 10,000 feet respectively. The rest supply was given by the firm in which I am connected. This is how the thing stands. We are the authorised Agents of the Kalinga Tubes, who have taken order to supply pipes.”

The correctness of the above report was denied by Shri Mitra before the Chief Election Commissioner. The stand of Shri Mitra was that he had undoubted and undisputed connection with Orissa Agents to the extent that he was the husband of the proprietress of the concern. Although legally and constitutionally he was not answerable for the conduct of the concern belonging to his wife, as husband and wife are indented in public estimation to a very great extent he did not adopt a technical attitude of evasion. Shri Mitra denied that he ever used the words “We are the authorised agents of Kalinga Tubes who have taken orders to supply pipes”. The Chief Election Commissioner took the view that the work “we” in the above sentence was a misprint and the work actually

used by Shri Mitra was "they". The Chief Election Commissioner also rejected the other contentions of the petitioner and came to the conclusion that Shrimati Mitra was not a *benamidar* of Shri Mitra. Opinion was accordingly expressed that Shri Mitra had not become disqualified for being a member of the Orissa Legislative Assembly on account of contracts for supply of goods to the State Government by Orissa Agents. The Governor of Orissa, as per notification dated June 14, 1964, decided in accordance with the opinion of the Election Commission that Shri Mitra had not become subject to disqualification for being a member of the Legislative Assembly.

Shri Mitra has also referred to the Special Audit Report of Shri K. S. Bhatnagar and has stated that the same was based on incorrect appreciation. There was some correspondence between Orissa Government and the Auditor-General about that report. The final audit report also contained, it is stated, various factual errors and, therefore, the Orissa Government placed on the table of Orissa Legislative Assembly a statement of the factual errors in that report. Shri Mitra further states that on inquiry it was learnt that there was no rate contract of 6" galvanized iron pipes with D. G. S. & D. in 1961-62 and 1962-63.

Shri Routray, Shri Mardaraj and Shri Mallik in their affidavits have denied the correctness of allegations against them. Shri Routray states that he had no connection with or interest in Orissa Agents. According to Shri Mardaraj *ex post facto* sanction referred to by the State Government was not given by him.

Affidavit has also been filed by Shri Sunil Kumar Sen, Accountant of Orissa Agents. According to Shri Sen, Orissa Agents was the sole proprietary concern of Shrimati Mitra. Orissa Agents started its business on April 1, 1959 and closed it on August 5, 1963. During this period Shrimati Mitra did not draw any monthly allowance, pay or travelling expenses. A special Investigation Circle was created by the Government of India to examine the accounts of Orissa Agents and assess its income. Shri Bagchi, Income Tax Officer, was deputed for this purpose. The Income Tax Officer examined the accounts of Orissa Agents for one year and found that during the entire period of its existence the concern had earned a gross income of Rs. 16,57,159-69 paise. Out of that Rs. 7,31,251-69 paise were allowed on account of expenditure for salary, office expense, sales tax and other such items, leaving a net income of Rs. 9,25,905. Orissa Agents paid

Rs. 1,02,962 towards National Defence Fund and Rs. 7,701 towards other charitable institutions. Besides that, Orissa Agents was directed to pay income-tax, penalty and interest amounting to Rs. 6,59,000·63 paise. The total cash benefit derived by Orissa Agents was thus Rs. 1,56,241·37 paise. Out of the income-tax liability of Rs. 6,59,000·63 paise, it is stated, Rs. 3,12,553·59 paise have been paid and the balance payable is Rs. 3,46,447·04 paise.

Supplementary affidavits have been filed by Shri R. N. Patnaik, Under-Secretary of the Home Department, on behalf of the State Government as well as by Shri Biju Patnaik and Shri Mitra.

There can, in my opinion, be hardly any doubt on the point that Shri Mitra was interested in the business of Orissa Agents. His wife had started this concern and was its sole proprietor. The residential house of Shri Mitra in Behari Bagh, Cuttack was used in connection with the business of Orissa Agents. The Office of Orissa Agents was also in that house. This is apparent from the affidavit filed on behalf of the State Government as well as from the fact that telephone No. 302, which was the official telephone at the Cuttack residence of Shri Mitra, was extensively used for the business of Orissa Agents. Shri Mitra in the course of his written-statement filed before the Election Commission in the proceedings under Articles 191 and 192 of the Constitution stated:

“The Opposite Party (i. e., Shri Mitra) had undoubted and undisputed connection with the concern (i. e., Orissa Agents) inasmuch as to the extent that the Opposite party was the husband of the proprietress of the Concern.”

The fact that Shri Mitra used to take interest in the business of Orissa Agents before becoming Minister is clear from business letter dated March 15, 1961 addressed on behalf of Orissa Agents to Messrs. Turner Hoare & Company (Private), Limited, Calcutta. In that letter, there was reference to the talk Shri Mitra had with representative of the above Company regarding wharfage for the goods ordered by Orissa Agents. On March 27, 1961, Shri Sawhney of Turner Hoare & Company made an endorsement on a bill for fans of Orissa Agents as under—

“This was handed over to me today by Shri Biren Mitra. Please write to them confirming our conversation and ask for the advance.”

There is also reference to the telephonic talk between Shri Mitra and the representative of Allied Distributors & Company, sole agents for Bengal Potteries in a business letter dated November 4, 1960 sent by Orissa Agents to Allied Distributors & Company. The opening paragraph of that letter reads as under—

“ With reference to your letter No. Orissa/15357 dated the 14th October 1960 we have the detailed market report on the products of M/s Bengal Potteries, Ltd., and therefore are in a position to indent a wagon load of the same. As per the telephonic conversation between Mr. Biren Mitra, Cuttack and your personnel at Calcutta, it was decided to allot us a wagon load of your earthenware products with 50 per cent of Class ‘A’ variety and 50 per cent of Class ‘B’.”

Reference on behalf of Shri Mitra has been made to the opinion dated May 30, 1964 of the Chief Election Commissioner, according to which Shrimati Mitra was not proved to be running the business of Orissa Agents *benami* on behalf of Shri Mitra. The aforesaid opinion, in my view would go to show that Shri Mitra was not the proprietor of Orissa Agents and as such did not incur the disqualification for being a member of the State Legislative Assembly. It would not, however, follow from that opinion that Shri Mitra was not interested in the business of Orissa Agents. I would, therefore, hold that Shri Mitra was interested in the business of Orissa Agents. I am further of the view that if there was any impropriety in the dealings of Orissa Agents with State Government, it would constitute no excuse that Orissa Agents was not a proprietary concern of Shri Mitra but of his wife.

The first order, which has been assailed in respect of this allegation on behalf of the State Government, is dated August 20, 1962 for supply of one lakh feet of 6" dia. ‘B’ Class tubes at the rate of Rs. 18·60 paise per running foot ex-factory Choudwar, exclusive of 5 per cent Orissa Sales Tax. The total value of the purchase order was Rs. 19·53 lakhs. In respect of this order I find that there were floods in 1961 in coastal area. In the middle of 1962, the State Government in view of serious drinking water problems raised by floods in coastal area, decided upon a crash programme of putting in deep tube-wells to supply drinking water as well as irrigation facilities to the people. The Chief Engineer, Public Health, was then called upon to arrange for 100 deep tube-wells in the area on a priority basis. On July 10, 1962, the Chief Engineer, Public Health, Orissa, issued tender notice

inviting quotations for various materials including 6" dia. G. I. Class 'A' pipes to reach his office on or before July 20, 1962. Thirty-six concerns, including 22 from outside the State, responded to the tender notice. Out of the 36 concerns, 16 concerns quoted rate for 6" dia. G. I. Pipes. The quotation of Orissa Agents, which was Rs. 18.75 per rft F.O.R. Bhubaneswar and Rs. 18.60 per rft. F. O. R. ex-factory side, Choudwar for 'B' class pipes, was the lowest except in the case of Aminchand Pyarelal (P) Ltd., Calcutta and Binayak Trading Corporation, Cuttack. The above two concerns quoted rate of Rs. 14.75 and Rs. 14.00 provided import licence was arranged. In the absence of an arrangement for import licence the quotation of Messrs. Aminchand Pyarelal was Rs. 24.00 per rft. The imposition of the condition about Import Licence by Messrs. Aminchand Pyarelal and Binayak Trading Corporation in the very nature of things made their offer unacceptable. So far as the Indian Tube Company is concerned, it addressed letter dated July 18, 1962 to the Chief Engineer stating that the Company was not suitably placed to make him an offer for supply of the tubes manufactured at Jamshedpur Works. The Company indicated in the letter that it could quote for supply on forward delivery basis of imported tubes subject to the State Government being able to provide the Company with an import licence. The condition of import licence, as in the case of other two concerns, was not acceptable to the Chief Engineer. The order thereafter was placed with Orissa Agents.

It would appear from the above that the order for supply of one lakh rft. of 6" dia. G. I. Pipes was placed with Orissa Agents because its quotation was found to be the lowest, apart from the quotations of concerns which had laid the condition of import licence. No objection can also be taken to the offer of 'B' Class pipes by Orissa Agents, as those pipes are heavier and costlier than 'A' Class pipes.

Reference on behalf of the State Government has been made to the Audit Report 1965, according to which Indian Tube Company had entered into a rate contract (valid up to March 14, 1963) of 9.14 rft. for 6" dia Indian make G. I. Pipes with D.G.S. & D. It was stated in the report that a reference should have been made to the D. G. S. & D. if there was difficulty in procuring the pipes from the Indian Tube Company. In this respect, I find that the letter dated September 2, 1965 from the Officer on Special Duty, Directorate General of Supplies and Disposals, New Delhi, to the Chief Engineer, Public Health, Orissa, shows that D.G.S. & D.

did not have any rate contract with Indian Tube Company during the years 1961-62 and 1962-63 for 6" pipes. The argument that 6" G. I. Pipes could have been procured on the rate contract of D.G.S. & D. in 1962 is, therefore, not well-founded.

The second item, which has been assailed, relates to a set of 17 orders of the value of Rs. 16.55 lakhs (to be more precise Rs. 16,54,800) which were placed by the Public Health Department for supply of material manufactured by Kalinga Tubes with Orissa Agents during the period of July 25, 1962 till October. 19, 1962. It is not disputed that the material of the value of over Rs. 10 lakhs out of these orders was not supplied by Orissa Agents. In respect of these orders, tender notice for supply of pipes of various diameters was issued by the Superintending Engineer, Public Health Circle, Bhubaneswar, on June 26, 1962, and it was directed that the tenders should reach him by July 6, 1962. Orissa Agents submitted its quotation on July 6, 1962. A note about the comparative statement was prepared on August 1, 1962. According to that note, 15 quotations had been received. In respect of six items the quotation of Orissa Agents was found to be the lowest. Regarding pipes of 2" diameter, the quotations of Orissa Agents and Utkal Aluminium Industries work almost the same, the quotations being Rs. 2.32/rft. and Rs. 2.30/rft. There was a substantial difference between the quotation of Rs. 1.85 per rft. of Orissa Agents and Rs. 1.53 per rft. of India Industries for 1½" dia. pipes. India Industries addressed a letter on August 17, 1962, to the Superintending Engineer stating that the quotation of Rs. 1.53 Paise for 1½" dia. G. I. Pipes was the result of a typing mistake. In support of this contention they referred to the fact that for pipes of 1½" dia. they had quoted a rate of Rs. 2.02 Paise. It would thus appear that the quotation of Orissa Agents was the lowest. Seventeen orders were accordingly placed for the supply of pipes with Orissa Agents.

The objection of the audit in respect of these orders was that on June 28, 1962, Orissa Agents had quoted a lower rate for the pipes in question to the Executive Engineer, Drainage and Sewerage Division. The learned counsel for the State Government has not been able to bring to my notice any quotation of June 28, 1962 of Orissa Agents. Reference has, however, been made to an order placed by the Executive Engineer with Orissa Agents on June 28, 1962 for supply of

Pipes of various dimensions. The order contains no indication as to when the quotation in respect of that order was made by Orissa Agents. Be that as it may, it is not clear as to how the quotation in respect of an earlier order could be availed of for a subsequent order, especially when another quotation was made by the Orissa Agents for the subsequent order. The trend of various quotations shows that there was a gradual increase in the price of pipes during the year 1962. This fact is also clear from the Rate Contract for black mild steel tubes of Indian Tube Company. with D. G. S. & D. In the circumstances, there appears to be force in the contention raised on behalf of Shri Mitra that it was not permissible to avail of the quotation made in respect of an earlier order for the purpose of a subsequent order.

Reference has been made on behalf of the State Government to the fact that Kalinga Tubes had a Rate Contract for 3" Pipe with D. G. S. & D. with effect from April 10, 1962. According to the Rate Contract the rate for pipes of 3" bore was Rs. 1,074.72 Paise for 100 meters. This rate comes to about Rs. 3.30 per rft. Although Kalinga Tubes quoted a rate of Rs. 3.80 Paise per rft. for 3" pipe, order No. 9278 of August 31, 1962, in respect of 3" pipes mentioned a rate of Rs. 3.18/rft.. The above order shows that the rate paid for 3" dia. pipes was not more than the Rate Contract.

Reference has also been made on behalf of the State Government to a letter dated February 5, 1963, addressed by the Superintending Engineer to the Executive Engineers of Sambalpur, Cuttack, Bhubaneswar and Berhampur Public Health Divisions in the course of which it was stated as under—

"Order for G. I. Pipes were placed long back on Messrs. Orissa Agents. They are now supplying the pipes. Extension of time is allowed for the quantity supplied by them up to the date of receipt of the pipes. The dates should be intimated for further communication to you. If they have despatched greater quantity of pipes than ordered for, you may accept the pipes and intimate the quantity for formal issue of orders."

No inference of impropriety can, in my opinion, be drawn from the above latter. As stated earlier, most of the supplies covered by the 17 orders were not made by Orissa Agents. As there was a short supply of the pipes in question, direction was issued by the Superintending Engineer to secure as many pipes as possible at the rates finalised in August, 1962. It may be mentioned that document G. W. 16/2 shows that a

security amount of Rs. 10,000 deposited by Orissa Agents in respect of these orders was forfeited as the concern failed to supply full quantity within the stipulated period. The forfeiture of the amount lends support to the plea that no favouritism was being shown to Orissa Agents in respect of this set of orders.

The third item, which has been assailed on behalf of the State Government, consists of a set of nine orders of the value of Rs. 4.92 lakhs placed by the Public Health Department of G. I. Pipes during the period from October 1961 to February 1962. It is the common case of the parties that the material of the value of about a lakh of rupees out of these orders was not supplied. The value of the material actually supplied was about Rs. 3.92 lakhs. No tenders were invited in respect of this set of orders. The rates of Orissa Agents were compared with those of three dealers—Mahabir Prasad Bansal, Oriental Distributors and Biswal Brothers. These concerns, it is stated, made their quotations on the basis of information which they probably got from the office about the requirement of the material. As the quotation of Orissa Agents was found to be the lowest (except in respect of 1/2" dia. pipes in which case the difference was very small) order was placed with Orissa Agents.

There is no cogent explanation as to why tenders in respect of this set of orders were not invited. It is also significant that Orissa Agents in its letter dated August 3, 1961 quoted lower rates but subsequently it revised those rates and quoted higher rates as per letter dated September 25, 1961. The rate appear to have been revised by Orissa Agents because the concern found that even after revision its rates would be the lowest compared to the three other dealers who too had made quotations. It may be mentioned that the rates offered to Orissa Agents were higher than those given in the letter dated September 25, 1961 but this difference was due to the fact that the rates offered included the freight. The non-invitation of tenders in respect of this set of orders, in my opinion, had the effect of putting Orissa Agents in a position of advantage, because the concern had not to compete with those dealers who did not get the opportunity of offering quotations because of the omission to issue a tender notice.

It has been argued on behalf of Shri Mitra that there was not much difference between the price charged by Orissa Agents for the supplies made in respect of this item and the circular prices of Kalinga Tubes. I shall deal with the question

of circular prices subsequently. Assuming that there was not much difference between the circular price and the price actually charged, this fact would not materially affect the impropriety in not inviting tenders regarding these supplies. There is nothing to show that a third person would not have made a quotation at a rate lower than the circular price of Kalinga Tubes if tenders had been invited.

The fourth item, which has been assailed on behalf of the State Government, relates to 9 orders placed on 15th and 16th March 1962, of total value of Rs. 8.26 lakhs. No documents in respect of these orders have been placed on the file on the ground that the same were produced in a criminal case. There is, however, no explanation as to why copies of those documents were not filed. The material in respect of these orders was not supplied by Orissa Agents but by Allied Dealers at the rates of Orissa Agents. Letter dated the June 26, 1965, addressed by Finance Secretary, Orissa to the Accountant-General, Orissa shows that as against the orders of the amount of Rs. 8.26 lakhs, supplies actually received were of the value of Rs. 3.89 lakhs. According to the Audit Report these orders were placed after inviting open tenders. It is stated that the lowest tender was of Indian Tube Company but the same was rejected on the ground that the Company had not produced the Sales Tax Clearance Certificate. On reference, however, to the clarification printed by the State Government in 1965, I find that the materials in question were urgently required and it was stipulated in the tender notice that the materials would have to be supplied by the March 31, 1962. Indian Tube Company indicated a delivery period of 40 to 50 weeks in its quotation. As the delivery period was considered very long, the quotation was not accepted. Another feature of the offer of the Indian Tube Company was mentioned in a statement enclosed with the letter dated the September 15, 1964, of the Chief Secretary to the Comptroller and Auditor-General of India. According to that statement, Indian Tube Company had stated that the price of the material would be that in force at the time of the delivery. The Chief Secretary asserted that this fact made the rate uncertain and as such it was not possible to accept the same. Be that as it may, as no document in respect of this item has been produced, this set of orders cannot be held to be vitiated by any impropriety. This set of orders, it may be stated, is subject-matter of allegation No. 48.

The fifth item relates to two orders. One of these orders was placed on the February 11, 1961 long before the

Ministry headed by Shri Patnaik came into power. The propriety of this order can obviously not be challenged in these proceedings. The other order was placed on the January 18, 1962 and was for an amount of Rs. 36,750 no documents in respect of this order have been placed and as such it is difficult to hold that order to be vitiated by any impropriety.

Argument has been advanced on behalf of the State Government that goods covered by the orders in items Nos. 1 to 5 were the pipes manufactured by Kalinga Tubes. It is urged that there would have been a considerable saving of many lakhs of rupees if those pipes had been purchased at the circular prices of Kalinga Tubes. A circular about the prices of Kalinga Tubes, it is pointed out, was procured at the time of the audit. In this respect, I may observe that no price circular of Kalinga Tubes has been brought to my notice in spite of the fact that I repeatedly asked the learned counsel for the State Government to do so at the time of arguments. It is stated that such a circular is not traceable. In the absence of such a circular it is difficult to know its date, duration, terms and binding nature on the dealers of the products of Kalinga Tubes. No finding of impropriety, in the circumstances, can be given on the basis of such a circular. Besides that I find that except in one case of the supplies of the value of Rs. 3.92 lakhs, the tenders of Orissa Agents were accepted from out of a large number of tenders because of the lowest rates of Orissa Agents, apart from the rates of the concerns, which had laid down unacceptable conditions like the procurement of import licence or a delivery period of 40/50 weeks. In view of the acceptance of the Orissa Agents' tenders on the ground of the lowest rates, it is open to question whether one can be permitted to rely upon the circular prices of Kalinga Tubes in order to show the impropriety of the transactions. Be that as it may, as the price circular has not been produced before the Commission, no finding of impropriety can be given on its basis.

I would, therefore, find that so far as the orders for supply of pipes are concerned, no impropriety is shown to have been committed in respect of the major orders covered by items Nos. 1, 2 and 4. Likewise, no impropriety is shown to have been committed in respect of the order covered by item No. 5. Regarding the nine orders covered by item No. 3 of the amount of Rs. 4.92 lakhs, I find that the material actually supplied was of the value of Rs. 3.92 lakhs. No tender notice in respect of those orders was issued and this

had, as stated above, the effect of putting Orissa Agents in a position of advantage, *vis avis* concerns which did not get the opportunity of making quotations because of the omission to issue a tender notice.

The State Government has also assailed the orders for supply of paints which were placed with Orissa Agents. It may be stated in this connection that Orissa Agents were the selling agents in Orissa of the paints of Jenson & Necholson (India) Ltd. This is clear from the letter dated the February 13, 1962 of that Company addressed to the Executive Engineer, Burla Building Division. It, however, cannot be said that Orissa Agents were appointed selling agents after the issue of circular dated the November 17, 1961, because letter dated September 6, 1961 from Executive Engineer, Capital Construction Division, shows that Orissa Agents were acting as the selling agents of the paints of Jenson & Necholson before the issue of that circular.

Regarding the supply of paints, I find that in March, 1962 the Superintending Engineer, Central Circle, invited quotations for paints of various descriptions from a number of concerns. Five quotations were received. The quotations of Orissa Agents were the highest, while those of Indian Paints and Chemicals, Cuttack, were the lowest. The orders were then placed on the different tenders as under :—

"Indian Paints and Chemicals (lowest tenderer)	.. 25,780 litres
Industry and Commerce (another tenderer)	.. 3,190 „
Orissa Agents (highest tenderer)	.. 12,340 „

It is pointed out on behalf of the State Government that as a result of the purchase of paints from Orissa Agents Rs. 14,000 were paid in excess. In this respect, I find that Indian Paints and Chemicals, Cuttack, was a Small-Scale Industrial unit. The Superintending Engineer took the view that Indian Paints and Chemicals might not be able to supply such huge quantity within a short period and therefore the order should be split up and distributed. The Printed Clarification of the State Government in reply to the 1965 Audit Report shows that Orissa Agents had quoted for the paints manufactured by Jenson & Necholson (India) Ltd. and those paints were considered to be of superior-most quality compared to

others for which quotations had been received. It is also stated that superior quality paints were required for important buildings, like Circuit House, Inspection Bungalows and First Class residential quarters. Previously, also superior paints had been used for various buildings and as such those paints were purchased from Orissa Agents. I see no cogent ground to reject the above version and would, therefore, hold that there was no impropriety in the order for paints placed with Orissa Agents.

The State Government had also assailed the purchase of timber from Orissa Agents. It has, however, not been shown at the time of arguments that the orders in this respect were vitiated by any impropriety. In the one instance, to which my attention has been drawn, the rate of Nayak Brothers was lower and the payment was made to Orissa Agents at the rate quoted by Nayak Brothers.

So far as Shri Patnaik, Shri Routray, Shri Mardaraj and Shri Mallik respondents are concerned, nothing has been brought out against them in this allegation.

The circulars for purchase of materials issued by the State Government after Shri Patnaik came into power have been discussed in Allegation No. 2 and need not be gone into again.

My findings in respect of the different matters arising in this allegation are as under :—

- (1) Orissa Agents started its business as the sole proprietary concern of Shrimati Mitra on April 1, 1959 and closed it on August 5, 1963. Shri Mitra was interested in the business of Orissa Agents.
- (2) If there was any impropriety in the dealings of Orissa Agents with State Government, it would constitute no excuse that Orissa Agents was not a proprietary concern of Shri Mitra but was that of his wife.
- (3) Although orders for the supply of goods of a much higher value were placed with Orissa Agents by the Public Health Department, the letter of the Finance Secretary, Orissa, to the Accountant-General shows that the value of goods actually supplied was

Rs. 34.75 lakhs without sales tax and Rs. 36.47 lakhs including sales tax;

- (4) No impropriety is shown to have been committed in respect of the orders for supply of pipes of the value of Rs. 19.53 lakhs placed in August, 1962, Rs. 16.55 lakhs placed during July to October, 1962, Rs. 8.26 lakhs placed in March, 1962 and Rs. 0.37 lakh placed in January, 1962.
- (5) Nine orders for supply of pipes of the value of Rs. 4.92 lakhs were placed with Orissa Agents during the period from October, 1961 to February, 1962 without inviting tenders. As against the above orders, Orissa Agents made supplies of the value of about Rs. 3.92 lakhs. The above orders were placed with Orissa Agents after comparison of the rates of that concern in letters, dated August 3, 1961 with those of three other dealers, who were stated to have made their quotations on the basis of information which they probably got from the office. Orissa Agents by its letter dated September 25, 1961, revised the rates and quoted higher rates compared to those which had been quoted on August 3, 1961. The rates of Orissa Agents even after revision were found to be lowest compared to the rates of the other three dealers.
- (6) The non-invitation of tenders in respect of the orders of the value of Rs. 4.92 lakhs had the effect of putting Orissa Agents in a position of advantage because the concern had not to compete with those dealers who did not get the opportunity of offering quotations because of the omission to issue a tender notice.
- (7) No impropriety has been proved in respect of the orders placed with Orissa Agents for supply of paints and timber.
- (8) Nothing has been brought out in this allegation to show any impropriety on the part of Shri Patnaik, Shri Routray, Shri Mardaraj and Shri Mallik.

CHAPTER 63

ALLEGATION No. 63

Re :

Utkal Distributors

Allegation No. 63 relates to alleged favouritism to Utkal Distributors Private Limited. The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Routray, Shri Mardaraj and Shri Mallik.

According to the case of the State Government, Utkal Distributors Private Limited was registered as a Company in 1948. The Company dealt in iron and steel material. At the time of its inception, Shri Patnaik, Shrimati Patnaik, Shrimati Dolly Roy, sister of Shri Biren Mitra, Shri Manindra Kumar Mitra, brother of Shri Mitra, Shri Ramesh Chandra Mitra, another relative of Shri Mitra, Shri A. P. Routray, brother of Shri Nilamoni Routray, Shri Hrushikesh Roy, another relative of Shri Nilamoni Routray and Shri Dhananjoy Lenka, an M. L. A. belonging to the Congress Party, were shareholders of the Company. Shri Patnaik, Shrimati Patnaik, Shrimati Dolly Roy, Shri Manindra Kumar Mitra, Shri Ramesh Chandra Mitra, Shri A. P. Routray, Shri Hrushikesh Roy and Shri Dhananjoy Lenka, however, transferred their shares in the company during the year 1956 to 1960. Shri Patnaik, Shri Mitra and Shri Routray despite that continued to retain their interest in the company. Shri Mitra in a pamphlet issued before the mid-term election of 1961 declared that he had taken a loan of Rs. 7,500 from Shri Nabakishore Mohanti of Utkal Distributors. Shri Routray, too, was shown as indebted to the Company to the extent of about Rs. 9,000 on March 31, 1962. That debt was on account of the articles purchased by Shri Routray from the company.

On December 13, 1957, the Chief Engineer, Public Works, Orissa, issued a letter containing certain instructions. It was mentioned in this letter that Government had decided that for each order placed with Utkal Distributors for supply of iron and steel material to the Public Works Department advance payment up to 25 per cent of the value of goods

covered by the order should be made to the company on the condition that the company executed an agreement and furnished a bond. The total amount of advance was not to exceed the security offered by the company by way of personal security bond to be executed by the Managing Director and Chairman of the Company. The Managing Director and the Chairman were to be jointly and severally liable to the extent of their personal property and as such before execution of the bond the financial capacity of the sureties was to be ascertained by the District Magistrate concerned. The District Magistrate was to take into account the value of their unencumbered immovable property. The balance of 75 per cent of payment in respect of each supply was to be made only after the material was received.

The company objected to the provision regarding ascertainment of the unencumbered immovable properties of the Managing Director and Chairman of the Company every year but its representations in this respect were turned down by the then Government.

On August 30, 1961, it is stated, the Chief Engineer, Roads & Buildings, in his letter to the Executive Engineer, Cuttack Division, issued orders for payment of an advance of Rs. 5 lakhs to Utkal Distributors subject to the recovery of 25 per cent of the value of supply to be made and the adjustment of the entire advance of Rs. 5 lakhs before the close of the financial year, if necessary by additional recoveries. It was indicated that the advance should be paid on furnishing of agreement and security bond, as laid down in the letter dated December 13, 1957. Direction was also given that the advance be paid before 10 A.M. on August 31, 1961. It was, however, apparent that in such a short time the provision regarding the enquiry by the District Magistrate of the personal property of the Managing Director and Chairman could not be complied with. On October 11, 1961, Utkal Distributors represented to the Government that the percentage of recovery from their future bills be reduced from 25 per cent to 5 per cent. It was also mentioned that the percentage of advance for steel be reduced from 25 per cent to 5 per cent. This was objected to by the Financial Adviser, but the Secretary of the Department endorsed the file to the Finance Department saying that the company had taken a heavy loan from the banks to subscribe Rs. 50 lakhs to the Orissa Loan. The Secretary suggested that they might agree to the

recoveries at the rate of 10 per cent of the advance. On November 10, 1961, the file was submitted to the Chief Minister, Shri Patnaik, who made the following order :—

“I think my verbal order was for recovery at the rate of 5 per cent. Necessary alterations may be made in the order to C. E.

This party has purchased Rs. 50 lakhs State Loan Bonds and necessarily such parties must receive Government patronage. This also goes for Patnaik & Co. (Automobile) for supply of trucks, who also purchased Rs. 50 lakhs State Loan Bonds.

Both the parties would suffer loss of nearly Rs. 1½ lakhs each. Government can hardly re-compensate them but Government can afford to be at least fair and give them preferential treatment.

In the case of Utkal Distributors the recovery should be made @ 5 per cent till the advance is cleared up to not 31st March, 1962, but October, 1962.

The party (U. D.) does not need any advance for future supplies. Preference, however, should be given to this party for placing orders of controlled or otherwise of steel items.”

Accordingly the Works Department issued orders to the Chief Engineer on November 13, 1961, that Rs. 5 lakhs advanced to Utkal Distributors during August 1961 be recovered at the rate of 5 per cent from their bills provided the entire advance was recovered by October 31, 1962 at the latest. It was also mentioned that no advance need be paid to the company in future.

On April 23, 1962, Utkal Distributors submitted an application to the Deputy Chief Minister praying for payment of advance in accordance with the Government order dated December 13, 1957. The Works Minister, Shri Mardaraj, to whom the file was endorsed, submitted it to the Chief Minister with the observation that the procedure for verification of the assets of the Managing Director and Chairman would be time consuming and involved reputation of the applicant. Shri Mardaraj recommended the deletion of the aforesaid clause regarding verification of property. He also suggested the reduction of the rate of recovery from 25 per cent to 20 per cent against each order. This proposal was approved by Shri Mitra. In accordance with the above, Government orders were issued on June 27, 1962.

After the above orders were issued by the Government, the Chief Engineer, Irrigation, asked for clarification as to whether the order dated June 27, 1962 would have retrospective effect so as to cover pending orders. The Chief Secretary then forwarded the following note dated July 13, 1962, of the Secretary, Works Department :—

“Ordinarily orders which have financial bearing are not given retrospective effect. Moreover, at the time the orders were originally placed on them, the Company did not ask for the advance payment. In the circumstances the request of the company for retrospective effect may not be granted.

The company has informed me that they are in a position to supply steel against the outstanding orders. The Chief Engineer, Irrigation, is, however, refusing to take the steel. The Chief Engineer says that he has already got the steel that he requires for the delta irrigation project and does not now want the steel against the outstanding orders and he is also short of storage accommodation. In fact, he had cancelled some outstanding orders ; but Chief Minister has ordered that he must take the steel against the outstanding orders as steel will be useful for other works. In the circumstances, the Chief Engineer may be instructed to accept all the steel that the company is offering against the outstanding orders.

Chief Minister may see.”

The matter was thereafter discussed and the Secretary made the following note on July 31, 1962 :—

“Chief Minister discussed with me and ordered that advance against pending orders may also be given to this concern provided that the total advance should not exceed Rs. 10 lakhs at any time.”

A further letter was thereafter issued on September 21, 1962, with the approval of the Chief Minister. In that letter, it was communicated that the Government had decided that the sum total of advance to Utkal Distributors for all wings of P. W. D. taken together shall not exceed Rs. 10 lakhs excluding the outstanding balance out of the advance of Rs. 5 lakhs. On November 7, 1962, another letter was issued by the Works Department saying that the above-mentioned company be paid the recouped amount so that the advance could be up to an amount of Rs. 10 lakhs or 20 per cent of the value of outstanding orders whichever was less. On May 13, 1963 an order was passed in the

Works Department for recouping the entire advance by the end of 1963-64. On representation of the company the time for repayment of the advance was extended to March 31, 1966. On July 22, 1965, Utkal Distributors made representation that instead of the recovery of 20 per cent it might be at the rate of $7\frac{1}{2}$ per cent from the supply bills. Shri Mohanty, who in the meanwhile had taken over as Minister, Works and Transport Department then agreed that 10 per cent should be recovered from the running bills. As there remained outstanding amount of Rs. 10.38 lakhs from Utkal Distributors, on January 1, 1966 the Works Department directed the said company to enter into an agreement with the Government for recovery of the outstanding dues. The Company, however, did not enter into an agreement despite that letter. No legal action was taken against the company till the Congress Ministry handed over charge on March 7, 1967.

The case of the State Government further is that the Additional Chief Engineer, Expressway, in his letter, dated January 25, 1963, intimated to the Works and Transport Department, that he had allowed Utkal Distributors to operate two granite stone quarries, named Bajabati and Pakhar (Mandia). Work order in that connection was issued by the Additional Chief Engineer on February 21, 1963. For the benefit of the company an approach road was constructed by the Government to the quarry head at a cost of Rs. 66,750. The supply of electricity was also arranged at the quarry head by the Government at a cost of Rs. 1,58,000. The company, however, failed to show good performance as a result of which the metals and chips collected by the company could not be utilised fully for the Expressway.

Utkal Distributors applied for advance and the Executive Engineer, Chandikol Division, granted an advance of Rs. 62,243 without the knowledge of the Chief Engineer. The Chief Engineer then directed that the amount be recouped by 50 per cent from each supply bill of the company.

In a letter, dated January 18, 1964, the Chief Engineer, Irrigation, suggested that the contractor be paid on the basis of the total quantity of masonry and different types of stones required for the same masonry as per average value worked out by the Executive Engineer. This proposal of the Chief Engineer was accepted by Shri Prahallad Mallik on March 13, 1964. On December 31, 1964, Additional Chief Engineer, Irrigation, recommended the grant of advance to the extent of

75 per cent of the value of the material to Utkal Distributors towards the cost of stones and rubbles lying unutilised at dam site and quarry site. The proposal was objected to by the Financial Adviser. A further representation was then made by the company and Shri Mallik, by his order, dated August 3, 1965, permitted grant of advance of 70 per cent of the value of the stones collected at quarry site and stacked at approved stacking places during rainy season. It was also directed that the amount of advance should not exceed Rs. 2 lakhs at any time.

The State Government concludes from the above that special favour was shown to Utkal Distributors. Responsibility for that is sought to be fastened on the respondents named above. An amount of Rs. 9,13,924-56 Paise is stated to be still due from that company.

Shri Patnaik in the course of his affidavit has denied the allegation that he had shown any favour to the company in question. According to Shri Patnaik he was director and his wife was shareholder of the company from 1951 to 1956. The shareholding of each of them was of Rs. 5,000 only. They transferred their shares and resigned from the Board of the Company in December, 1956. Their connection with the company was thus severed in December, 1956 and since then they had no knowledge of the affairs of the company. The company got advances from the Government of Orissa even before Shri Patnaik became Chief Minister. The company supplied iron and steel material to the State Government for many years prior to 1961. Orders for supply of iron and steel material weighing over 6,900 tons, which had been placed with the company before Shri Patnaik became Chief Minister, were outstanding on August 30, 1961. When the Government floated a State loan in 1961, Utkal Distributors as well as some other companies stood by the Government. The Government then took a policy decision to pay advances to such of the companies. It was not an act of favouritism but a decision in the best interest of the State. The company was given an advance of Rs. 5 lakhs which it utilised for purchase of Government Loan Bonds worth Rs. 50 lakhs. Similar advances were given to several other parties whose list has been enclosed with the affidavit.

Shri Mitra in the course of his affidavit has denied the correctness of allegations made against him. According to Shri Mitra the association of any member of his family with

the company in question was never known to him. It is further stated that on account of Shri Mitra's political activities there were dissensions in the family and he had to leave his family residence at Cuttack. As regards the loan received from Shri N. K. Mohanty of Utkal Distributors, Shri Mitra states that the above loan was advanced to his wife for the construction of a house before Shri Mitra become a Minister. No favouritism, it is stated, was shown to Utkal Distributors.

Shri Routray in his affidavit, too, has denied the allegation made against him. According to Shri Routray, he never held directly or indirectly any shares, in Utkal Distributors. As regards his indebtedness to the Company, Shri Routray states that he purchased some building material from the Company. The amount has since been paid up. Shri Routray has denied that he showed any favour or, secured any benefit from the Company.

Shri Mardaraj in the course of his affidavit too, has repelled the charge levelled against him. According to Shri Mardaraj, the question of giving advance to Utkal Distributors was decided in 1957 when the Ministry headed by Dr. Mahtab was in power. Question arose in 1962 about the verification of the assets of the Chairman and Director of the Company in connection with the payment of advance to the Company. Shri Mardaraj on June 27, 1962 as Works Minister, put in a note for enforcing the clause regarding verification of the assets of the Managing Director and Chairman of the Company by the District Magistrate. The file was then sent to Shri Biren Mitra, Deputy Chief Minister, who was acting as Chief Minister, in the absence of the Chief Minister who was away to Delhi. Shri Mitra then called Shri Mardaraj to his residence and asked him not to insist upon the retention of the clause regarding verification of assets by the District Magistrate. Shri Mardaraj knew about the strong support given to Utkal Distributors by the Chief Minister and Deputy Chief Minister. He had no alternative but to agree to the deletion of that clause by penning through it and putting his initials thereon. As regards the rate of recovery of the advance which had been reduced from 25 per cent to 5 per cent by the Chief Minister in 1961, Shri Mardaraj felt that it was an absurdly low rate. He accordingly raised it to 20 per cent. The lease of Haridaspur quarry, it is stated, was given to Utkal Distributors at the instance of the Chief Minister. Shri Mardaraj found the performance of Utkal Distributors to be not satisfactory but he could not interfere because working of the quarry had been placed under the Commerce Department. As regards the other dealings between Utkal Distributors and

P. W. D., it is stated, the officers were adopting a soft attitude towards the Company, because they knew of the interest of the Chief Minister and the Deputy Chief Minister in that company. Shri Mardaraj has disowned any responsibility for that.

Shri Mallik in his affidavit has denied the allegation of favouritism levelled against him.

Shri Radhika Prasad Nanda, Managing Director of Utkal Distributors, has also filed his affidavit. According to him, Shri Patnaik and his wife relinquished their interest in Utkal Distributors in 1956 due to difference amongst the Directors and shareholders. The years, in which others transferred their shares in the Company, have also been given. It is stated that the Company was appointed by the Government of India (Iron & Steel Controller) as the stockists for iron and steel for the State of Orissa. During the period of control permits were issued by the Iron & Steel Controller of India and the State Government had no direct say in the matter. The Company got large advances against orders from the State Government on previous occasions also and those advances were fully adjusted. In 1957, it is stated, the State Government consented to give advance against orders to the Company on different terms. As and the terms conditions were not suitable to the Company, it was not inclined to take the advance. Subsequently the State Government floated loans and requested the Company to subscribe substantial amount towards the loan for the benefit of the State. The Company was induced to accept advance to subscribe to the State Loan to the tune of about Rs. 37 lakhs. The deal resulted in huge loss to the Company. As regards the allotment of stone quarry work at Haridaspur, Shri Nanda has stated that the Company was the lowest tenderer but the work was divided between Orissa Construction Corporation and the Company. So far as the supply of masonry at Salandi is concerned, it is stated, the work was given to the Company because its tender was the lowest. Shri Mitra and Shri Routray, it is further stated, were never the shareholders of the Company. The Company according to Shri Nanda, has not closed down its business and in this connection he refers to the fact that the Company has paid about Rs. 1½ lakhs to the State Government towards the outstanding trade advances between 1967 and 1968. The Company is stated to be continuing the contract work for supply of boulders to Salandi Project.

Supplementary affidavits have been filed by Inspector Md. Haroonal Rashid (Vigilance) and Shri Indramoni Kanungo, Assistant Financial Adviser-cum-Under-Secretary

in the Works and Transport Department, on behalf of the State Government, as well as by Shri Patnaik. Shri Patnaik in his supplementary affidavit has stated that whenever the Government floated loans, as a matter of policy the Government offered to pay advances to the suppliers of machinery and materials against orders, to enable them to subscribe towards the State Loan Bonds. It is further stated that in practice the subscribers to the State Loan Bonds had to incur some loss on the sales of those bonds. Inducement was invariably necessary for getting the bonds fully subscribed and, therefore, reasonable preferences were afforded to the parties in the matter of placing orders. The present Government too is stated to be following the same policy. Shri Patnaik in this connection has produced a copy of letter dated August 31, 1967, addressed by the Superintendent, Orissa Government Press.

As regards the affidavit filed by Shri Mardaraj, counter affidavits have been filed by Shri Patnaik and Shri Mitra. Both Shri Patnaik and Shri Mitra have denied that they had any interest in Utkal Distributors or that they influenced any one to show favour to the Company.

Shri Mitra has denied the allegation that he called Shri Mardaraj to his residence and asked him not to insist upon the condition regarding the verification of the assets of the Managing Director and the Chairman of the Company by the District Magistrate. Shri Mitra has in this connection referred to order dated June 7, 1962 of Shri Mardaraj. Shri Mitra adds :—

“It is shocking to find that a Cabinet Minister cannot justify the orders passed by him and, therefore, has to take recourse to wild and baseless charges against his colleagues.”

In connection with this allegation, I find that the first order, which has been assailed on behalf of the State Government is Shri Patnaik's order dated November 10, 1961. The order has already been reproduced earlier. Before that order was made, the following representations was addressed by Utkal Distributors to the Secretary, Works Department on October 11, 1961:—

“The Chief Engineer (Roads & Buildings), Orissa, was pleased to advance a sum of Rs. 5,00,000 against the outstanding orders of the Departments. This advance is being realized by the said department @ 25% from the bills out of the materials which are being delivered to them from time to time. We are afraid at the present rate of recovery of advance, entire amount would be fully recovered before all the orders on account of the party are executed.

2. Since we have passed on the orders of the Producers and advanced full value of the orders, and if by any chance part

of the orders are subsequently cancelled by the Department we will be greatly inconvenienced. Therefore, we would request you to kindly order deduction of only 5% towards the advance from our future bills. If any balance is still outstanding after the supplies are completed, we can pay off such balance in lump sum. We request that this proposal may kindly be accepted.

3. Further we may add that the existing procedure 25 per cent advanced (sic) against order for steel may be reduced to 5 per cent and recovery may also be made @ 5 per cent on orders already placed and against which we have not drawn any advances. We simply want to be assured that the Department will lift whatever they order."

On October 17, 1961, the Secretary of the Works Department addressed the following note to the Finance Department:—

"This concern has taken a heavy loan from the Banks to subscribe Rs. 50 lakhs to the Orissa Loan. We may agree to make recoveries at the rate of 10 per cent of the advance."

The suggestion in Para. 3 of their letter may be accepted."

Shri Patnaik in making the impugned order accepted with some modification the suggestion of the Secretary, Works Department and in my opinion, it is difficult to draw an inference of impropriety from the above order of Shri Patnaik. An advance of Rs. 5 lakhs had already been given to Utkal Distributors prior to that. The modification made by Shri Patnaik by the impugned order related to the mode of recovery by reducing the percentage of recovery from the bills of the material from 25 to 5. The time of the recovery of the entire advance was also extended till October 31, 1962. Perusal of the order shows that Shri Patnaik was influenced by the fact that Utkal Distributors had suffered financial loss by purchasing the State Loan Bonds of the value of Rs. 50 lakhs and as such he wanted to give Government patronage to the Company. This was a policy decision and whether one agrees with it or not, it is difficult to hold that the decision was vitiated by any impropriety or was otherwise *mala fide*. It is significant that the target date of October 31, 1962, by which the entire recovery was to be made, was also specified in the order. Note may also be made in this context of the fact that the present Government of Orissa too has adopted the policy of making advance payments up to 80 per cent of the value against orders for investment in Government Loan Bonds *vide* letter dated August 31, 1967 of Superintendent, Orissa Government Press.

It may be mentioned that the propriety of the above order was also assailed by the State Government in allegation No. 59 dealing with advance to Patnaik & Company and the contention advanced in this behalf was rejected.

The State Government has next assailed the following order made by Shri Mardaraj and signed by Shri Mitra in token of his concurrence :—

“ C. M.

Note from page 54/N may kindly be perused. As pointed out by the Secretary the clauses qualifying for taking advanced have been drawn up previously but on last occasion clauses 5 & 6 were deleted for the reasons mentioned in Secretary's note. In my opinion, the procedure that would follow will be a very timetaking one. The only point of the applicant is that these two clauses are time-taking and to some extent involves his reputation. We may think of deleting these two clauses, i. e., clauses 5 and 6, and to safeguard for the recovery of the Government dues I feel that instead of 25% we can reduce it to 20% against each order for iron and steel materials.

Sd. H. H. Singh Mardaraj

7-6-62

Sd. B. Mitra

8-6

Sd. H. H. Singh Mardaraj

9-6

In respect of the above order I find that the State Government directed in 1957 that an advance of 25% of the value of the goods covered by the order should be paid to Utkal Distributors. The Government also directed that the total advance should on no account exceed the security offered by the Company by way of personal security bond to be executed by the Managing Director and the Chairman of the Company. It was further directed that before execution of the bond the financial capacity of the sureties should be ascertained by the District Magistrate concerned and this capacity would remain valid for one year. In determining the financial capacity, the District Magistrate was to take into account only the unencumbered immovable property of the sureties and not their movable property or encumbered immovable property. This is apparent from the letter dated December 13, 1957 of the Deputy Secretary-cum-Financial Adviser, Works Department to the

Chief Engineer. Copy of that letter was sent to the Managing Director of Utkal Distributors. Utkal Distributors made a representation on May 19, 1958, for deleting the condition about the verification of the financial capacity of the sureties through the District Magistrate, but the State Government rejected the representation as per letter dated June 25, 1958. The second representation for the same purpose was made by Utkal Distributors on July 7, 1958, but the same too was rejected by the State Government as per letter dated September 22, 1958.

A query was made by Shri Mardaraj about the waiver of the condition regarding the verification of the financial capacity of sureties of Utkal Distributors through the District Magistrate. Shri K. Singh, Secretary of Works Department in his note dated June 2, 1962 then stated that, the condition about the verifications through the District Magistrate had been waived by the Finance Department for Patnaik & Company, and Utkal Distributors only in case of those advances which were given to enable those concerns to buy State Loan Bonds. The waiver was stated to be for specific purpose and not for general application. The Secretary's note in this respect reads as under :—

“ This is the order which I referred to in my note on page 52/V and under which the Company applied to get an advance *vide* their letter at page 94/C.

“ As Chief Secretary is aware, certain advances were issued to Messrs. Utkal Distributors and Messrs. Patnaik & Company last year to enable them to buy State Government Loans. The letter at flag 'R' (page 11/C of linked file III-M-80/61) was issued for making advance to Messrs. Patnaik and Company. This letter was issued in consultation with the Finance Department. But subsequently perhaps on the representation of the Company, the Finance Department deleted the portion under which the capacity of the securities was to be determined through the District Magistrate. In the case of Messrs. Utkal Distributors also the Finance Department issued an order that the condition regarding ascertaining the value of their unencumbered assets through the District Magistrate would be waived. It may, therefore, be noted that the concession allowed was for a specific purpose and not for general application.

When Government is advancing money to a private party it is necessary that Government money should be safeguarded which can be done only by the party taking the advance executing a security bond. The security bond must be backed by the unencumbered properties of the party and we have no other means of ascertaining the value of their unencumbered

property except through the District Officer. In the circumstances, the safeguard provided in 1957 to get the value of the unencumbered property verified through the District Magistrate is a reasonable one and it might continue and should not be waived.

Submitted for orders. Minister, Works, should see.

Sd. - K. SINGH

2nd June 1962

The above note of the Secretary was forwarded to the Minister Works by the Chief Secretary with the remark:

“ This explains Minister's query. ”

Shri Mardaraj thereafter passed the impugned order dated June 7, 1962 reproduced above.

I have given my earnest consideration to the matter, and am of the view that the impugned order is vitiated by an impropriety on the part of both Shri Mardaraj and Shri Mitra. So far as Shri Mardaraj is concerned, he admits in his affidavit that as Works Minister he wanted to enforce the condition regarding the verification of the assets of the Managing Director and the Chairman of the Company by the District Magistrate. According to Shri Mardaraj, when he sent the file to Shri Mitra, who was acting as Chief Minister in the absence of Shri Patnaik. Shri Mitra called Shri Mardaraj to his residence and asked him not to insist upon retaining the clause regarding verification of the assets by the District Magistrate. Knowing as Shri Mardaraj was of very strong support given to Utkal Distributors by the Chief Minister and the Deputy Chief Minister, he had no alternative but to agree very reluctantly to the deletion of the clause. It would follow from the above that though Shri Mardaraj did not consider it proper to waive the condition regarding the verification of the assets of the Chairman and Managing Director of the Company through the District Magistrate he agreed to waive that condition, because, according to him, he was pressed by Shri Mitra to do so. Shri Mardaraj thus admits that he passed the impugned order not on its merits but because of the extraneous influence brought upon him. The fact that Shri Mardaraj yielded to pressure, even though it be of a senior colleague in the Cabinet, would neither exonerate Shri Mardaraj nor provide him with an *alibi*.

From the point of view of the security of Government money also the impugned order was not reasonable and that was the reason because of which the Secretary of the Department had suggested that the condition about the verification of the financial capacity of the sureties through the District Magistrate should not be waived. For precisely the same reasons the previous representations of the Company had also been rejected in 1958. The condition about the furnishing of security bonds by the Chairman and Managing Director of the Company could serve useful purpose only if the financial status of the Chairman and the Managing Director of the Company was verified.

So far as Shri Mitra is concerned, I find that he signed the impugned order in token of his concurrence. Shri Mitra has denied the statement of Shri Mardaraj that he (Shri Mitra) called Shri Mardaraj and influenced him with a view to get deleted the condition relating to the verification of the financial capacity of the sureties by the District Magistrate. In view of the denial of Shri Mitra, the statement of Shri Mardaraj about the part played by Shri Mitra may not constitute sufficient proof against Shri Mitra. I, however, find that Shri Mitra in his affidavit admits that on the eve of mid-term election in 1961 his wife took a loan from Shri N. K. Mohanty of Utkal Distributors for the purpose of construction of her house. The amount of loan has been mentioned in the affidavit filed on behalf of the State Government to be Rs. 7,500. There is nothing to show that the above loan had been paid off before June 8, 1962, on which date Shri Mitra appended his signatures to the impugned order. It would, therefore, follow that the wife of Shri Mitra was indebted to Shri N. K. Mohanty of Utkal Distributors at the time the impugned order was made in favour of Utkal Distributors. Keeping all these facts in view, I am of the opinion that Shri Mitra appended his signatures to the impugned order because of extraneous consideration.

The third order, the propriety of which has been questioned by the State Government, was made by Shri Patnaik and related to the payment of Rs. 10 lakhs as advance to Utkal Distributors. This order is clear from the note dated July 31, 1962 of Shri K. Singh, Secretary Works Department, and the note dated September 14, 1962 of Shri Mohapatra, Deputy Secretary Finance. The proposal contained in the latter note was expressly approved by Shri Patnaik on September 15,

1962. The two notes along with the order of Shri Patnaik read as under :—

“C. M. discussed with me and ordered that advance against pending orders may also be given to this concern provided that the total advance should not exceed Rs. 10 lakhs at any time. In other words, before making the advance, C. E. (I) should ascertain from C. E. (R. & B.) the advance made by him and the outstanding advance from Rs. 5 lakhs given last year and see that the total does not exceed Rs. 10 lakhs.

Sd.—K. Singh
31-7-62.”

“C. M.

This is regarding payment of advance to Utkal Distributors against orders to be placed with them. As desired by C. M. the position of old advance of Rs. 5 lakhs has been verified from the Works Department. As it appears Rs. 2.73 lakhs is outstanding from the old advance. This advance is to be recovered by the end of October, 1962 according to the present order. The dealers are willing to effect recovery of the old advance by 20% also from each bill and in case to effect full recovery by the end of October, 1962. The present proposal to give advance up to Rs. 10 lakhs at 20% against orders excluding the old balances may be agreed to and the draft as modified be concurred in this arrangement may, however, be reviewed by the end of 1963-64 to consider further developments by them. (As Secretary is absent, file is submitted direct).

Sd.—D. Mohapatra
14-9-62.

As proposed.

Sd.—B. Patnaik ”
15-9-62.

In respect of this order, I find that the representation dated July 7, 1958 made by Utkal Distributors to the then Chief Minister of Orissa, shows that on an earlier occasion the State Government had given a trade advance of Rs. 9 lakhs to that Company and the entire advance was paid back by the Company. Letter dated August 30, 1961 from the office of the Chief Engineer shows that the pending orders with Utkal Distributors related to the supply of 6,902 tons of steel materials. The record also indicates that the stand of Utkal Distributors was that the Company had “advanced full value of the orders” to the producers, and wanted to expand its activity to meet the pressing demands of the Government. The impugned order was thereafter made by Shri Patnaik

in exercise of his administrative powers, and whether one agrees with it or not, it cannot be said that the order of Shri Patnaik is *mala fide* or tainted with impropriety. The fact that Shri Patnaik was at one time a Director of Utkal Distributors would not show that he was interested in that Company when it is kept in view that he had transferred his shares and severed his connections with the Company about six years before the impugned order. It may also be observed that the order in question made it clear that the advance was to be given "up to Rs. 10 lakhs at 20 % against orders". This would show that an advance of Rs. 10 lakhs could be given only if there were outstanding orders with the Company for supply of material of the value of Rs. 50 lakhs or more. As regards the order dated September 15, 1962 for the recovery of Rs. 2.73 lakhs from the previous advance, I find that from the date of the order a period of only 1½ months was given for the recovery of that amount as the order expressly stated that the above amount would have to be fully recovered by the end of October 1962.

The fourth and the last order, which has been assailed on behalf of the State Government, was made by Shri Mallik on August 3, 1965 and relates to an advance of Rs. 2 lakhs to Utkal Distributors. The order along with the preceding notes reads as under :—

"Under-Secretary

Notes of the I. & P. Department from the preceding pages along with the previous notes of the Finance Department may please be seen.

In the previous notes, Finance Department had agreed to the payment of advance not exceeding Rs. 2 lakhs to M/s. Utkal Distributors in a rotating manner. The Draft prepared by the Administrative Department may be concurred in as amended in pencil.

Sd.—A. Mohapatra
30-7-65.

I. & P. Department
Sd.—B. K. Mohanty
31/7

D. M. (IP)

Notes from P. 15/N may be perused. Draft which has been concurred in by F. D. may be approved before issue.

Sd.—K. Singh
2-8-65.

Sd.—P. Mallik.
3-8-65.

Perusal of the above notes goes to show that the matter was vetted by the Secretary of the Works Department as well as by the Finance Department. The papers were put up before Shri Mallik at the final stage for obtaining his formal approval. No inference of impropriety, in my opinion, can be drawn against Shri Mallik because of his having given the necessary approval in accordance with the suggestion of the Secretary of the Department.

As a result of the above I hold :

- (1) The charge of impropriety has not been proved against Shri Patnaik, Shri Routray and Shri Mallik.
- (2) The order dated June 7, 1962 made by Shri Mardaraj and signed by Shri Mitra on June 8, 1962 in token of his concurrence was vitiated by an impropriety, being the result of extraneous consideration.

CHAPTER 64

ALLEGATION No. 64

Re:

Kendu Leaves Trade

Allegation No. 64 relates to alleged impropriety in Kendu leaves trade. The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Tripathy, Shri Routray, Shri Sahu and Shri Mohanty.

According to the case of the State Government, Kendu leaves, which are used for manufacture of Bidis, are a major source of Government income in Orissa. The Kendu leaves grow mainly on fallow lands inside and near about forests. More than 50 per cent of such land is occupied by tenants and the rest belongs to the Government. Tenants have a right to the plants on their lands. When Shri Patnaik's ministry came into power, a scheme of State monopoly in Kendu leaves trade was introduced. In 1962, Orissa Kendu Leaves (Control of Trade) Act was enacted. The Act provides for State monopoly in Kendu leaves trade to be carried on through agents. According to Section 8 of the Act the Government may for the purpose of purchase of and trade in Kendu leaves appoint agents in respect of different units. The procedure for appointment of agents shall be such as may be prescribed. The rules framed under the Act provide that Government shall publish a notice inviting applications when it considers fit. They also provide that it shall be open to the Government to accept or reject any applications without assigning any reason. It is further provided that when applications received in respect of any unit are not considered suitable or satisfactory, it shall be open to the Government to negotiate with one or more applicants. Wide discretion in the matter of selection of agents has thus been vested in the Government. The form of application is not helpful in any way for making proper selection of the agent. The form of the application as initially prepared contained a column wherein the applicant had to state the expected sale value per bag. This column was, however, deleted and the form without that column was approved by the Chief Minister on January 4, 1962. Column No. 14 of the application as originally drafted made provision for the amount offered to Government for permission to enter and collect leaves

from Government lands. This column was substituted by another column according to which the applicant had to state whether he was willing to offer Rs. 5 per bag of leaves for permission to enter into and collect leaves. The change in this form was criticised by the Chief Secretary in a note. When that note was put up before Shri Patnaik, he made the following order on January 13, 1962 :—

“Since we know what price structure we want, there should be no difficulty in fixing the rates with the agents whom we approve.”

Rule 7 (5) provided that on appointment as agent, the person appointed would execute an agreement in such form as the Government might direct. The validity of the provisions of the Act and Rules framed thereunder was challenged in a writ petition. The matter went up to the Supreme Court. The Court held that—

- (a) The provisions of the impugned Act were *intra vires*.
- (b) The price fixed for Kendu leaves was reasonable.
- (c) If a State monopoly is created, the State must carry on the trade through its employees or through a Corporation owned or controlled by it.
- (d) It would be open to the State Government to appoint agents provided the agents worked on behalf of the State and not for themselves. The agent should not acquire a personal interest in working the monopoly and should be an agent strictly in the narrow sense.
- (e) The agreement must be prescribed by Rules so that it would clearly indicate the relationship between Government and the agent. Agreement on *ad hoc* basis was unreasonable. Rule 7 (5) was, therefore, struck down.
- (f) The subsisting agreements at the time were declared invalid as some of the terms were found to be in the nature of a contract and some others indicated creation of a personal interest in favour of the agents.

To get over the difficulties created by the decision of the Supreme Court, the system of having procurement agents and purchasers of stocks from such agents was introduced. Agents

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from Government lands. This column was substituted by another column according to which the applicant had to state whether he was willing to offer Rs. 5 per bag of leaves for permission to enter into and collect leaves. The change in this form was criticised by the Chief Secretary in a note. When that note was put up before Shri Patnaik, he made the following order on January 13, 1962 :—

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- (c) If a State monopoly is created, the State must carry on the trade through its employees or through a Corporation owned or controlled by it.
- (d) It would be open to the State Government to appoint agents provided the agents worked on behalf of the State and not for themselves. The agent should not acquire a personal interest in working the monopoly and should be an agent strictly in the narrow sense.
- (e) The agreement must be prescribed by Rules so that it would clearly indicate the relationship between Government and the agent. Agreement on *ad hoc* basis was unreasonable. Rule 7 (5) was, therefore, struck down.
- (f) The subsisting agreements at the time were declared invalid as some of the terms were found to be in the nature of a contract and some others indicated creation of a personal interest in favour of the agents.

To get over the difficulties created by the decision of the Supreme Court, the system of having procurement agents and purchasers of stocks from such agents was introduced. Agents

were appointed in terms of an agreement which laid down the remuneration to be paid to them. A different set of persons were selected as purchasers of stocks on stipulation of purchasing the stocks at certain prices. Although technically the agent and the purchaser on paper were to different persons, in actual practice, it is stated, the agent and purchaser were found to be one and the same person. As a matter of policy it was decided that to avoid friction between the agent and the purchaser and to secure a smooth working of the system, the purchaser and the agent for each unit should be compatible persons. In most of the cases the purchaser and agent for each unit were found to be either relatives or connected with the same business organisation. During the period from 1963 to 1965 the main negotiations were with the agents and the purchasers were selected according to the choice of the agents.

The State Government further alleges that though applications for being appointed agents were invited, it was a mere formality. The applications did not provide any basis for considering the relative merits of different applicants. Selection of the agents was made entirely at the discretion of the authorities. As regards the purchasers, there was no system of inviting applications. On the other hand notices were issued to intending purchasers to meet the Deputy Secretary of the Forestry Department on a date fixed for the purposes of negotiations. Offers in writing were taken only from purchasers finally selected.

The policy of settling Kendu Leaf Units purely on the basis of negotiations at the discretion of the authorities without having any accepted principles laid down either in the Act or the Rules, was severely criticised in the Legislative Assembly. In November, 1964 the Secretary of the Department raised the question whether the then system of negotiations should be continued or there should be a change for the system of negotiations and pointed out that if the system of auction was introduced, the revenue will increase by about Rs. 10 lakhs in a year. When the above note was put up before Shri Tripathy, he observed on the margin: "I agree. Consult L. D. and put up before Cabinet." On January 4, 1965 Shri Tripathy recorded the following note:—

"C. M. sent back this file without orders. He has suggested why the *status quo* should not be maintained for the units proposed to be advertised. Since compensation is realised for short-fall, there would be no loss in revenue. Examine and put up."

It was then noticed that the performance of 91 units was satisfactory and those units would have to be settled by renewal. The question of change of system from negotiation to auction or tender would arise only in the case of 51 units. Shri Tripathy then made the following orders—

“As most of the units are to be settled by renewal, the other units may also be settled by negotiation as before. Any change will be considered next year.”

In 1966, a system of inviting tenders for the units was introduced and there was a substantial rise in the income to Rs. 1.20 crores. The average annual income during the period from 1962 to 1965 worked up to Rs. 1,03,25,000. The State Government accordingly, alleges that if the system of tender had been adopted in earlier four years also instead of the system of negotiation, the State would have gained about Rs. 87 lakhs during those four years.

No set policy according to the State Government, was followed while the units of Kendu Leaves were settled by negotiation. In some cases the lease amount of 1957 was assessed as the amount payable, while in other cases the amount payable was assessed to be sometimes 20 per cent, sometimes 25 per cent and sometimes 50 per cent in excess of the figure of 1957. A number of these instances have been given in the affidavit filed on behalf of the State Government. The Ministers concerned, according to the State Government, misused that opportunity in order to derive pecuniary benefits for themselves. The Ministers upon whom liability is sought to be fastened are Shri Patnaik, Shri Mitra and Shri Tripathy, who were Chief Ministers, Shri Routray and Shri Mohanty, who were Ministers-in-Charge of Forests and Shri Sahu, who was Deputy Minister-in-Charge of Forests. It is, however, admitted in the affidavit on behalf of the State Government :

“There was comparative safety of the State revenue when Shri Tripathy became the Chief Minister. Personal gains were avoided to a great extent by the Chief Minister.”

In support of the allegation, the State Government has filed the affidavit of Shri Harischandra Pathy, Assistant in the Home Department.

Shri Patnaik in his affidavit has denied the charge levelled against him and has stated that during the two years revenue period 1960-61 and 1961-62 when Shri R. N. Singh Deo was the Deputy Chief Minister and Finance Minister in the Coalition Government, the actual collections on account of Kendu Leaf Trade amounted to Rs. 12.35 lakhs in 1960-61 and

Rs. 38.18 lakhs in 1961-62. After assuming office in June, 1961 the Government headed by him piloted a bill in the Orissa Legislature for introducing State Monopoly in the Kendu Leaf Trade. Although Shri Singh Deo and his party men, who through decades had received considerable personal gains from this trade, tried their best to defeat this Act of the Legislature, the Supreme Court upheld the Act with certain modifications. In 1962-63 the State Government by careful handling broke the association of the monopolists and forced them to yield to the State Government in one year a sum twice as much as obtained by the Government in the previous two years. New entrepreneurs were also introduced into this trade for the first time. In 1962, it is stated, when the State monopoly was put into operation, the Ministry of Shri Patnaik deliberately used shock tactics by ordering that the merchants should be made to pay a certain high percentage over and above the rates paid by them during 1957-59. This established the basis for fixation of rates by officials. Each case was considered on its merit and adjustments were made where necessary. In some hard cases, orders of Government were also taken. By this process, the State Government earned in one year over Rs. 1 crore as against about Rs. 50 lakhs during the two previous years. Shri Patnaik further asserts that the final rates for the sale of Kendu leaves were arrived at by the Government only after detailed examination and assessments had been made by the concerned officials at various levels regarding the quality and quantity of Kendu leaves grown in different parts of the State.

Shri Mitra in his affidavit has likewise denied the correctness of the allegation made against him. According to Shri Mitra, there was no impropriety or misappropriation. It is further stated that during the relevant period far from any loss being caused to the State, the State gained considerably from the Kendu Leaf revenue. The allegation about payment of illegal gratifications to the Ministers and others has been described by Shri Mitra as false, malicious and motivated. No favouritism, it is stated, was shown to any particular individual firm or person in the matter of settlement of units.

Shri Tripathy in his affidavit has denied the allegation of any impropriety in the matter of settling Kendu Leaf Units by negotiations. As regards the decision in the end of 1964 not to introduce tender system, Shri Tripathy states that it was a policy decision taken by the Government and he implemented the same. It is also pointed out by Shri Tripathy that the

present Government has discontinued the assessed tender system and reverted to the old negotiation system.

Shri Routray in his affidavit has denied the allegation and has pointed out that even according to the Government's affidavit no impropriety has been attributed to him.

Shri Mohanty has denied the correctness of the allegation made against him. According to him, whatever he did was for the interests of the State and its people. Shri Mohanty has denied the allegation that he showed any favouritism in any particular instance while settling Kendu Leaf Units.

Shri Sahu in his affidavit has stated that he took charge as Deputy Minister of the Forest Department only on March 14, 1965 and as such he could not be responsible for anything done prior to that date. According to Shri Sahu, he has not taken any decision which could be construed as detrimental to the interests of the State.

Supplementary affidavit has been filed by Shri Harischandra Pathy on behalf of the State Government as well as by Shri Patnaik.

The State Government has at the outset assailed the order dated January 13, 1962 of Shri Patnaik. The order has been reproduced earlier, and, in my opinion, no impropriety is involved in that order. The order related to the form of application for appointment as an agent. The form constitutes a part of the Orissa Kendu Leaves (Control of Trade) Rules, 1962. The constitutional validity of the Orissa Kendu Leaves (Control of Trade) Act, and the Kendu Leaves (Control of Trade) Rules, was assailed in a writ petition before the Supreme Court. The Court upheld the validity of the provisions of the Act. The validity of the Rules was also upheld except Rule 7 (5) which provided the execution of an agreement by a person appointed as an agent "in such form as Government may direct." It was observed by the Supreme Court in that case (*Akadasi Pradhan vs. State of Orissa and others*, AIR 1963 SC 1047).

"It is significant that though the Form for an application which has to be made by a person applying for agency is prescribed, no form has been prescribed for the agreement which the State Government enters into with the agent. The agreement is apparently entered into on an *ad hoc* basis and that clearly is unreasonable. In our opinion, if the State Government intends that for carrying on the State monopoly authorised by the Act agents must be appointed, it must take care to appoint agent on such terms and conditions as would justify the conclusion that the relationship between them and the

State Government is that of agent and principal; and if such a result is intended to be achieved, it is necessary that the principal terms and conditions of the agency agreement must be prescribed by the rules."

Rule 7 (5) was accordingly struck down. It is significant that no objection was taken to the form of the application which had been incorporated in the Rules in accordance with the order of Shri Patnaik.

After the decision of the Supreme Court, in order to overcome the legal difficulty, purchasers were appointed by the State Government in addition to the agents. It was directed that the purchaser and agent for each unit should be compatible persons so as to ensure smooth working of the system. Applications for appointment as agents and purchasers were invited through public notices and the amount payable by them was fixed by negotiation. In a number of cases the amount payable by the agent or purchaser was reduced on his representation by the Chief Minister or the Minister concerned.

In respect of the amount payable by the agent or purchaser, I am of the view that the system of open auction or in the alternative of tenders is to be preferred to the system of negotiation, because compared to the latter system there is much less scope for malpractices in the system of open auction or tenders. At the same time, it has to be borne in mind that the scheme of State trading in Kendu Leaves was introduced in Orissa for first time. There were no such schemes in operation in other States, the working of which could furnish guidance for the procedure to be adopted in Orissa. There is also nothing before me to show that the reduction of the amount payable by the agents and purchasers was due to an extraneous consideration. Indeed, an element of reduction of the amount is inherent in a system of negotiation. No inference of impropriety can be drawn from the reduction of the amount *per se*.

The system of negotiation continued till the year 1965. On November 6, 1964 the Secretary of the Forestry Department recorded a note suggesting the adoption of a tender system in respect of units regarding which the performance of the purchasers had not been satisfactory in the previous year. Shri Tripathy agreed with the suggestion on November 17, 1964 and directed that the Law Department should be consulted. It was later brought to the notice of Shri Tripathy

that the number of units, which had to be settled by renewal on account of satisfactory performance, was very large. Shri Tripathy then made the following order on January 11, 1965:—

“As most of the units are to be settled by renewal, the other units also may be settled by negotiation as before. Any change in the method of appointment of agents and purchasers will be considered next year.

Sd. S. Tripathy

11-1-1965

The above order was signed by Shri Mitra in token of his concurrence on January 13, 1965. No objection, in my opinion, can be taken to the above order of Shri Tripathy.

The system of appointing purchasers through invitation of tenders was adopted in the year 1966 and for that purpose tender notice was issued on March 7, 1966. The basic policy in respect of Kendu Leaves trading remained the same in 1967 as it was in the year 1966. Four units were ordered to be settled through negotiation by the Divisional Forest Officer, *vide*, order dated February 9, 1967 of Shri Tripathy. The reason for that was that no tenders in respect of those units had been received. Two other units were settled by negotiation as per orders of Shri Tripathy on January 8, 1967. In respect of both these units, the persons, who gave the highest tenders in 1966, backed out and refused to work the units. The amount offered by the second highest person in respect of one of the units was below the offset price, while the second unit could not be worked by any tenderer as it got late in the season. Both these units were accordingly, allotted to Orissa Forest Corporation during the year 1966. Shri Tripathy then passed the order that for the year 1967 the two units need not be given to the Corporation. When the question arose in 1967, Shri Tripathy passed an order on January 8, 1967 in respect of one unit that Shri R. K. Patel and Company might be appointed purchasers at the reserve price fixed in the earlier year. The reserve price fixed in the preceding year was Rs. 2,06,700 and the only person, who had given a tender for an amount exceeding the reserve price, had backed out. Regarding the second unit, only Rs. 22,000 were realized as profit during the preceding year although the reserve price was Rs. 1,99,000. Considering all the aspects, Shri Tripathy stated that a net profit of Rs. 1,50,000 was very reasonable for the second unit. He accordingly, directed the aforesaid unit to be settled on that

amount. After going through the material on record in respect of the above two units, I am of the view that no inference of impropriety can be spelt out of the orders of Shri Tripathy.

Regarding the policy of Kendu Leaves trade I find that Orissa Taxation Enquiry Committee headed by Dr. P. S. Lokanathan gave its report in 1961. According to that report prior to 1960-61 lessees of forest and other Government lands used to enjoy monopoly rights of purchase by virtue of licences issued under the Orissa Kendu Leaves (Control and Distribution) Order, 1949. The average revenue income of the State from Kendu Leaves during the three years preceding 1960-61 was Rs. 68,28,000. In 1960-61 monopoly was abolished and a licensing system with controlled competition was introduced. The new system did not give encouraging results and there was a steep fall in the income from Kendu Leaves. The Committee accordingly, stated:

“To sum up the discussion, we are convinced that the monopoly is the best method of exploiting the wealth of Kendu Leaves in the best interests of the people of the State.”

Orissa Kendu Leaves (Control of Trade) Act was thereafter enacted in 1962. The following statement gives income of the State from the Kendu Leaves during the years 1960-61 to 1966-67 :—

		Rs.
1960-61	..	12,35,000
1961-62	..	38,18,000
1962-63	..	1,07,00,000
1963-64	..	99,00,000
1964-65	..	1,05,00,000
1965-66	..	1,02,00,000
1966-67	..	1,19,82,567

Scrutiny of the above figures shows that though there was compared to previous years, some increase in the income of the State from Kendu Leaves during 1966-67 as a result of the introduction of the tender system, the increase in the income during 1962-63 was much more substantial compared to what it was before the coming into power of the Ministry headed by Shri Patnaik.

I would, therefore, hold that the charge of impropriety, contained in this allegation, has not been substantiated.

CHAPTER 65

ALLEGATION No. 65

Re :

Dealings with Middle East Construction and Equipment

Allegation No. 65 relates to alleged favouritism in dealings with firm Middle East Construction and Equipment, Cuttack (hereinafter referred to as MECE). The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Tripathy, Shri Routray, Shri Mohanty, Shri Mardaraj and Shri Mallik.

According to the case of the State Government, firm MECE. was registered under the Orissa Sales Tax Act on August 1, 1962 with an invested capital of Rs. 15,000. Two brothers and one sister, namely, Shri Chinmoy Kumar Patnaik, Shri Sushil Kumar Patnaik and Shrimati Rajlakmi Patnaik, were the partners of the firm. The partners were the children of late Shri Ram Krushna Patnaik, who was brother of Shri Gopal Chandra Patnaik. Shri Gopal Chandra Patnaik is the Managing Director of Patnaik & Company, dealings with which Company are the subject-matter of allegation No. 59. Shri Gopal Chandra Patnaik had close business relations with Shri Biju Patnaik, Shri Biren Mitra and Shri Nilamani Routray. Shri Kamini Kant Patnaik is the husband of Shrimati Rajlakhmi Patnaik. Shri Kamini Kant Patnaik is a trustee of Kalinga Foundation Trust from 1963. The aforesaid trust was registered in 1959 with Shri Biju Patnaik as the Managing Trustee. Shri Kamini Kant Patnaik was also a shareholder and Director of some of the companies which had been started by Shri Biju Patnaik. He was and is also the retained lawyer of Shri Biju Patnaik and Shri Biren Mitra for income-tax proceedings. Shri Kamini Kant Patnaik was a Congress candidate in 1967 Election for one of the Lok Sabha Constituencies. As such Shri Kamini Kant Patnaik is stated to be intimately connected with Shri Biju Patnaik and Shri Biren Mitra.

In 1962, it is stated, the Government of India Exploratory Tube-well Organisation made some exploration work in the coastal districts of Cuttack, Puri and Balasore. It was then

reported by letter dated August 20, 1962 that about 8.50 lakhs acres of land in the coastal districts could be brought under irrigation by sinking 5,262 deep tube-wells in that area. This fact was communicated to the Government of Orissa by letter dated March 7, 1963. It was also indicated in that letter that an equivalent area could be available in other districts where a large number of filter point tube-wells were required to be installed for the Lift Irrigation programme. Tenders were then invited for purchase of four medium duty Rotary Rigs. The tender quotation of Messrs. Larsen & Tubro for Failing Rigs of the best quality was the lowest and the firm was asked to supply the rigs. The firm requested for release of foreign exchange to the extent of Rs. 5.03 lakhs. Government of India agreed to release the foreign exchange, but stated that this amount was to be released from the U. S. A. Aid Loan No. 217 for which tenders were required to be called for through D. G. S. & D. in United States of America. For purchasing the entire equipment from U. S. A. it was estimated that for four complete drilling rigs, at least eight lakhs of foreign exchange would be required. The Government of India was thereafter moved to release foreign exchange for purchase of rigs. In the meantime in a conference relating to Light Irrigation held from 19th to 21st September 1963 it was decided to purchase two more rigs which were available in India and did not involve foreign exchange. These rigs were to be in addition to the four rigs for which Government of India had been moved. Enquiries were made from various sources regarding the purchase of these rigs. Ultimately six firms, including MECE., submitted their quotations for supply of different type of rigs by March 9, 1963. The quotations were examined in the Agriculture Department and a note was put up about the respective merits and demerits of the different rigs for which quotations had been submitted. One of the quotations was of MECE for a USA make Porta Drill rig which had already worked for 300 hours. The price mentioned was Rs. 1,96,600. The Joint Director, Agriculture and Animal Husbandry Department in letter dated March 30, 1963 stated that the rigs offered by four of the firms were of indigenous make and two were of foreign make. The indigenous rigs, it was stated, were not working satisfactorily and, as such, it would not be worthwhile to go in for them, more so when the department had no experience in the working of those rigs. Among the two foreign make rigs, Messrs. Larsen and Tubro had asked for import licence. Recommendation was accordingly made for purchase of Porta Dill rig from MECE

at a cost of Rs. 1,96,600. Earlier a similar Porta Drill rig had been procured from the Government of Mysore through the Central Government at a cost of Rs. 1,46,600. No attempt, however was made to secure the second rigs also from any such source through the Government of India. The quotation of MECE for supply of rig was accepted and this was approved by the Additional Development Commissioner. Order was placed by the Director of Lift Irrigation by letter dated November 6, 1963 for supply of the rig within eight to ten weeks' time from the date of receipt of order. It was also mentioned that 90 per cent of the price would be paid after delivery of the same at Cuttack and the balance 10 per cent would be paid after the machinery was tested and boring was done in one or two places in field demonstration at Cuttack. MECE confirmed the order but added that the Director should have no objection to depute the Assistant Engineer-in-charge at the cost of the firm to inspect the demonstration of the machine at Calcutta as a measure of safety before the machine was sent to Cuttack. The demonstration at Calcutta was to be in addition to the demonstration at Cuttack. Shri Rattan Singh, Driller, was thereafter sent to Calcutta in March, 1964 and he certified that the machine was in perfect running order. The mechanic sent the certificate by his letter, which was received by the Director of Lift Irrigation on March 12, 1964. The same day another letter was received from the firm stating that as their original quotation contained stipulation for payment of 90 per cent ex-Calcutta delivery and since the inspection had been made by the Government representative, the firm might be given 90 per cent of the price at Calcutta through a special messenger at the cost of the firm so that the firm might arrange the despatch of the machines by road to Cuttack. A note was then put up in the Office of the Director of Lift Irrigation that after the inspection at Calcutta there appeared to be no objection for payment of 90 per cent of the price at the time of despatch from Calcutta. It was suggested that Executive Engineer, Lift Irrigation might be deputed with the necessary bank draft to accept despatch of the machinery to Cuttack and to release the bank draft in favour of the firm after actual despatch and transit insurance. This note was approved by the Director of Lift Irrigation and the Government was informed accordingly. An Executive Engineer was thereafter sent to Calcutta with a Government bank draft of Rs. 1,90,040. The drilling rig was thereafter despatched from Calcutta on March 18, 1964. It also came to light that the drilling rig had been the subject matter of

some litigation and that MECE had not acquired ownership of the rig before the firm entered into contract for the sale of the same. The title in the rig was acquired by the firm only thereafter.

The case of the State Government further is that on February 18, 1964 the Additional Chief Engineer, Expressway, Orissa, invited quotations from registered suppliers for supply of 5 Horse-power, 7½ Horse-power, 10 Horse-power, 15 Horse-power and 20 Horse-power diesel pumping sets (centrifugal) for the Expressway Project on or before February 27, 1964. Eight firms including MECE submitted their quotations. The quotation of MECE however, was for 6.25 Horse-power and 12.5 Horse-power pumping sets. The quotation of one of the firms was not received in time and as such was excluded from consideration. The quotations of two other firms were not accepted. A note was put up to place orders for purchase of pumping sets on the remaining firms including MECE. This course was objected to by the Accounts Officer *inter alia* on the ground that the pumping sets offered by MECE were of different Horse-powers than those for which quotations had been invited. The objection was, however, overruled by the Chief Engineer and orders were placed on the firms including MECE. Five numbers of 6.25 Horse-power pumping sets at a price of Rs. 3,850 and five numbers of 12.5 Horse-power pumping sets at a price of Rs. 5,750 each were ordered to be purchased from MECE. The firm failed to supply the above pumping sets within the scheduled time and extensions of time were given to the firm for making the delivery. Another purchase order dated October 7, 1964 was placed with MECE for supply of 25 numbers of Briggs and Stratton Self-priming compact model pumps with imported engines at a price of Rs. 3,465 each. The record does not indicate whether any tenders were invited before placing this order. The firm failed to deliver the pumps in question within the scheduled time and according extension of time was given for the purpose. Another order was placed with the firm for supply of two numbers of 40 Horse-power pumping sets on April 28, 1965.

In March/April, 1963 the Additional Chief Engineer after making enquires in the market and after receiving quotations from three firms placed order for the supply of six numbers of concrete Mixers with MECE. The date of supply was indicated to be June, 1963, by which date only four machines were supplied and after the delivery of the remaining two machines

time was extended till July 1963. Another order for supply of six concrete Mixers was also placed with the firm. Time for the supply of these Mixers too, was extended at the request of the firm. The price of the undelivered Mixers was also enhanced from Rs. 8,640 to Rs. 8,920. Orders were also placed with MECE by the Additional Chief Engineer, Express Way in May 1963 for purchase of 100 tarpaulins. Time for delivery of the same was extended at the request of the firm.

The Superintending Engineer, Designs and Planning, Expressway, it is stated, invited tenders for 15 items of work at an estimated cost of Rs. 12,98,192 from registered contractors of Roads & Buildings. MECE offered its quotation for some of the items of work. A comparative statement was prepared and one general order was thereafter placed with MECE, even though the firm had not submitted quotations for some of the items. Verbal orders were communicated to the firm by the Additional Chief Engineer even before the tenders were actually finalized.

The State Government further alleges that in April, 1965 order was placed by the Chief Engineer, Rural Engineering Organisation, Orissa on the Industrial Development Corporation of Orissa Ltd., for supply of 140 numbers of hand road rollers to Panchayat Samitis. The Industrial Development Corporation supplied 107 such rollers but could not supply the remaining 33 rollers. Enquiry was then made from MECE and the firm submitted a quotation for 200 rollers of 2½ to 3 tons at a price of Rs. 3,595 and promised to deliver 15 to 20 rollers per month., the delivery to commence between 6 to 8 weeks from the date of the firm order. The matter was then discussed and it was pointed out that as the Industrial Development Corporation was having labour trouble and as the rollers supplied by MECE were suitable, orders be placed with the firm. After the matter had been discussed with the Department, the Chief Engineer, Rural Engineering Organization, placed purchase order dated September 14, 1966 for supply of 100 numbers of 3 Tons hand rollers with MECE at the rate of Rs. 3,595 each. It was mentioned that the delivery was to commence from November 15, 1966 and was to be completed by March 15, 1967. It was noted that the firm had agreed to subscribe Rs. 5 lakhs for investment in State Government Loan Bonds 1978 and in that connection an advance amounting to Rs. 3,19,550 being 90 per cent of the cost of 100 rollers would be paid to the firm. An agreement was thereafter

executed with the firm on September 15, 1966. An advance of Rs. 3,19,550 was paid to the firm. The firm thereafter purchased loan bonds worth Rs. 4 lakhs only and not for 5 lakhs. The firm did not pledge the loan bonds in favour of the Executive Engineer. No roller was thereafter supplied by the firm to the State Government.

The State Government concludes from the above that undue favouritism was shown to MECE which resulted in wastage of huge funds. The respondents named above are sought to be made liable for the impropriety.

In support of the above allegation the State Government has filed the affidavits of Inspector Gourang Patra (Vigilance), Shri Hanuman Prasad Roy, Personal Assistant (Technical) to Director of Lift Irrigation, Shri Dasharathi Mishra, Accounts Officer in the Express Highway Department and Shri Muralidhar Satpathy, Assistant to Chief Engineer, Rural Engineering Organization.

Shri Patnaik in his affidavit has denied that he exercised any influence or pressure on any person in connection with any of the transactions with MECE.

Shri Mitra in his affidavit has stated that he has no knowledge of any of the transactions referred to in this allegation. Shri Mitra did not use any influence in connection with transactions which are the subject matter of the allegation.

Shri Tripathy in his affidavit has denied that he showed any favour to the firm in question. Shri Tripathy has also referred to a circular issued by the Government on August 8, 1966 to give an advance up to 90 per cent of the value against orders for investment in Government Loan Bonds and has added that there was nothing wrong in issuing that circular.

Shri Routray in his affidavit has stated that he had no interest in MECE.

Shri Mohanty in his affidavit states that he has no knowledge of the existence of MECE or of its dealings with the different departments. The affidavits filed on behalf of the State Government, it is stated, "do not even breathe a suggestion of *mala fides* against this respondent."

Shri Mardaraj in his affidavit has stated that he played no part in the different transactions which were entered into with MECE.

Shri Mallik likewise has denied the allegation of favouritism made against him.

In respect of this allegation it has not been shown to me that the respondents concerned passed any order or did anything in connection with the impugned transactions. I would, therefore, hold that the charge of impropriety, contained in this allegation has not been proved against the respondents.

CHAPTER 66

ALLEGATION No. 66

Re :

Dealings with Industry & Commerce Enterprisers, Cuttack

Allegation No. 66 relates to alleged favouritism in dealings with Industry & Commerce Enterprisers Private, Ltd., Cuttack (hereinafter referred to as ICE). The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Tripathy, Shri Routray, Shri Mohanty, Shri Mardaraj, and Shri Mallik.

According to the case of the State Government, ICE is a family concern of Shri S. C. Dhawan and his brothers. Shri S. C. Dhawan purchased shares of Shri Biju Patnaik and his wife in Utkal Distributors Private, Limited, in 1956 and as such Shri Dhawan had close business relations with Shri Patnaik. He had similar relations with Shri Mitra and Shri Routray. On August 21, 1965 the Chief Engineer, Rural Engineering Organization, addressed a letter to the Secretary, Government of Orissa, Planning & Co-ordination, stating that to cope with work 1500 tons of M. S. rods were required and he recommended the payment of 90 per cent advance to ICE and two other firms on the value of rods for which orders were to be placed. On August 22, 1965, the Government of Orissa accorded necessary sanction for payment of advance amount of Rs. 11,03,805 to three concerns including ICE against the value of 1500 tons of M. S. rods. On August 24, 1965, the Chief Engineer, Rural Engineering Organization, placed an order for supply of 500 tons of M. S. rods with ICE and asked the company to supply the same within a period of four months from September 1, 1965. An advance of Rs. 3,67,900 was paid to the said Company on account of 90 per cent of total value of the material. The ICE, it is stated, failed to deliver the material within the agreed time. A number of letters were thereafter addressed to ICE. On August 17, 1966, the Chief Engineer in a letter to the Additional Secretary to Government, Planning & Co-ordination, stated that out of the amount of Rs. 3,67,900 ICE had supplied M. S. rods worth Rs. 59,784.75 Paise, leaving a balance of Rs. 3,08,116. The Chief Engineer suggested that in order to recoup the full advance a further order of 210 tons

of M. S. rods be placed with the Company. On August 17, 1966, the Planning & Co-ordination Department directed the Chief Engineer to serve a notice on ICE giving the Company a week's time to supply the specified material or to give Orissa State Loan Bonds or other security. Some further correspondence passed with that Company. In order to recoupe the balance of the advance, fresh orders were also placed with the Company. The full amount of advance was not recouped till December 1966.

Advance of Rs. 2,54,000 was also paid to the Company by the Rural Engineering Organization in respect of an order for supply of 140 Hand Road Rollers worth Rs. 5,24,300 in 1965. In addition to that, the Chief Engineer, Roads & Buildings, gave an advance of Rs. 2,14,401.18 Paise to the Company against an order for supply of iron and steel material. The State Government concludes from the above that favouritism was shown to ICE and the respondents named above are responsible for the same.

In support of the above allegations, the State Government has filed the affidavits of Inspector Md. Haroonal Rashid (Vigilance), Shri Murlidhar Satpathy, Assistant to the Chief Engineer, Rural Engineering Organization and Inspector Gourang Patra (Vigilance).

Shri Patnaik in his affidavit has denied the allegation against him and has stated that he could not have any interest in Shri Dhawan because of transfer of his shares in favour of Shri Dhawan several years ago. Shri Patnaik did not exercise any influence in connection with transactions with ICE. The transactions in question took place after Shri Patnaik had even relinquished the post of Chairman, State Planning Board.

Shri Mitra in his affidavit states that he had no connection with Shri Dhawan or ICE. He was not aware of any Improprity in the dealings with ICE.

Shri Tripathy, Shri Routray, Shri Mohanty, Shri Mardaraj and Shri Mallik have all denied in their affidavits the allegation that they showed any favour to ICE.

Supplementary affidavit has been filed by Shri L. S. Panda, Under-Secretary in the Supply Department, on behalf of the

State Government, as well as by Shri Patnaik and Shri Routray.

In respect of this allegation it has not been shown to me that the respondents concerned passed any order or did anything regarding the impugned transactions. It is also the common case of the parties that nothing remains due from ICE on account of the advances paid to the Company. I would, therefore, hold that the charge of impropriety, contained in this allegation, has not been proved.

CHAPTER 67

ALLEGATION No. 67

Re:

Congress Session at Bhubaneswar

Allegation No. 67, relates to the use of Government agencies for the 68th Session of All-India Congress Committee held at Bhubaneswar in January, 1964. The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Mardaraj, Shri Brundaban Nayak, Shri Routray, Shri Sanganna and Shri Mallik.

According to the case of the State Government the 68th Session of the All-India Congress Committee was originally proposed to be held in 1962 at Puri. The proposal was subsequently changed and ultimately the Session was held in January 1964 at Bhubaneswar. Shri Patnaik, who after ceasing to be Chief Minister was appointed Chairman of the State Planning Board, became the Chairman of the Reception Committee. There were a number of sub-committees of the Reception Committee and most of them had a Minister or Deputy Minister as the Chairman. Shri Patnaik, it is stated, then wanted to impress the All-India leaders with his organizational capacity and also to show them that he was the leader of the State Unit of the party. The different resources of the State were accordingly utilized to make the Session a great success.

On October 3, 1963, it is stated, a meeting of the officers was held in the office room of Shri Patnaik to discuss arrangements for the Congress Session. In that meeting a sub-committee was formed consisting of various officers with the Estate Officer as convener. The Committee was to maintain close liaison with Shri Patnaik and other Congress leaders. On December 30, 1963 an order was made by Shri Routray and was agreed to by the Chief Minister that Ministers, Deputy Ministers of the Centre and the States as also the Speakers and Deputy Speakers of the State Legislatures be treated as State guests. Although expenses for the above-mentioned dignitaries were at first met from the State funds, the Chairman of the Reception Committee agreed to meet the expenditure and gave a cheque of Rs. 91,487 on February 18, 1964 on that account. The

Reception Committee occupied 33 acres of land for the purpose of Exhibition and 454.31 acres of Government land for other purposes. Rent of Rs. 618.75 Paise was charged on the former count and Rs. 5,678.87 Paise on the latter count. The Government departments themselves paid Rs. 80,600 to the Reception Committee for the purpose of holding exhibition on the land set apart by the All-India Congress Committee for the purpose. The Reception Committee charged rent at the rate of Re. 1 per square foot for open space and Rs. 2 per square foot for the covered space. About 100 vehicles allotted to the Panchayat Samitis and other Government agencies were utilized and an amount of Rs. 38,984 was realized on *ad hoc* basis as hire charges. Works were ordered to be taken up by various departments on job work basis as there was little time to call for tenders and follow usual routine. Materials were also purchased without keeping proper accounts. Ultimately, the accounts were squared up with the payment of Rs. 1,47,310 by the Congress Party. Government material work more than Rs. 3,15,200 was utilized and the depreciation charge of Rs. 1,575.94 Paise was realized. G. C. I. sheets purchased with Government funds were supplied for the Congress Session on a nominal hire of 6½% of the value per annum for one month and a sum of Rs. 2,083.33 Paise was charged on that account. Electrical goods and G. I. pipes were likewise given on hire basis. The road from Raj Bhavan to the end of the Delta Colony was widened at a cost of Rs. 1,01,200. The width of the Raj Path from Cuttack-Puri Road to Raj Bhavan was increased from 24 feet to 36 feet. Construction was also undertaken of the road from new station-yard. Construction of Units in Unit No. 8 at Bhubaneswar was expedited to accommodate persons visiting the Congress Session. Advances to the tune of Rs. 3.30 lakhs were taken from the Contingency Fund for arranging exhibitions by the different departments of Government. The services of Fire Service personnel and trainees were utilized for decorating the Pandal of the All-India Congress Committee.

The State Government concludes from the above that the respondents named in the allegation secured benefits for their party-man, and as such were guilty of impropriety.

In support of the above allegation the State Government has filed the affidavit of Shri Sashibhusan Mishra, Deputy Estate Officer-*cum*-Under-Secretary in the Political & Services Department and Shri Subrat Joshi, Assistant Director of

Public Relations (Production)-cum-Assistant Secretary in the Home Department.

Shri Patnaik in his affidavit has denied the correctness of the allegations made against him. According to Shri Patnaik even for large seasonal or religious gatherings, the services of Government Departments, like Public Health, Engineering, Police, Electrical, Transport, Publicity and Public Works, are readily provided by the Government to assist the people gathered for the purpose. In the Congress Session lakhs of people came to Bhubaneswar to watch the proceedings of the Session as well as to see the Exhibition. Thousands of delegates, including V. I. Ps., came from different parts of the country and abroad. They also went on tours to see the different projects and places of interest in Orissa. All this assisted in projecting the image of Orissa beyond its boundaries. The Government records show that expenses for all services rendered by the Government agencies were fully met by the Congress Reception Committee. Widening of roads, completion of unfurnished houses, improvement of street lighting and drinking water facility remained a permanent asset of the Capital. The State obtained additional advantages on account of the Session in the form of new Railway Station buildings at Bhubaneswar and Puri and the strengthening of Telephone Services. The State was also given hundreds of tons of scarce steel materials like the G. I. sheets as well as dozens of new vehicles beyond the meagre State Quota. Shri Patnaik has denied that any Government vehicle was used by the Congress Reception Committee of which he was the Chairman. The Exhibition was very successful and gave an idea to all visitors and dignitaries of the Projects and Products of Orissa. During the Session time Pt. Nehru laid the foundation stone of multi-purpose Project of Tikkerpara Dam which had been designed by the State Engineers under the supervision of the Governor, Dr. A. N. Khosla, "the greatest living Engineer of India". This massive Project, it is stated, was subsequently scuttled as a result of political motivation of the short-sighted politicians.

Shri Mitra in his affidavit has likewise stated that the services of different departments of Government are utilized for any mass gathering of people on the occasions of religious and seasonal functions. It, therefore, became necessary to make provision for sanitation and drinking water facilities for lakhs of people who gathered at Bhubaneswar during the Congress Session. Such services, as were rendered to the Congress Party, were fully paid for by the Reception

Committee. Other expenses, like widening of roads and completion of unfinished houses, remained a permanent asset. Far from incurring any loss, the State was immensely benefited by the Congress Session at Bhubaneswar.

Shri Mardaraj in his affidavit has stated that he played an important part in the arrangements of the Congress Session as Minister for Works, Transport, Public Health and a section of the Electrical Division. Shri Mardaraj was never in the High Power Committee of the Congress but he played an important part in the Congress Session because of the portfolio held by him. Concourses like the Congress Session, it is said, provide opportunities of cultural and intellectual exchanges between people not only from all over India but from different corners of the world. Shri Mardaraj adds :

“Other considerations apart, a State has a primary obligation to maintain law and order, health and sanitation and arrange for accommodation and transport wherever a number of people get together, whatever be their faith or creed. Among the visitors there were personages who not only held high positions in the A. I. C. C. but also occupied very important positions in the Central and various State Governments. Many of them enjoyed international reputation and could claim people's hospitality anywhere in the country as leaders in India's fight for freedom. Orissa being the host State could not but gear its resources both at the State and the public level to welcome such visitors to the soil and make best of the job. Congress was the most powerful party in India at the time running the Government of India at the Centre for about two decades. For a developing State as Orissa, the A. I. C. C. Session provided an opportunity to get people at the Centre acquainted with their problems and needs locally. Such sessions are policy formulation gatherings for the whole country and Orissa could not ignore the potentialities thereof. I do not consider that anything wrong has been done by me personally nor do I feel that the Government of Orissa collectively has done any such thing which could be regarded as out of the way or the *bona fide* of which could be questioned. I submit that much rather this charge was not placed before the Hon'ble Commission and believe that it is malicious and an attempt at political vendetta.”

As regards the construction of Pandal, rostrum and few other items done by the contractors, it is stated they did not accept any money and said that the work done by them might be taken as their contribution to the Reception Committee.

Shri Brundaban Nayak in his affidavit has denied that any impropriety was committed in connection with the Congress session.

Shri Routray and Shri Sanganna have denied the allegation that any impropriety was committed by them. Their affidavits are on the lines of those put in by Shri Patnaik and Shri Mitra. As regards the order made by him for treating certain high dignitaries as State Guests, Shri Routray states that the order was fair and in conformity with the accepted practice.

Shri Mallik likewise in his affidavit has denied that he committed any impropriety in connection with the Congress Session.

Supplementary affidavits have been filed by Shri Subrat Joshi on behalf of the State Government, Shri Patnaik, Shri Routray and Shri Brundaban Nayak.

It has been argued on behalf of the State Government regarding the Congress Session at Bhubaneswar that the use of official machinery in connection with the gathering of a political party is most improper and as such the respondents are guilty of the charge levelled against them in this allegation. In this respect, I find that the annual Congress Sessions during the life time of Pandit Nehru used to attract very large number of people from all over the country. Although after the dawn of independence Congress was one of the political parties in the country, because of the role played by the Indian National Congress in the struggle for freedom, for many years after 1947 the Congress continued to retain its halo of the past. As such the Congress Sessions were looked upon as events of national importance and drew large mass of people, as they used to before 1947. In 1964, the Congress was in power at the Centre as well as in almost all the States. Besides Pandit Nehru, the other Ministers of the Central Government as well as the Chief Ministers and Ministers of the States were participating in the Congress Session. Apart from the Ministers, the Legislators and other Congressmen, as also vast crowds of people, were to attend the Congress Session and the Exhibition held at the time of the Session. It is the duty of the administration on the occasion of such vast concourse of people, as in the case of a Kumbh Mela or other big fairs, to make proper arrangements for sanitation, water, street light and public transport. There can also be nothing wrong on the part of the State Government in using such an occasion for projecting the image of the State to the persons present at such a gathering. The object of that is to give an idea to those people of the industries and projects of the State; as also its achievements and requirements. The Central Ministers as well as the Ministers of the

States, it may be observed, were entitled to VIP treatment not because they were Congressmen but because of their official status.

So far as the official work done in connection with the Congress Session is concerned, I find that the proceedings, dated February 24, 1964 of the State Legislative Assembly give lists of the different works and read as under :—

"NAME OF WORKS

(GOVERNMENT WORKS)

1. Construction of temporary structures for Police personnel for A. I. C. C.
2. Construction of temporary sheds for P. & T. Department for A. I. C. C.
3. Construction of temporary accommodation for Railway Enquiry and Booking Office for A. I. C. C.
4. Construction of temporary structures at Bhubaneswar for Transport Department in connection with A. I. C. C.
5. Construction of temporary sheds of conservancy staff in connection with A. I. C. C. work at Bhubaneswar.
6. Temporary electrification to structures of (a) Police Department, (b) Health Department, (c) Transport Department, (d) Government Exhibition.
7. Temporary W/S & S/I to Government Exhibition Ground in Capital, January 1964.
8. Temporary W/S & S/I to Khadi Board Exhibition Ground in Capital, January 1964.
9. Temporary W/S & S/I to temporary Bus Stand
10. Temporary W/S & S/I to temporary Police Barrack in Capital—
 - (a) Near Government Exhibition
 - (b) In Stewart School premises
 - (c) Near Rural University staff quarters in Unit VIII
11. Construction of temporary latrine blocks in Capital
12. Temporary W/S to Sweeper's Colony near Exhibition Ground in Capital.
13. Temporary Supplementary rising main 6" G. I. in Unit VIII and installation of Diesel Engine.

(Non-Government Works)

1. Collection and stocking moorum for temporary road to the North of Raj Bhavan.
2. Spreading laterite moorum on road formation
3. Labour maintain from the 5th January 1964 to the 10th January 1964 to attend urgent works in VIPs Camp.
4. Labour engaged for watching P. W. D. stock materials
5. Temporal Electrification of Khadi Board Exhibition and AICC subject Committee Pandal, open session ground and temporary sheds, etc.
6. Cost of works done including depreciation of materials and 19 per cent departmental charges. "

The Reception Committee bore the expense in respect of the non-Government works and whenever any such work was done through the Government agency, the Reception Committee paid the cost of the work done and 19 per cent departmental charges. Objection has, however, been taken on behalf of the State Government to the expenses borne by the State Government for the construction of temporary structures for Police personnel P. & T. Department, Transport Department and conservancy staff. In this respect, I am of the view that as the above structures were required for the use of official agencies, there was nothing improper on the part of the Government in paying for the construction of those structures.

Another objection, which has been taken on behalf of the State Government, is to the widening of Raj Path to 36 feet instead of 24 feet as originally decided. It is pointed out that as a result of widening, the estimated cost went up from Rs. 9,26,270 to Rs. 11,27,000. In this connection I am of the view that the widening of the Raj Path brought about an improvement of a permanent nature for one of the most important roads in the New Capital of Orissa. The fact that an order for the widening of the Raj Path was made at the time of the Congress Session, would not rob the order of its propriety.

Reference has been made on behalf of the State Government to the letter dated November 21, 1963 addressed by the Superintending Engineer, Public health, to the Chief Engineer, wherein it is stated that the Minister, Works indicated that the Superintending Engineer would be responsible for maintenance of all water-supply arrangements in the different places in the Capital during the All-India Congress Committee Session.

The above letter shows that the Minister, Works wanted to ensure that there was no break-down of the water-supply at a time when people from all over the county assembled in Bhubaneswar because of the Congress Session. No inference of impropriety can be drawn from that against the Minister, Works.

Reference has then been made on behalf of the State Government to the requisitioning of jeeps from the districts and the use of 77 jeeps during the Congress Session. In that respect, I find that the answer to Question No. 208 given in the State Legislative Assembly on February 24, 1964 shows that the jeeps were requisitioned for the following purposes :—

- “ 1. For the use of the Departments like Public Relations, Transport and P. & S. Departments on hire.
2. For the use of Union Ministers and Ministers from other State Governments who wanted to see the Community Development activities in this State.
3. For hiring out to VIPs who wanted to visit Puri and Konarak on payment of charges.
4. For arranging Departmental exhibition. ”

The following rates were charged for the hire of the jeeps :—

	Rs.
(a) Single Trip—From New Capital to Konarak and back	60
(b) Single Trip—From New Capital to Puri and back	60
(c) Two-in-one-trip covering both Puri and Konarak	100
(d) For sight-seeing for 5 persons in three hours	30

It was also ordered by Shri B. Nayak on December 31, 1963 that those who required jeeps for the entire Session should pay Rs. 50 per day besides meeting cost of petrol, mobile oil and drivers' meals. There was, in my opinion, nothing wrong in providing that amenity to VIPs, especially when it is kept in view that the amenity was not free of cost and the hiring charges for the jeeps were to be paid. The office note, dated October 5, 1964 shows that hire charges admissible under the rules for the vehicles used for the VIPs during the Congress Session were duly realised and deposited in the Treasury.

Answer to Question No. 1179 given in the State Legislative Assembly on March 18, 1964 shows that 454.31 acres of land were temporarily allotted for a period of one month in favour of the Reception Committee for holding the Congress Session and 33 acres of land were allotted for a period of 1½ months for holding the Industrial Exhibition. Ground rent of Rs. 150 per acre per annum was realised for the period of occupation. The different departments of the State Government paid higher rent for the land taken for putting up stalls because of the facilities afforded to those departments. On February 18, 1964 Shri Patnaik, Chairman of the Reception Committee, addressed a letter to the Estate Officer, Government of Orissa. Along with that letter Shri Patnaik sent cheques of Rs. 10,788.89 Paise towards rent of quarters, Rs. 618.75 Paise towards rent of 33 acres of land taken for Industrial Exhibition, Rs. 5,678.87 Paise towards rent of land at Gopabandhu Nagar and Rs. 91,487 for board, lodging and transport of the VIPs who were accommodated in the State Guest House. Besides the above cheques, cheques of some other amounts were also enclosed with that letter. On February 12, 1964 the Executive Engineer, Capital Construction Division, sent a bill of Rs. 1,17,602.07 Paise for the work done and the material supplied by the P. W. D. in connection with the Congress Session. On March 2, 1965 the Chief Engineer, Public Health, gave sanction for the amount of Rs. 1,47,310 in connection with the work done for water-supply and sanitary installation at the time of the Congress Session. It is not disputed that both the amounts Rs. 1,17,602.07 Paise and Rs. 1,47,310 have been paid by the Reception Committee.

Regarding the use of Fire Service personnel for the Session, the State Government alleges that a report dated September 9, 1967, to that effect has been made by a Deputy Superintendent of Police during the course of this inquiry. Neither the D. S. P. who made the report, nor the person from whom he made the enquiry has filed his affidavit. It would, therefore, appear that the evidence on this point is far too meagre and unsatisfactory to warrant a finding in favour of the State Government.

I have given the matter my earnest consideration and am of the view that the respondents concerned have not been proved to be guilty of impropriety as alleged in this allegation. I hold accordingly.

CHAPTER 68

ALLEGATION No. 68

Re:

Favouritism in Matter of Public Services

Allegation No. 68 relates to alleged impropriety in the matter of public services. The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Tripathy, Shri Routray, Shri Mohanty, Shri Mardaraj, Shri Misra and Shri Mallik.

According to the case of the State Government, Small Savings Scheme was introduced by the Government of India and it was administered in collaboration with the States. The States had their District Wings for operation. The introduction of standardised Agency system needed greater and effective co-ordination between the officials, non-officials, and the Government of India's staff at different levels in the State. The Council of Ministers of Orissa in their meeting held on October 14, 1961 approved a proposal for creating the post of Deputy Director, Small Savings in the Senior Scale of Indian Administrative Service with a special pay of Rs. 150 attached to the post. Shri U. N. Patnaik joined the post on October 14, 1961 and proceeded on leave preparatory to retirement on May 1, 1962. When the question of appointing a successor arose for consideration, the Finance Department came forward with the proposal that Shri Raghabananda Panigrahi, a non-official, be appointed on a fixed salary of Rs. 750 a month. Shri Panigrahi was a Congressman of some standing. He had been a political detainee from 1942 to 1944 and was in prison along with some of the Ministers in the Cabinet. The Political & Services Department on April 27, 1962 made a suggestion that the practice of appointing an Indian Administrative Service Officer be kept in abeyance and the same should be filled up by Shri Panigrahi, a non-official, for a year as an experimental measure. Although the Deputy Secretary and the Additional Secretary (Finance) were in principle against the proposal to appoint a non-official, the Additional Secretary suggested that a non-official might be appointed as an experimental measure. The Secretary, Finance then stated that in view of the establishment of Panchayat

Samitis and Zilla Parishads, the appointment of a non-official was necessary to popularise the Small Savings drive in the rural areas and a non-official of the type of Shri Panigrahi should be considered for the job for a period of one year. A memorandum relating to the appointment of Shri Panigrahi was then prepared and was endorsed to the Chief Minister with the note of the Chief Secretary that "the memorandum be perused and approved." The Chief Minister signed the memorandum in token of approval. A notification was thereafter issued about the appointment of Shri R. Panigrahi as Deputy Director, Small Savings, on a fixed salary of Rs. 750 a month. Reference was then made to the Public Service Commission for concurrence to the appointment of Shri Panigrahi. The Commission declined to concur and stated that the post should be advertised. The Joint Secretary, Political & Services, then suggested that the department should issue orders for fresh employment. When the period of six months after the appointment of Shri Panigrahi was about to expire, a letter was issued to the Public Service Commission for reconsidering the opinion of the Commission and for further continuance in service of Shri Panigrahi. A proposal made by the department for granting extension to Shri Panigrahi was approved by Shri Mitra. Notification containing extension for a period of one year with effect from February 13, 1963 was then issued and further extension was granted to Shri Panigrahi. A decision was taken by the Cabinet on June 6, 1963 to grant extension of three years to Shri Panigrahi with effect from August 13, 1963. A proposal to grant another extension of three years was approved by the Cabinet in a meeting held on June 16, 1966. These extensions were given without the concurrence of the Public Service Commission.

On September 5, 1961, it is stated, the Council of Ministers approved a proposal for creation of the posts of Chief Engineer, Superintending Engineer and Executive Engineers for the construction of Expressway from Daitari Mines to Paradeep Port. On March 14, 1962, the Joint Secretary, Works Department submitted a note to the Secretary suggesting the necessity of appointment of a Chief Engineer for the Expressway in the scale of Rs. 1,600—100—1,800. Three names were suggested from the rank of Superintending Engineers in this connection. They were (i) Shri K. C. Parija, (ii) Shri G. Gupta, and (iii) Shri S. R. Padhi. With regard to Shri Parija, it was stated that

he was the senior most Superintending Engineer and was due to retire on June 6, 1962. Shri Parija had also applied for leave preparatory to retirement with effect from February 6, 1962. The confidential character roll of Shri Parija did not speak well of him and he had in the past been superseded by Shri S. S. Behara. As regards Shri Padhi, it was stated that though his record was fairly good, he had still five years of service ahead. Recommendation was made for appointment of Shri G. Gupta. The Secretary submitted a note on March 14, 1962, stating that the Minister had discussed the matter with the Chief Minister and it had been agreed that Shri Parija, being the senior most Superintending Engineer, be appointed to the post and be designated as Additional Chief Engineer, Expressway. After the matter had been further discussed, on March 20, 1962, Shri Patnaik made the following order:—

“Discussed. Parija may be appointed.”

The matter was thereafter referred to the Public Service Commission. A communication was received from the Commission stating that the records of service of Shri Parija hardly justified his appointment or promotion as Chief Engineer since the post was of a responsible character and required a high degree of efficiency and technical knowledge. The Chief Secretary, thereafter put up a note that the Government would have to disagree with the Public Service Commission. On June 21, 1962 the Chief Secretary put up the following note:—

“C. M.

I have discussed. It is a misfortune of Orissa that no senior officer who worked under Messrs. Shaw and Benet (previous Chief Engineers) got a good chit. Those who have worked elsewhere have prospered. I feel confident Shri Parija will be able to deliver the goods. He will also honestly follow the policy of encouraging labour co-operatives because he has tried to do it as far back as 1949. I would, therefore, urge consideration of my proposal.”

Shri Patnaik thereafter passed the following order on June 21, 1962:—

“Let me hope the C. S.’s sizing up of Parija would be justified by Shri Parija’s work. As a very special case I approve C. S.’s recommendation. P. S. C. may be suitably informed.

Sd/ B. Patnaik

21-6-1962.”

On June 30, 1962 the Secretary, Works, wrote a letter to the Secretary, Public Service Commission, giving the circumstances under which Shri Parija had been promoted as Additional Chief Engineer and re-employed after the age of superannuation. It was stated that Shri Parija had rendered the longest period of service in execution of roads and building works and was specially trained in the United States of America at the cost of the State in 1946. The Commission was requested to concur in the appointment and re-employment of Shri Parija. A notification was also issued appointing Shri Parija on an *ad hoc* basis for one year with effect from June 6, 1962. The Public Service Commission on November 3, 1962, declined to concur in the re-employment of Shri Parija as Additional Chief Engineer. In view of the non-concurrence by the Public Service Commission, a draft memorandum was prepared and was placed before the Cabinet. In the meeting on November 15, 1962, the Cabinet approved the re-employment of Shri Parija as Additional Chief Engineer for one year with effect from June 6, 1962. On May 15, 1963 the Cabinet approved the re-employment of Shri Parija for further one year with effect from June 6, 1963. Further extension was granted to Shri Parija in accordance with the Cabinet decision till June 5, 1965. In May, 1965 Shri Parija attained the age of 58 years. The department did not like the idea of giving him further extension. When the matter was referred to the Governor Shri A. N. Khosla, he suggested that there should be no radical change in the set up and either Shri Parija be allowed to continue till June 1966 or Shri Padhi be entrusted with the job after being given the same rank and seniority. In view of the note of the Governor, the matter was further considered and the Chief Minister, Shri Tripathy, passed an order directing further re-employment of Shri Parija for one year. A memorandum was then prepared and was approved by the Council of Ministers on June 4, 1965. Shri Parija was ultimately relieved of the charge on June 11, 1966.

Another case, referred to by the State Government is that of Shri H. K. Kar, who was Assistant Engineer and Personal Assistant to the Superintending Engineer. Shri Kar completed his 55th year on September 15, 1961; but before that, on August 10, 1961, at the instance of the department he gave his consent in writing to his re-employment. On August 22, 1961, Shri Kar made a representation requesting that he might be promoted to the post of Executive Engineer since his name was second in the

list of permanent Assistant Engineers and a number of Executive Engineers were due to be promoted. The Chief Engineer recommended the case of Shri Kar for promotion to the rank of Executive Engineer since Shri Kar was due to retire and none was affected by his promotion. The Secretary of the Department in his note recommended the case of Shri Kar for re-employment as Assistant Engineer but he expressed his view against the promotion of Shri Kar as Executive Engineer. Shri Patnaik made an order, on August 30, 1961 that Shri Kar be promoted and re-employed for one year only, but the Public Service Commission declined to concur the promotion and re-employment of Shri Kar. Shri Kar's services were terminated thereafter with effect from July 17, 1962. To regularise the matter, a memorandum was placed before the Council of Ministers on August 9, 1962 and it gave its approval to the extension of service of Shri Kar from September 16, 1961 to July 17, 1962, as an Executive Engineer (provisional).

The State Government has further assailed the acts of the above mentioned respondents in promoting thirteen Inspectors of Police as Deputy Superintendents of Police. It is stated that the procedure for appointment of officers to the rank of Deputy Superintendent of Police is that the Range Selection Boards submit their recommendations to the Central Selection Board consisting of the Inspector-General of Police as Chairman and Deputy Inspector-Generals of Police as members. The Central Selection Board reviews the cases and draws up a final list of officers fit for promotion to the rank of Deputy Superintendent of Police. Those recommendations are sent to the Government for transmission to the Public Service Commission.

The Central Selection Board, it is stated, met on 10th to 12th May, 1962 and drew up a list of officers fit for promotion to the rank of Deputy Superintendent of Police. The list was forwarded to the Government along with a letter dated May 19, 1962. The proceedings of Supplementary Selection Board held on July 2, 1962 were also sent to the Government, as per letter dated July 5, 1962. The recommendations of the Central Selection Board were examined in the Home Department. The department suggested for inclusion in the list the names of three officers, who had been recommended by the Range Selection Boards but had not been recommended by the Central Selection Board. The department also suggested the detection of the names of some other officers.

When the matter was placed before the Home Minister, Shri Routray, he approved the suggestion of the department in respect of the inclusion of names of three officers and in addition to that he directed the inclusion of two more names Shri N. K. Jena and Shri S. Rahaman, whose names had been recommended by the Range Selection Boards but had not been recommended by the Central Selection Board. The list with the above changes was forwarded to the Public Service Commission on December 13, 1962. The Public Service Commission, as per letter dated August 21, 1963, indicated the names of officers who, in its opinion, were fit for promotion to the rank of Deputy Superintendent of Police. A further list of officers considered fit for promotion was sent by the Public Service Commission along with its letter dated September 26, 1963. This list included the name of Shri N. K. Jena. The Public Service Commission recommended the names of six officers who had neither been recommended by the Central Selection Board nor by the Government. The name of Shri Rahaman was not recommended by the Public Service Commission. As regards the case of two Assistant Public Prosecutors, whose names had been recommended by the Selection Board, the Commission stated that they were not eligible for promotion in the absence of any provision in the Rules. It was pointed out to the Public Service Commission that in the advertisement issued in 1954 calling for applications for the posts of Assistant Public Prosecutors, prospects were held out for promotion to the rank of Deputy Superintendent of Police after a service of five years. The Public Service Commission, however, observed that though the advertisement had been approved by the Government, the said provision of the advertisement had not been embodied in the Rules. The Government thereafter issued orders for incorporating a provision in the Rules making the Assistant Public Prosecutors eligible for promotion to the rank of Deputy Superintendent of Police. The Public Service Commission took exception to the amendment of the Rules without consultation with the Commission. The Commission, however, concurred in the appointment of two additional persons as Deputy Superintendents of Police.

On November 29, 1962, it is stated, the Inspector-General of Police intimated to the Government that a number of duty posts in the rank of Deputy Superintendents of Police were lying vacant for sometime and as a result thereof considerable difficulty was being experienced. As the previous list has been exhausted, and there existed an emergency, he suggested

that the vacancies should be filled up as early as possible. The State Government then made *ad hoc* appointment of thirteen officers as Deputy Superintendents of Police in March, April and May 1963 for a period of six months. Further extensions of six months each were granted for continuance of officers in the rank of Deputy Superintendents of Police till the end of 1964. The Public Service Commission sent its recommendation in respect of the new officers on September 26, 1963 and the recommendation of the Public Service Commission was accepted by the Government on August 19, 1964. It is stated that five other officers, who were senior to many officers, who got *ad hoc* promotion, were thus deprived of the chances of promotion during the period from September, 1963 till December 31, 1964.

The State Government concludes from the above that the respondents named above have been guilty of impropriety in dealing with public services in the State.

In support of the above allegations, the State Government has filed the affidavits of Shri Satyaranjan Pal, Under-Secretary, Finance Department, Shri Bama Charan Mitter, Under-Secretary, Works and Transport Department, Shri Abhoy Chandra Mohanty, Under-Secretary, Irrigation & Power Department and Shri Gadhadhar Misra, Under-Secretary, Home Department.

Shri Patnaik in the course of his affidavit has denied the charge levelled against him. He has pointed out the discrepancy in the particulars of allegation and the affidavit filed on behalf of the State Government. In the particulars of allegation it is mentioned that Shri Kar was to retire as Executive Engineer but he was promoted to the rank of Superintending Engineer by Shri Patnaik. In the supporting affidavit it is, however, stated that Shri Kar was to retire as an Assistant Engineer and was reappointed as Executive Engineer. Shri Patnaik further states that even before he assumed office, the case of Shri Kar had been examined and recommend for reappointment for one year. The officer then made a representation that he might be promoted as Executive Engineer as some of his juniors had already been promoted and some more were likely to be appointed. His case was recommended by the Chief Engineer and the Superintending Engineer and accordingly Shri Patnaik accepted the recommendation. When the re-employment of Shri Kar in the higher post was not approved by the Public Service Commission his service was terminated on July 17, 1962.

As regards Shri Raghabananda Panigrahi, Shri Patnaik states that his case was discussed and decided at official level and he signed the memorandum in token of approval. Shri Panigrahi, it is stated, proved to be an able officer and no favouritism was shown to him.

Dealing with the case of Shri Parija, Shri Patnaik states that he was the senior most Superintending Engineer, had rendered the longest service in execution of roads and building works and had been specially trained in the United States of America at the cost of the State in 1946. He was considered suitable for the job and his case had been recommended by the Secretariat. Shri Patnaik accepted the recommendation as he had no reason to disbelieve the evaluation of the departmental officials of the capacity of Shri Parija to undertake the task.

Shri Mitra in his affidavit has denied the allegation of any favouritism in dealing with public services. The appointment of Shri R. Panigrahi, it is stated, was made because it was felt that the scheme of Small Savings could be advanced by a person having large mass contact. It was necessary to educate the people in order to make a success of the scheme. As Shri Panigrahi was a social worker, who had a large contact with the common people, he was considered to be suitable for the job. There was, it is further stated no administrative impropriety in the appointment of Shri Parija.

Shri Tripathy in his affidavit has denied the charge levelled against him. According to him, the promotion of Shri Parija and his re-employment was no act of favouritism. Re-employment is given to officers in technical posts like engineers. The Council of Ministers later decided to eliminate the posts of Engineers from the category of technical posts which qualified for re-employment. Order was then made on June 5, 1966 that Shri Parija be not given any further re-employment and should hand over the charge on June 6, 1966. Shri Tripathy did not find any impropriety in the re-employment of Shri Parija. As regards Shri Panigrahi, it is stated that he proved himself to be the best officers of his cadre. There was no administrative impropriety in his case.

Shri Routray in his affidavit has repelled the charge levelled against him. Although the Government, according to Shri Routray, generally accepts the advice of the Public Service Commission, it is not bound to do so and the only

limitation is that when the advice of the Commission is not accepted by the Government the reasons for such non-acceptance are to be laid before the Legislature. The recommendations of the Central Selection Board of the Police Department are not binding on the Government. When the Inspector-General sends those recommendations to the Government he does so for the approval of the Government. Approval is not given like a rubber stamp and the recommendations are scrutinised in the department before being submitted to the Minister. The Minister then exercise his judgment and gives his decision. The different orders made by Shri Routray it is stated, were just and were intended to do justice to all concerned without any bias or prejudice against any one. Extension were granted to the *ad hoc* promotees on specific recommendations of the Secretary and with his categorical suggestions that the extensions were justified and permissible under the rules. Shri Routray adds that every Minister has to exercise his Judgment in matters of appointment, promotion and transfer. At the time a Minister makes an order, he takes into consideration papers and facts placed before him, the advice and opinion of his colleagues, who are competent to give advice and opinion, and any other information that is available to him. Every consideration that weighs in the mind of Minister in passing orders in such matters may not be reflected in the orders passed. Shri Routray asserts that he acted *bona fide* in making the different orders.

Shri Mohanty in his affidavit has denied the correctness of the allegation made against him. According to Shri Mohanty, he showed no favouritism to Shri Parija. Shri Mohanty took charge of the Public Works Department on February 21, 1965 and as such was not concerned with the department for most of the period covered by the allegation. After Shri Mohanty had taken over the Works Department, he was not in favour of granting extension to Shri Parija but he agreed to the course in view of the apprehension expressed by the Governor, who was an Engineer of International repute. Shri Mohanty had nothing to do with the promotion to thirteen Inspectors of Police as Deputy Superintendents. As regards Shri Kar and Shri Panigrahi, Shri Mohanty states that their appointments relate to a period when he was not even a Minister.

Shri Mardaraj in his affidavit has likewise denied the correctness of the allegations made against him. According to him he committed no impropriety in making the impugned orders.

The appointment of Shri Parija was made because he was the senior most Superintending Engineer. Shri Mardaraj was not in favour of granting extension to Shri Parija but he gave way to the suggestion of the Chief Minister and the Governor. Shri Mardaraj had nothing to do with the reappointment of Shri Kar.

Shri Mitra in his affidavit has denied that he showed any favouritism in the matter of public services.

Shri Mallik, too, has denied the correctness of the allegations made against him. According to Shri Mallik, he had nothing to do with the appointment of Shri Parija. He also made no order in respect of Shri Kar. Shri Mallik had also nothing to do with the promotion of Inspectors of Police as Deputy Superintendents. No favour was also shown by Shri Mallik in the matter of Shri Panigrahi.

Supplementary affidavits have been filed by Shri Subrat Joshi, Assistant Director, Public Relations-cum-Assistant Secretary (Home), Shri Bamacharan Mitter and Shri Satyaranjan Pal on behalf of the State Government as well as by Shri Patnaik.

The State Government has at the outset assailed the appointment of Shri Panigrahi as Deputy Director, Small Savings. In this connection I find that on April 27, 1962 the Deputy Secretary, P. & S. Department, addressed the following note to the Chief Secretary—

- “ Shri J. N. Patnaik, I. A. S., Deputy Director, Small Savings has been sanctioned leave preparatory to retirement with effect from the 1st May 1962. It is not possible, at the present moment, to post a senior I. A. S. Officer as Deputy Director, Small Savings, due to the shortage of Senior Officers even for more important assignments under the State Government and outside. It is, therefore, suggested that a suitable non-official with necessary experience may be recruited for this post.
2. The work requires extensive tour in the districts, contacting the official and non-officials at different levels in order to promote a climate for the Small Savings activities and to improve collection. Now that Panchayati Raj institutions have started playing a very important role in the State, a non-official can possibly be quite effective in making these institutions interested in the Small Savings Programme.
3. This was informally discussed with Minister, P. & S., who is also the Chairman of the State Small Savings Board and Chief Secretary. It has been suggested that Shri Raghabananda Panigrahi, who is a non-official with a varied experience of work, may be considered for the post. Shri Panigrahi has

worked as Provincial Organizer of Khadi and Village Industries Commercial Co-operative Institutions, the State Co-operative Marketing Society and also as a Sales Promotion Officer in some big foreign Fertilizer concern. He has travelled wide in the State and is reported to have given proof of his efficiency in canvassing to popularise a cause.

4. It is proposed to keep the present post of Deputy Director, Small Savings, which was created in the senior scale of I.A.S. in abeyance and to create a post of Special Officer, Small Savings. This post may carry a fixed pay of Rs. 750 per month and Shri Panigrahi may be appointed to this post on a contract basis for a period of one year to start with. If his work is found to be satisfactory, the term of the contract may be extended for a further period as it may suit Government.

This post has not been indentified in any Cadre. No other service will be affected by reason of its being kept in abeyance. It was actually filled up by I.A.S. Officers, O.A.S., Class I and O.A.S., Class II Officers at different times during the last five years.

If approved, the Finance Department may be requested to further process this proposal."

When the note was put up before Shri Patnaik, he forwarded it to the Secretary, Finance Department, with the query "will you consider this"? On July 24, 1964, the Finance Secretary, recorded the following note:

"It has been the experience so far that Small Savings is mostly confined to the urban areas and very little success has been achieved in making the rural people, especially the big agriculturists, savings minded. Now with the establishment of Zilla Parishads and Panchayat Samitis, attempt should be made to popularise savings drive in the rural area and for this purpose a suitable non-official may prove to be more useful than an official. Such an experiment though it has certain obvious disadvantages inasmuch as such a non-official might not carry sufficient weight with the officials at the district level, who now ensure most of the savings from contractors and other parties who have direct dealings with Government, yet the experiment is worth trying with the help of a suitable experienced man who may be able to get co-operation of officials also. Shri Raghabananda Panigrahi, a non-official with varied experience of work as Provincial Organizer of Khadi and Village Industries, in Commercial Co-operative Institution, in the State Co-operative Marketing Society and as a Sales Promotion Officer in Orissa for a foreign fertiliser concern, is considered suitable for such an assignment and he may be appointed for a period of one year on a fixed pay of Rs. 750 per month and his work reviewed after this period.

2. The draft Memorandum placed below may be amended as above by deleting all that has been noted in pages 2 and 3 of the draft Memorandum."

On August 6, 1962, the Chief Secretary forwarded the draft Memorandum to the Chief Minister with the request that it might be perused and approved. Shri Patnaik signed the note of the Chief Secretary. On August 10, 1962, the Finance Secretary recorded a note in view of the latest decision of the Council of Ministers that proposal for creation of posts carrying pay of Rs. 1,000 only should be submitted to the Cabinet, the case need not be placed before the Cabinet. The Finance Secretary directed that appointment order might issue. On August 11, 1962 notification about the appointment of Shri R. Panigrahi as Deputy Director of Small Savings on a fixed pay of Rs. 750 per month was issued. In the copy of the notification forwarded to Shri Panigrahi it was stated that his appointment was provisional for a period of six months in the first instance and was subject to the concurrence of the Public Service Commission.

When the Public Service Commission was asked to concur in the appointment, it declined to do so and stated that the post should be advertised. Another letter was sent to the Public Service Commission on February 13, 1963 giving reasons for the retention of Shri Panigrahi in the post without advertising the same. It was stated that after the appointment of Shri Panigrahi there had been remarkable achievement in the target due to his varied experience and strenuous efforts. As no reply was received from the Public Service Commission and as the period of six months for which Shri Panigrahi had been initially appointed had expired, Shri Mitra agreed on March 6, 1963 to the suggestion of the Finance Secretary regarding the retention of Shri Panigrahi for a further period of six months. On April 6, 1963, the Public Service Commission sent a letter to the State Government reiterating its earlier view that the post of Deputy Director of Small Savings should be filled in after advertisement. An office note was then recorded that Shri Panigrahi had achieved a fair measure of success and his work had been appreciated by the Chairman, Central Advisory Board. It was further stated that in view of the good work done by Shri Panigrahi a Memorandum should be put up before the Cabinet for disregarding the advice of the Public Service Commission. A Memorandum was then prepared in the course of which it was stated that Shri Panigrahi had joined the post in August 1962. By the end of December 1962, it was stated, the total net collections was Rs. 1,59,96,000 against a net collection of Rs. 1,32,92,000 during the corresponding period of 1961-62. According further to the Memorandum, the Small Savings Collections in Orissa in 1962-63

amounted to Rs. 2,53,00,000 as against Rs. 1,92,00,000 collected in the corresponding period of 1961-62. Orissa was stated to be one of the six States of Indian Union which had higher collections in 1962-63 compared to 1961-62. There was also reference to a number of other schemes which had been introduced to boost Small Savings. The Cabinet in its meeting held on June 5, 1963 approved the proposal for the continuation for three years of Shri Panigrahi in the post of Deputy Director, Small Savings, in disregard of the advice of the Public Service Commission. On June 17, 1966, the Cabinet granted further extension of three years to Shri Panigrahi as Deputy Director, Small Savings, in accordance with the Memorandum prepared under the direction of Shri Tripathy.

It would appear from the above that Shri Panigrahi was appointed Deputy Director, Small Savings, because of the shortage of I.A.S. Officers. It was also felt that for rural areas, where the scheme of Small Savings had not made much headway in the past, Shri Panigrahi with his background would prove more efficient. Shri Panigrahi justified the confidence which was reposed in him and this is evident from the total figure of Small Savings. The following statement shows the gross and net collections under Small Savings Securities along with the matching loan received from the Government of India by the State of Orissa during the Third Five-Year Plan period 1961-62 to 1965-66 :—

" Year	Gross collection	Net collection	Loan received from Government of India
(1)	(2)	(3)	(4)
	Rs.	Rs.	Rs.
1961-62 ..	7,04,35,000	2,08,26,000	1,24,00,700
1962-63 ..	9,12,54,000	2,73,35,000	1,55,00,000
1963-64 ..	10,02,81,000	2,94,28,000	1,57,00,000
1964-65 ..	10,61,80,000	3,21,78,000	2,28,00,000
1965-66 ..	11,50,00,000	3,00,00,000	2,50,00,000
	(Approximately)	(Approximately)	
	48,31,50,000	13,97,67,000	9,15,00,700

The target amount of the net collections for the Third Plan period was Rs. 12,75,00,000 and of the loan from the Government of India was Rs. 8,50,00,000. There was an excess of Rs. 1,22,00,000 so far as the collections were concerned and of Rs. 65,00,000 so far as the loan received from the Government of India was concerned, above the target. The work done in Orissa for Small Savings after the appointment of Shri Panigrahi was also commended by the Central Government authorities. The material on the record shows that the Government of India decided that out of the net collections of every State, the State Government should be allocated loan to the extent of 2/3rd for effective mobilization of Small Savings.

Reference has been made on behalf of the State Government to the time scale of Rs. 800—1,250 given to Shri Panigrahi. In this connection, I find that Shri Panigrahi was initially appointed on a fix salary of Rs. 750 per month. He made repeated representations for grant of increment. On July 19, 1966 the Deputy Secretary, Finance, in the course of his note, stated regarding Shri Panigrahi:

“The officer has already put in four years’ service on a consolidated pay of Rs. 750 per month. It would not be desirable to deny normal incremental benefits to this officer any further. Increments provide incentive to work and so in the interest of work, a regular scale of pay should be given to this officer. Rs. 750, which is being given to him as pay, the initial stage in the pre-revised Class I scale of pay of Rs. 750—1,150. This scale has been revised to Rs. 800—1,250, with effect from 1-1-1965. It would be fair to sanction this scale in favour of Shri Panigrahi, with effect from 1-1-1965. By this, he would be able to earn over increment on 1-1-1966 raising his pay to Rs. 850 per month, besides getting a suitable arrear pay which he deserves.”

The above recommendation was supported by the Additional Secretary, Finance, Secretary, Finance, Additional Chief Secretary and was accepted by Shri Mallik on July 30, 1966 and Shri Tripathy on August 3, 1966. No inference of impropriety, in my opinion, can be drawn against Shri Mallik and Shri Tripathy for their accepting the unanimous recommendation of the departmental officers.

The State Government has next assailed the order dated August 30, 1961 made by Shri Patnaik in respect of Shri H. K. Kar. The order reads as under:—

“Shri Kar should be appointed and re-employed for one year only.

Sd. B. Patnaik
30-8-61.”

In respect of the above order of Shri Patnaik, I find that Shri Kar was due to retire on September 16, 1961. In August, 1961, Shri Kar was Assistant Engineer. Recommendation was made for his re-employment by the Chief Engineer. Shri Kar then represented that he might be promoted to the rank of Executive Engineer. The above representation of Shri Kar was forwarded by the Chief Engineer with the following observations :—

“ In forwarding herewith the representation of Shri H. K. Kar, Assistant Engineer, for reconsideration of his case for promotion to the rank of Executive Engineer, I like to mention that Shri Kar's work was found to be satisfactory. The only reason for which perhaps his case was not considered for promotion is that he will retire on 16th September, 1961 and as such he has got to serve in the Department for less than a month. If this does not stand in his way of promotion, I think there is no reason to debar him as I find, and also mentioned by him, that some of his juniors in the Roads & Buildings wing have already been promoted to the rank of Executive Engineers although their C. C. Rs. are no better than Shri Kar's. The only reason is that short period of his stay after he is promoted. Perhaps by such promotion no one will be affected seriously as by the time the Assistant Engineers who are proposed to be Executive Engineers, join their new appointments, Shri Kar will retire from service. So, I think there may not be any objection in giving him his due place although he has a very brief period to stay. ”

The Secretary of the Department suggested that Shri Kar might not be promoted as Executive Engineer but should be re-employed for one year from the date of superannuation provided he agreed to work as an Assistant Engineer.

It would appear from the above that there was a difference between the Chief Engineer and the Secretary of the Department regarding Shri Kar. The Chief Engineer wanted that Shri Kar might be re-employed for one year as well as given promotion as Executive Engineer. The Secretary wanted that Shri Kar should not be promoted but should only be offered re-employment. Shri Patnaik preferred the recommendation of the Chief Engineer to that of the Secretary. This was a decision taken by Shri Patnaik in exercise of his administrative powers and, in my opinion, no inference of impropriety can be drawn against him on that score. There is nothing to show that Shri Patnaik had any personal interest in Shri Kar.

As regards Shri K. C. Parija, the only orders of which the propriety has been assailed on behalf of the State Government at the time of arguments, are those made by Shri Patnaik on

March 20, 1962 and June 21, 1962. In this respect, I find that though some of the entries in the confidential character roll of Shri Parija were not favourable, he was the senior most Superintending Engineer. Shri Parija was also found to have rendered the longest period of service in execution of roads and buildings work and had been specially trained in the United States of America at the cost of the State in 1946. The office notes shows that Shri Patnaik was rather hesitant to appoint Shri Parija and agreed to the proposal when the Chief Secretary pointed out that Shri Parija would be able to deliver the goods. Shri Patnaik approved the recommendation of the Chief Secretary with the words :—

“ Let me hope the C. S's. sizing up of Parija would be justified by Shri Parija's work. ”

The impugned orders were made by Shri Patnaik in exercise of his administrative powers and, in my opinion, it cannot be said that they are vitiated by any impropriety. It has also to be borne in mind that Shri Patnaik had no personal interest in the appointment of Shri Parija.

Regarding the promotion of 13 Inspectors of Police as Deputy Superintendents of Police, the propriety of order dated November 29, 1962 made by Shri Routray has been challenged at the time of arguments. The above order reads as under :—

“ As regards ‘C’ I have gone through the C. C. Rs. of Shri S. N. Mahapatra and Shri N. K. Jena. While Shri Mahapatra's records are indifferent, I see no reason why Shri Jena's name should not be included in the list. His name may, therefore, be included.

Further, I have seen the C. C. R. of Shri S. Rahaman who was recommended by the Range Board, but not by the Central Selection Board. He is a very senior officer and is due to retire on 12th September 1964. In 1958, the remarks of the S. P. and D. I.-G. about him are good and there is nothing adverse. In fact, the remarks of S. P. is that the officer is well considered for promotion. Subsequently, in the Koraput district, his records have not been satisfactory. But this may not be the only reason for excluding his name. It may therefore be sent to the P. S. C. for consideration. ”

Sd. N. Routray

29th November, 1962

Perusal of the above order shows that Shri Routray gave reason in support of the order and, in my opinion, there was nothing manifestly unreasonable or improper about the order which was made by Shri Routray in exercise of his administrative powers. It is significant that the recommendation of Shri Routray in respect of Shri N. K. Jena, as contained in the above order, was accepted by the Public Service Commission. Since the Public Service Commission declined to concur in the appointment of Shri Rahman, he was ordered to be reverted by Shri Routray, as per order dated July 4, 1964. There is nothing to show that Shri Routray had any personal interest in Shri Rahman.

As a result of the above, I would hold that the charge of impropriety as contained in this allegation, had not been proved against the respondents.

CHAPTER 69

ALLEGATION No. 69

Re:

Allotment of Land in New Capital, Bhubaneswar

Allegation No. 69 relates to alleged impropriety in allotment of plots of land in New Capital, Bhubaneswar. The respondents named in the allegation are Shri Patnaik, Shri Mitra, Shri Tripathy, Shri Mohanty, Shri Routray, Shri Brundaban Nayak, Shri Chittaranjan Naik and Shri Deo.

According to the case of the State Government, till the end of 1959 lands in the New Capital for residential purposes were allotted by the Co-operative Societies and for Industrial and commercial purposes by the allotment committee constituted by the Government. In 1960, the allotment committee was wound up and it was decided that the lands be leased out according to the rules framed for the purpose. The Estate Officer was to deal with the applications for land in the first instance and an appeal was to lie to the Government. According to the rules, Government lands were divided into different units, and those units were divided into various categories like :

(1) land for low income group,

(2) land for persons other than those in low income group,

(3) land for commercial and other purposes to be settled by auction,

(4) land reserved for Government use.

Persons with an income not exceeding Rs. 2,400 per annum were considered to be belonging to low income group. Government had the discretion to exempt or fix any premium for the people belonging to low income group. Rent of the land for that group was fixed at Rs. 150 per acre per annum. The allotment of land to the people other than those belonging to low income group was made through Co-operative Societies. For them the premium was Rs. 10,000 per acre, and the annual rent was Rs. 150 per acre. On June 20, 1963 the Deputy Chief Minister, Shri Mitra, made an order for

constituting an Advisory Committee consisting of the Capital Administration Minister as its Chairman. The Local M. L. A. and some officers were its members. The Advisory Committee came into existence in August 1963. Shri Mohanty, who was local M.L.A. at that time, was one of its member. The function of the Committee was to advise the Government in preparation of Master Plan, allotment of lands and other important matters relating to the Capital. The Master Plan for the New Capital was drawn by Dr. Otto H. Keenigsberger. The Master Plan which demarcated land for specific purposes in different sectors, was not notified under the Town Planning Act. The management of the New Capital, which was originally under the Works Department, was then handed over to the Revenue Department. For the undeveloped area, the premium was at first fixed at Rs. 2,000 per acre for lease of land to Co-operative Societies and Rs. 5,000 for others. But in 1962 it was decided that there should be no difference in the premium for undeveloped land. The concession to the Co-operative Societies was also withdrawn in October, 1964. From August, 1963 till February, 1967 there were six meetings of the Advisory Committee. In the second meeting of the Advisory Committee held on December 10, 1963, Shri Mohanty, who had in the meantime become a Minister, was present. Before approving the proceedings of that Committee, Shri Routray wanted to know about the allotment of shop-cum-residential plots in Unit No. III in favour of Shri Raj Kishore Sahu, Proprietor of Raj Mahal Hotel, and Shri Birabar Maharana, a supporter of the Congress Ministers. In the third meeting held on April 29, 1964, Shri Mohanty expressed the view that Shri Birabara Maharana, who was in occupation of Plot No. 41 in Unit II should be allowed to retain that plot and one more plot should be given to him in exchange of the plot to be released by him in the station square area. Shri Mohanty also desired that a little space of land might be allotted to him (Shri Mohanty) contiguous to his land. Accordingly, the Committee decided that 14 decimals out of adjoining plot of land might be allotted in favour of Shri H. K. Ghosh, Finance Secretary, and the remaining $6\frac{1}{2}$ decimals of that space be allotted in favour of Shri Mohanty. In the fourth meeting held on August 6, 1964 decision was taken to allot plot No. 41 in addition to plot No. 112 to Shri Birabara Maharana. In the sixth meeting held on January 10, 1967, the Advisory Committee decided to allot 42 plots of land to M.L.As. and M. Ps. Besides that, plots were allotted to Doctors and Army Personnel. Plots in that meeting were also allotted to Shri Gobinda Choudhury and his relatives.

Government Policy, it is stated, was laid down that no plots could be allotted in favour of persons who already owned a plot within the New Capital area for residential purpose. In order to enforce that principle, each allottee was required to file a declaration indicating that neither he nor any of his family members owned any land within the New Capital area. This rule, it is stated, was not enforced in the case of Ministers and their favourites. There was also a restriction that no person, who had been allotted a plot in shop-cum-residential area, should be allotted any other plot. This principle too was not followed.

On an application, dated February 17, 1960 of Shri Routray a plot of land was allotted to him near Bhubaneswar Railway Station. Shri Routray took over possession of the same on August 1, 1962. On August 6, 1963, Shri Routray wanted permission to transfer that plot in favour of his wife. On August 21, 1963, the Estate Officer submitted that since this was a transfer by a husband in favour of his wife, there could be hardly no doubt about the *bona fides* of the transaction. On August 24, 1963, Shri Mitra accorded sanction for the transfer. The transfer was thereafter effected on September 30, 1963. On March 19, 1965, Shrimati Routray wanted a certificate of non-encumbrance and permission to mortgage the land for obtaining a loan. The Estate Officer passed orders on March 31, 1965 for issue of the requisite certificate and for grant of permission.

A plot of land in front of Kalpana Cinema was allotted to Shri Brundaban Nayak in 1960 for residential purpose. Shri Nayak rented it out to Kalinga Automobiles. An unauthorised construction, it is stated, was made on the plot by the Kalinga Automobiles. A plot of land was also allotted to Shri Mallik in 1960 on concessional rate of premium because the income of Shri Mallik was then stated to be less than Rs. 6,000 per annum. Allotment of plots of land was made in favour of Shri Chittaranjan Naik and Shri Deo even though they did not mention the names of their relatives in the declaration form. Likewise, plots of land were allotted to Shri Lingaraj Panigrahi, Speaker of the Legislative Assembly and Shri Bibhuthendra Mishra, Deputy Minister, Law, Government of India, in 1962. Shri Panigrahi in his declaration did not mention the names of his relatives, while Shri Mitra's application did not contain the requisite particulars. The lease-deed in favour of Shri Mishra was permitted to be executed pending all

formalities on December 19, 1962. Shri Madan Mohan Pradhan, to whom a plot was allotted in 1963, also did not mention the names of his relatives in the declaration filed by him.

Shri Mohanty, it is stated, was the Managing Trustee of the Lingaraj Temple since the inception of the Board of Trustees. Shri Mohanty had a residential house in old Bhubaneswar. A number of plots were transferred in favour of Shri Mohanty and his relatives during the year 1960 and January and February, 1961. As those transfers relate to a period prior to June 23, 1961, it is not necessary to go into the propriety of those transactions. In April, 1963 the Capital Administration Department directed the Amin to report if the building on the residential plot allotted to Shri Mohanty had been completed by him so that Shri Mohanty could vacate the Government building and shift to his own building. A report was then made that Shri Mohanty after completing the building had rented out four rooms towards the front for shop and commercial purposes.

Shri Brundaban Patra, it is stated, was allotted a plot of land measuring $20\frac{1}{2}$ decimals in front of Kalpana Cinema for residential purposes. This plot was adjacent to the plots already allotted to Shri Mohanty and Shri Ghosh, Finance Secretary. Shri Patra executed lease-deeds on October 17, 1960. According to the terms of the lease-deeds, Shri Patra was required to complete construction of the building within 36 months time from the date of execution of the deeds. Even before the expiry of the stipulated period a notice was issued to Shri Patra on August 2, 1963 to show cause why his lease be not terminated because of his having not started the construction of the building. Shri Patra then submitted a petition asking for extension of time with effect from October 1963 for the construction of the building. The petition of Shri Patra was rejected on the ground that he had neither the capacity nor the will to put up the house and that he was bidding his time to get a good party who could pay him a substantial sum for the said plot. Order for the termination of the lease of Shri Patra was passed by Shri Routray and the same was communicated to Shri Patra on May 14, 1964. The decision was then taken to allot 14 decimals out of the above-mentioned plot to Shri Ghosh and the remaining $6\frac{1}{2}$ decimals to Shri Mohanty as already stated earlier. On November 30, 1964, Shri Mohanty wrote to the Estate Officer that he

would not like to deprive the original allottee of his land in case he was keen to have his own building in the New Capital. The matter was shelved thereafter till 1966. On July 6, 1966 the Estate Officer wrote to Shri Mohanty requesting him to execute supplementary lease-deed. He also intimated that Shri Patra had been allotted another plot in the shop-cum-residential area. Shri Mohanty was requested to execute the lease-deed in July 1966. Shri Mohanty then obtained extension of time from Shri Nilamani Routray. Shri Mohanty paid the premium on February 27, 1967 and executed the lease-deed on March 2, 1967. There was, it is stated, much public wrath against Shri Mohanty and Shri Ghosh and during the students' disturbance in 1964 the house of Shri Mohanty was set on fire.

Shri Pitambar Patnaik, a Congress worker, it is stated encroached upon Government land near Budheswari Temple. The aforesaid land had been given to Capital Co-operative Building Society. A notice was served on Shri Pitambar Patnaik on March 28, 1963. He submitted petitions to the Government requesting for allotment of the encroached area. Shri Pitambar Patnaik also referred to the fact that his land in village Siripur Barmunda had been acquired by the Government. The Capital Advisory Committee then decided to allot the land in question to Shri Pitambar Patnaik for industrial-cum-business purposes on a premium of Rs. 25,000 per acre with ground-rent of Rs. 150 per annum.

An application for allotment of land was also made by Shri Gouranga Charan Mohanty, Chief Liaison Officer of Tata Iron & Steel Company, Jamsedpur. Although he was a member of Ekamra Co-operative Society, the Secretary did not recommend allotment of land to him. Shri Gouranga Charan Mohanty then met the Chief Minister who desired that a small plot of land should be allotted to him as a special case since Shri Mohanty had been staying out of the State and wanted to come back at the fag end of his career. It was also observed that in the context of the growth of ambitious agro-industrial complex representatives of trade and industry must be provided space in the Capital. A plot of land at a higher rate of premium, i.e., Rs. 25,000 per acre was then allotted to Shri Mohanty. Four plots of land were also allotted to Shri Gobinda Choudhury and his relatives. The allottees encroached on Government land. There was a dispute with regard to the allotment of two of the plots and Shri Choudhury filed a suit. Although the Government

pleader was of the view that the Government had a good case, a compromise was arrived at in the suit and lease of the two plots in dispute was granted in favour of Shri Choudhury. This was with the approval of Shri Routray. Plots of land were also allotted in favour of Shri Raj Kishore Sahu, Proprietor of the Raj Mahal Hotel and his relatives. When Shri Sahu made encroachment on the space in front of the plot, Shri Mitra desired that as the encroachment did not interfere with the lay-out of the road, the encroached area should be settled with Shri Sahu on payment of premium. Shri Sahu was also permitted to transfer two of his plots by Shri Routray. The State Government concludes from the above that impropriety in the allotment of plots was committed by the respondents named above.

In support of the above allegation, the State Government has filed the affidavits of Shri Sashibhusan Mishra, Deputy Estate Officer-cum-Under-Secretary, and Inspector Gouranga Patra (Vigilance).

Shri Patnaik in his affidavit has pointed out that no specific charge has been made against him which he is called upon to answer. He has added that during his time the price of the land in the New Capital was increased and Rules were framed in order to streamline the procedures for allotment of land.

Shri Mitra in his affidavit has denied the charge of the allotment of land to any one in New Capital, Bhubaneswar in violation of established rules and procedure. According to Shri Mitra, no land has been allotted to him or his wife. The allotments were made in accordance with the recommendations received from time to time from the officials concerned. No favouritism was shown in the matter.

Shri Tripathy in his affidavit has likewise denied the allegation of favouritism. As regards the allotment of land to Shri G. C. Mohanty, Shri Tripathy states that the land was not allotted at reduced rates and as such there was no pecuniary loss to the Government.

Shri Routray in his affidavit has stated that Bhubaneswar in Orissa and Chandigarh in Punjab were the two modern State Capitals which come into existence after independence. Whereas Chandigarh has considerably developed into a city, Bhubaneswar is still a small town and its growth is very much

hampered. Bhubaneswar is not a business centre and people are not eager to invest money here in buildings. Government took various steps to encourage people to put up buildings at Bhubaneswar and therefore at the initial state Government was very liberal in the matter of allotment of land in the New Capital. At a certain period it was even in contemplation to allot lands free of premium to shop-keepers for shop-cum-residence and also to the other categories at nominal premium. It was only when the construction of Paradeep Port was taken up that business activities spread to Bhubaneswar. The matters relating to allotment of lands in Bhubaneswar, it is stated, should be judged against the above background. Shri Routray as Minister-in-charge of Department does not recollect having ever disregarded the recommendations of any Co-operative Societies or of the Advisory Committee, except in respect of the proceeding of the last meeting of the Advisory Committee over which he presided, when he did not think it proper to implement the decision of the Advisory Committee on the even of the election. No impropriety, it is stated, was committed in the allotment of lands. Shri Routray exercised his judgment and acted *bona fide* taking in view the circumstances of each case. Declaration about the non-possession of any other plot in Bhubaneswar, Shri Routray believes, is a recent innovation and it was not there when he purchased his plot. The allotment of land in favour of Shri Routray was made before October 1960 and the lease-deed in his favour was executed in October 6, 1960. As regards the transfer of the plot in favour of his wife, Shri Routray stated that this was in pursuance of a gift-deed with the permission of the Government. There was no impropriety in the transfer or the mortgage of the land for raising the loan.

Shri Mohanty in his affidavit has repelled the charge levelled against him. According to Shri Mohanty he was sworn in as a Minister on October 2, 1963 and prior to that he as the local M. L. A. was member of the Advisory Committee with effect from August 20, 1963. Most of the matters in the affidavit filed on behalf of the State Government, it is pointed out, relate to the period before Shri Mohanty assumed office as Minister. Some of the instances, it is further pointed out, relate even to the period of 1936 when the State of Orissa was not born. The policy of the settlement of land was followed according to the decision of the Government and the Allotment Committee simply functioned as a recommending body. Shri Mohanty

as a local man put forth the grievances of local people who met with many difficulties at the initial state in connection with planned development of the New Capital. Initially the Government was interested in the people who could actually complete the building within the given period and the existence of other residential building or building sites in the name of the lessee was not taken into account. Circulars were also issued that in allotting plots of land preference be given to those who were in prior occupation and has had erected thatched sheds. As regards the allotment of $6\frac{1}{2}$ decimals of land in favour, Shri Mohanty stated that the same was not on reduced premium. No favouritism was shown to him. Notice, dated August 2, 1963 issued to Shri Brundaban Patra was at a time when Shri Mohanty was neither a member of the Advisory Committee nor a Minister. Even when the final allotment of $6\frac{1}{2}$ decimals of land out of the land of Shri Patra was made in favour of Shri Mohanty, he by letter dated November 30, 1964 expressed the desire that the original plot allottee should not be deprived of his land in case he was interested to have his own building. Shri Mohanty did not pursue the matter thereafter and deposited the premium after he had resigned his office.

Shri Brundaban Nayak in his affidavit has stated that the only allotment of plot of land in his favour was in the year 1960. As such, the allotment does not come under the purview of the present Commission of Inquiry. There was nothing irregular in renting out the house. As regards the allegation of unauthorised construction, it is stated the same is irrelevant.

Shri Chittaranjan Naik in his affidavit has stated that he gave a declaration at the time of the allotment of plot of land in his favour but the form of declaration did not require the mention of the names of the relatives. It is added that none of the relatives of Shri Naik, as mentioned in the declaration form, owns any piece of land at Bhubaneswar even now.

Shri Deo in his affidavit has stated the statement that none of his relatives or family members specified in the application form has any land in the New Capital, is true. If there was any omission in the application form it was absolutely unintentional and was the result of an oversight.

Shri Bibhudendra Mishra too has filed his affidavit in respect of this allegation. According to Shri Mishra he was a member of the Senate, Syndicate and Academic Council of the Utkal University for a number of years; a member of the Central Council of Ministers as Deputy Minister in the Ministry of Law and subsequently as Minister of State in the Ministry of Industry. Shri Mishra as a member of the Ekamra Co-operative Building Society, applied for a plot of land. Before the allotment the Estate Officer required Shri Mishra to furnish declaration. The declaration form signed by him nowhere asked for the names of his family members to be given. In case the Government wanted their names he would have given the same. It is further stated that uptill now no relative of Shri Mishra, mentioned in the declaration form has been granted lease of any plot of land in the New Capital. The allegation that favouritism was shown to him has been denied by Shri Mishra.

Supplementary affidavits have been filed by Shri Sashibushan Mishra on behalf of the State Government, Shri Routray and Shri Mohanty.

The first argument, which has been advanced on behalf of the State Government in respect of this allegation, is that Kalinga Automobiles, who were tenants of Shri Brundaban Nayak in his building near Kalpana Cinema, made some unauthorised construction which obstructed the flow of breeze to the house of Shri H. K. Ghosh, Finance Secretary. In this respect I find that Kalinga Automobiles on receipt of copy of letter from the Estate Officer containing the above complaint wrote back on April 11, 1963 to the Estate Officer that they would see that the structure did not block the passage of breeze to the adjacent building. It was also pointed out by Kalinga Automobiles that they had put up a temporary shed as it was difficult for their workers to work in the open during summer. There is nothing to show that the Kalinga Automobiles had put up the construction in question at the instance of Shri Nayak and in my opinion, no inference of impropriety can be drawn against Shri Nayak on that score.

Argument has then been advanced on behalf of the State Government that Shri Mohanty constructed a building consisting of shop-cum-residence on the plot transferred in his favour by one Shri K. C. Naik. It is urged that the aforesaid plot had been leased out only for the purpose of residential building. In this respect I find that the plot of Shri K. C. Naik was transferred in favour of Shri Mohanty before June

23, 1961 and as such the propriety of that transfer cannot be assailed in these proceedings. Shri Mohanty in order to make construction on the plot put in a plan for shop-cum-residential building. The plan was countersigned by the Estate Officer on March 23, 1961 and was approved by the Notified Area Committee on April 8, 1961 at a time when the State was under the President's Rule. As permission for the construction of shop-cum-residential building on the plot in question was granted to Shri Mohanty before June 23, 1961 no objection, in my opinion, can be entertained to the construction of that building in these proceedings.

It has next been argued on behalf of the State Government that Shri Routray committed an impropriety in making order dated April 10, 1964 relating to the determination of the lease of plot in favour of Shri Brundaban Patra. Regarding the above order, I find that the note of Shri A. N. Tiwari as Estate Officer as well as that of Shri A. K. Barren, Additional Chief Secretary, along with the order Shri Routray, read as under:—

“Addl. Chief Secy.

Shri Brundaban Patra was allotted plot No. 2 in front of Kalpana Cinema on 17-10-1960. He was to complete the construction within 36 months which has expired on 17-10-1963. No steps have been taken by Shri Patra for construction of the house. On the other hand, Shri Patra was going about bargaining for this site, so that he can dispose of the same at a substantial consideration.

2. Law Deptt. who were consulted, have advised *vide* p. 11/n that in cases where the lease has been registered, but no construction has been put up within the stipulated period, the lease can be straightway determined. Strictly speaking, in terms of lease, no notice is necessary. But Law Deptt. have thought it expedient to give a notice of determination of lease *vide* draft 'T' placed below. After service of the notice of determination, possession will be taken.
3. It is, therefore, submitted that Govt. orders determining the lease of Shri Brundaban Patra as advised by Law Department may kindly be obtained.

Sd. A. N. Tiwari

5th December 1963

M (P & S)

Notice is necessary & none should be given. The lessee has not built & is attempting to dispose of the plot. The lease may be determined.

Sd. A. K. Barren

6/4/64

Agreed

Sd. N. Routray

10/4/64 "

It would appear from the above that the Estate Officer had represented in his note that Shri Brundaban Patra had not only taken no steps for the construction of the house on the plot in question within 36 months but he had also been going out for negotiating sale of the plot for a higher price. Both the Estate Officer as well as the Additional Chief Secretary in the circumstances recommended that the lease of the plot in favour of Shri Patra might be determined. In the context of the above facts, Shri Routray, in my opinion, committed no impropriety in accepting the recommendation of the Estate Officer and the Additional Chief Secretary.

The State Government has also assailed the propriety of the allotment of $6\frac{1}{2}$ decimals out of the above-mentioned plot of Shri Patra in favour of Shri Mohanty. In this connection I find that on October 14, 1963, Shri H. K. Ghosh, Finance Secretary, made an application to the Estate Officer that as the plot of Shri Patra was likely to be resumed by the Government he might be allotted that plot because it was contiguous to the plot on which Shri Ghosh had constructed his residential house. A meeting of the Capital Advisory Committee was held on April 29, 1964. Shri Mohanty, who was one of the members of that Committee, was present in the meeting. The following is the record of proceedings relating to the said plot:—

"Plot No. 2 measuring $20\frac{1}{2}$ decimals in front of Kalpana Cinema has since been resumed by Government. Shri H. K. Ghosh, Secretary, Finance has been allotted the adjoining plot, namely, plot No. 3, covering $20\frac{1}{2}$ decimals. He finds himself sandwiched by a moter garage on one side and laundry and hotel on the other. It has become difficult for him to stay in this area. He has, therefore, requested for allotment of the adjoining site measuring $20\frac{1}{2}$ decimals in his favour so that he could

plan development of his house suitably. The other adjoining plot No. 1 has been allotted in favour of Shri S. P. Mohanty. Shri Mohanty desired that a little space should be given to him adjoining his site. Accordingly the Committee decided that 14 decimals of the adjoining space may be allotted in favour of Shri H. K. Ghosh and the remaining $6\frac{1}{2}$ decimals of the adjoining space may be allotted in favour of Shri S. P. Mohanty on usual terms."

Perusal of the above goes to show that when the major part of the plot in question was being allotted to Shri H. K. Ghosh on the ground of contiguity, Shri Mohanty, whose plot was also contiguous to the plot in question, desired that the remaining $6\frac{1}{2}$ decimals might be allotted to him, $6\frac{1}{2}$ decimals of the plot were, accordingly, allotted to Shri Mohanty on usual terms. On November 30, 1964, Shri Mohanty informed the Estate Officer that he did not want the $6\frac{1}{2}$ decimals of the plot in case the original owner was keen to have his own building in the New Capital of State. Shri Brundaban Patra in the meantime was allotted to other plots and apparently had no interest left in the above-mentioned $6\frac{1}{2}$ decimals of land. Shri Mohanty was asked in July, 1966 to execute supplementary lease-deed in respect of $6\frac{1}{2}$ decimals of land. As no lease-deed in favour of Shri Mohanty was executed till February, 1967, on his application time was allowed till March 12, 1967 for execution of the lease-deed. The above facts, in my opinion, do not warrant an inference of impropriety on the part of Shri Mohanty.

It has been urged on behalf of the State Government that the allotment of a plot in favour of Shri Birabar Maharana at the instance of Shri Mohanty was not proper. There is no force in this contention because the proceedings of the meeting of the Advisory Committee dated August 6, 1964 show that Shri Maharana was an old settler and had been staying in the Capital for a long time. It was also brought to the notice of the Advisory Committee that Shri Maharana had been occupying the plot in question from the inception of the Capital and the Committee felt that it was a fit case in which that plot should be settled with him.

Argument has been advanced on behalf of the State Government that there was impropriety in the transfer of his plot by Shri Routray in favour of his wife. In this connection I find that the transfer was allowed on the basis of application dated August 6, 1963 of Shri Routray. The office note shows that there was a precedent regarding the permission for such

a transfer. The Secretary in his note stated that there was hardly any doubt about the *bona fides* of the transaction as the transfer was by the husband in favour of the wife. Shri Mitra thereafter accorded the necessary sanction on August 24, 1963 and I find nothing improper in that.

Another allotment, which has been assailed on behalf of the State Government, is that in favour of Shri Pitambar Patnaik. Regarding this allotment I find that on July 20, 1963, Shri Pitambar Patnaik made an application stating that his family consisted of 15 persons and that his land in the vicinity of Agricultural College and Regional College had been acquired. Shri Pitambar Patnaik had also taken possession of some other land in the New Capital and he was evicted from that land. On August 6, 1964, the Advisory Committee decided to allot him quarter of an acre from a plot on Cuttack-Bhubaneswar Road. No impropriety, in my opinion, can be inferred from the above allotment.

Lastly it has been argued that the allotment of a plot in favour of Shri Gouranga Charan Mohanty, Chief Liaison Officer of Tata Iron and Steel Company, Jamshedpur, under the orders of Shri Routray, was vitiated by an impropriety. The impugned order of Shri Routray reads as under:—

“I have carefully thought over this case. Out Capital is still in a developing stage and its desired expansion cannot possibly be achieved by Government funds alone. At a time when our State is on the threshold of the Fourth Five-Year Plan and an ambitious agro-industrial complex is coming up, we have to provide space in the Capital for representatives of trade and industry. Keeping the larger interest of the Capital in view, Cabinet has recently decided that residential sites at a higher rate of premium, i. e., Rs. 25,000 per acre, as against the normal rate of Rs. 10,000 per acre, will be allotted for the industrial and business houses in the Capital direct by Government.

2. Shri G. C. Mohanty is associated with Tatas as their Chief Liaison Officer for a very long time. He has to frequently come to Orissa for discussion with the State Government regarding industrial development, etc. It would, therefore, be desirable to consider his request for a residential site in the Capital. The proposal of the Estate Officer at para. 7 (page 9/N for allotment at a higher rate of premium to Shri Mohanty is approved).

Sd/ N. Routray

2-9-66 ”

The above order appears to have been made by Shri Routray in exercise of his administrative powers, and, in my opinion, it is difficult to spell out an inference of impropriety from the same. It is not disputed that Shri G. C. Mohanty hails from Orissa. He became a member of a Co-operative Society in order to secure a plot in Bhubaneswar, but as he could not secure plot through the Co-operative Society he moved the authorities concerned. It is significant that the plot was ordered to be allotted to Shri G. C. Mohanty at a higher rate of premium of Rs. 25,000 per acre against the normal rate of Rs. 10,000 per acre.

No other point has been pressed at the time of argument. In the result, I hold that the charge of impropriety contained in this allegation has not been proved against any of the respondents.

CHAPTER 70

ALLEGATION No. 70

Re :

Occupation of Cuttack Inspection Bungalow by Shri Mitra

Allegation No. 70 relates to the occupation of two suites of rooms in P. W. D. Inspection Bungalow, Cuttack, by Shri Mitra. The respondents named in the allegation are Shri Mohanty, Shri Tripathy and Shri Mitra.

According to the case of the State Government, the occupation of P. W. D. Inspection Bungalow is governed by the Rules framed by the Public Works Department of the Government of Orissa in 1943. According to those Rules M. L. As. are entitled to occupy Inspection Bungalows only when travelling on duty. The control of the accommodation rests with the Executive Engineer and reservation of accommodation can only be made on prior intimation to the Executive Engineer. No person other than a Gazetted Officer can occupy rooms in the Inspection Bungalow for a period of more than seven days without permission from the Superintending Engineer. Where a Bungalow is required for occupation for a period exceeding three months, orders of the Government are necessary.

Shri Mitra, it is stated, requested the Superintending Engineer, Central Circle, for reservation of P. W. D. Inspection Bungalow, Cuttack. The Superintending Engineer instructed the Executive Engineer, Cuttack, to reserve the Inspection Bungalow for Shri Mitra for a period of ten days with effect from January 12, 1966. Shri Mitra who had by then ceased to be Chief Minister and was a sitting M. L. A., occupied the Bungalow from January 12, 1966 till April 17, 1966. Shri Mitra at that time had a house but the same had been rented out. On April 8, 1966 a question about the occupation of the Bungalow by Shri Mitra was asked in the Orissa Legislative Assembly. Shri Mohanty, Minister of Works, then gave a reply which implied that the Government had given permission to Shri Mitra to occupy the two suites in the Inspection Bungalow on his request. The Government records, however, do not show that any such permission was given.

The State Government concludes from the above that the respondents named above are guilty of impropriety.

In support of the above allegation the State Government has filed the affidavit of Shri Radhakrishna Tripathy, Under-Secretary, Works and Transport Department.

Shri Mohanty in his affidavit has stated that he had absolutely nothing to do with the occupation of the Bungalow by Shri Mitra or his stay thereafter. The allegation that Shri Mohanty conveyed on the floor of the Assembly on April 8, 1966 that Government permission to occupy the Bungalow had been given, has been denied. At that time, it is stated, there was no question of the Government permission.

Shri Tripathy in his affidavit has denied the allegation against him and has stated that there was no pecuniary loss to the Government. There was also no precedent about the occupation of Bungalow for long period. The allotment was within the competence of the Officers. No allotment was made by the Government.

Shri Mitra in his affidavit has stated that he occupied the Bungalow in question after ceasing to be a Minister on payment of proper charges. The allegation of impropriety has been denied by Shri Mitra.

Supplementary affidavit has been filed by Shri Radhakrishna Tripathy on behalf of the State Government and Shri Mitra.

In respect of this allegation, I find that the circumstances in which Shri Mitra occupied the Inspection Bungalow in question is clear from the letter dated March 31, 1966 of the Superintending Engineer to the Chief Engineer, Roads & Buildings. The letter reads as under :—

“(a) It is a fact that a person is occupying the Inspection Bungalow at Cuttack near the O. M. P. Junction by the side of National Highway continuously for more than one month.

(b) This person is no other than Shri Biren Mitra, our Ex-Chief Minister of Orissa and a sitting M. L. A.

He is entitled to occupy the Inspection Bungalow. He has requested me for reservation of the Bungalow and I have instructed to the Executive Engineer, Cuttack Division, reserve the Inspection Bungalow for a period of 10 days from the date of his occupation. He has actually occupied the Bungalow on the 12th January 1966. He is still occupying the Inspection Bungalow. I do not know the circumstances under which he is forced to continue his stay. As I find one of the remaining rooms is sometimes going vacant. I have not asked him as to when he is planning to vacate the Bungalow. On hearing from him

the actual date of his vacation, I plan to approach the Government for according sanction of reservation in his favour for the rest of the period of his stay as Government is fully competent to allow his occupation.

No inconvenience is caused to any of the other occupants during his stay.

Such occupations do happen as a routine matter many times at many places. So no special significance is given by me to this occupation."

It would appear from the above that Shri Mitra was allowed to occupy the Bungalow in question by the Superintending Engineer. Shri Mitra thereafter continued to occupy the Bungalow and it appears that no one asked him to vacate the same. The Superintending Engineer then proposed to move the Government for permission to allow Shri Mitra to stay. The said contingency did not arise as Shri Mitra vacated the Bungalow on April 17, 1966. The letter of the Superintending Engineer also shows that no other occupant was inconvenienced by the stay of Shri Mitra.

I have given the matter my consideration and am of the view that though the stay of Shri Mitra in the Inspection Bungalow for such a long period was not strictly in accordance with the rules, no inference of impropriety in the sense of his having abused the position as a Minister can be drawn against Shri Mitra on that account. It is common case of the parties that Shri Mitra had ceased to be a Minister before the date he occupied the Inspection Bungalow.

So far as Shri Mohanty and Shri Tripathy are concerned there is nothing to show that they passed any order or did anything in the matter. I would, therefore, hold that the respondents concerned are not proved to be guilty of impropriety as alleged in this allegation.

PART III
CONCLUSIONS

CHAPTER 1

Effect of the Findings

The number of allegations in which Shri Patnaik and others were arraigned by the State Government as respondents is as under—

Shri Patnaik	37	allegations
Shri Mitra	42	Do.
Shri Tripathy	16	Do.
Shri Routray	26	Do.
Shri Mohanty	11	Do.
Shri Jagannath Rao	3	Do.
Shri Mardaraj	15	Do.
Shri Misra	3	Do.
Shri Brundaban Nayak	5	Do.
Shri Sanganna	6	Do.
Shri Mallik	12	Do.
Shri Sahu	3	Do.
Shri A. S. Deo	3	Do.
Shri Chittaranjan Naik	3	Do.
Shri Chandramohan Singh	1	Do.

Perusal of Part II of this report would show that allegations Nos. 1, 2, 27, 28 and 31 have been substantiated either wholly or in part against Shri Patnaik. The charges proved would bring the case against Shri Patnaik within the ambit of the words "committed various acts of..... improprieties and abuse of their power in matters of administration of the State", as given in clause (1) of the notification appointing this Commission of Inquiry and reproduced in Chapter II of Part I. It may be that those allegations

would also fall under some parts of the other clauses of the notification which in a way overlap clause (1). It is, in my opinion, not necessary to dilate on that aspect of the matter. It has been admitted by the learned Advocate-General that the basic clause of the notification is clause (1) and the other clauses represent the different facets of that clause. Indeed, arguments have been addressed to me only in the context of clause (1) except in respect of some specific matters to which reference would be made hereafter. In addition to the above-mentioned five allegations, I gave the following finding while dealing with allegation No. 23 relating to Paradeep Port—

“(3) Although there is no order on the official file to that effect according to Shri Patnaik the normal administrative and financial rules were directed to be suspended for the completion of the Port Project within the scheduled time. This was indiscreet and was bound to create a climate of financial indiscipline.”

I also found that the above direction was the result of misguided zeal but the one redeeming feature was that no such direction was issued in writing and there was nothing on the official files making mention of such a direction. It would further appear from the affidavit of Shri Patnaik that though he gave the above direction he also insisted that the official concerned should keep within the estimates.

Regarding the charge of increase in income of Shri Patnaik after he became Chief Minister and the amassment of wealth by him, my findings, as given in allegation No. 46, are as under—

“(2) There is no cogent material before the Commission for giving a finding as to what, if any, was the increase in the income of Shri Patnaik after he became Chief Minister of Orissa.

(3) The wealth of Shri Patnaik, as determined by the Wealth Tax Officer, increased from Rs. 21,72,894 in the assessment year 1961-62 to Rs. 23,79,945 in the assessment year 1962-63 and to Rs. 26,38,207 in the assessment year 1963-64. This increase was mainly due to appreciation in the value of the shares held by Shri Patnaik.”

The charge of impropriety in respect of 31 out of 37 allegations has not been proved against Shri Patnaik.

In respect of Shri Mitra, I have found during the course of discussion in Part II of the report that allegation Nos. 5, 27, 33, 37, 58, 62 and 63 have been proved against him either

wholly or in part. The matters proved against Shri Mitra would, as in the case of Shri Patnaik, bring his case under the following part of clause (1) of the notification—

“committed various acts of...improprieties and abuse of their power in matters of administration of the State.”

Regarding the charge of increase in income and amassment of wealth by Shrimati Mitra, my findings in allegation No. 46 are as under—

“(4) The assessed income of Shrimati Easwaramma Mitra as proprietor of Orissa Agents, which was Rs. 69,143 during the assessment year 1961-62 (account year 1960-61) before Shri Mitra became Deputy Chief Minister, rose to Rs. 1,02,027 in the assessment year 1962-63 and to Rs. 6,98,524 in the assessment year 1963-64. The dealings, which led to the increase in the income of Orissa Agents, were mostly with the State Government and are the subject matter of allegation No. 62.

(5) The total amount spent by Shrimati Easwaramma Mitra on the acquisition of land and construction of building after Shri Mitra became Deputy Chief Minister was about Rs. 95,000.”

The charge in respect of 34 out of 42 allegations has not been proved against Shri Mitra.

So far as Shri Mardaraj is concerned, two of his orders—one in allegation No. 31 relating to allotment of contract for construction of Daya Bridge in favour of Shri G. C. Kanungo and the other in allegation No. 63 about waiving the condition regarding the verification of the assets of Chairman and Managing Director of Utkal Distributors, have been found to be vitiated by impropriety. As such, his case would be covered by the portion of clause (1) dealing with improprieties. Shri Mardaraj has stated that he made those orders under the influence of his senior colleagues in the Cabinet. The circumstances of the two cases also indicate that Shri Mardaraj made the impugned orders under some extraneous pressure because he himself had no personal interest either in Shri G. C. Kanungo or in Utkal Distributors. This fact would, not, however, justify exoneration of Shri Mardaraj. At the same time it has to be recorded that there is neither any proof nor even an indication that Shri Mardaraj used his office for personal enrichment or to derive any unlawful pecuniary or other advantage for himself or members of his family.

As regards Shri Brundaban Nayak, I find that the part of allegation No. 42 which has been proved against him, relates to the sale of spun pipes of the value of Rs. 1.50 lakhs by him through his concern 'Kalinga Agencies' to various Departments of the Government of Orissa. Shri Nayak has already suffered the penalty on account of the sale of those pipes as he became disqualified for being a member of the Legislative Assembly. A notification to that effect was issued by the Governor of Orissa on June 28, 1965. Apart from that, no other charge has been proved against Shri Nayak.

So far as the remaining 11 respondents, namely, Shri Sadasiba Tripathy, Shri Nilamani Routray, Shri Satyapriya Mohanty, Shri P. V. Jagannath Rao, Shri R. P. Misra, Shri T. Sanganna, Shri Prahallad Mallik, Shri S. K. Sahu, Shri Anup Singh Deo, Shri Chittaranjan Naik and Shri Chandramohan Singh are concerned, no charge has been proved against them.

Question has been raised as to what is an impropriety on the part of a minister. Although it is difficult to give a comprehensive definition of the word "impropriety", the language used by the Cabinet Sub-Committee, "not in keeping with the normal standards of public conduct" would give a connotation of the word. To put it differently, any act or omission on the part of a minister not consistent with the trust reposed in him would amount to impropriety.

Argument has been advanced on behalf of Shri Patnaik and Shri Mitra that at the relevant time there was no prescribed code of conduct for the ministers and as such they should not be held to be guilty of any impropriety. In this respect, I am of the view that there are certain basic rules of conduct which have to be followed. They are a part of general ethics and public morality. It is no answer to a charge of a breach of those rules of conduct that they have not been codified. Irrespective of any codification, it should be plain that a minister cannot use his office or allow it to be used for furthering the business interests of his family members or of the firms or companies in which he or his family members are interested as proprietors and directors in dealings with the Government of which he is a minister. If a minister allows his family members to have commercial dealing with the State and there is an impropriety in that dealing the minister cannot escape responsibility on the score that he himself passed no orders in respect of that transaction. In an earlier Chapter, dealing with the Guiding Principles, I observed :

“Another and a very vital principle which must be kept in view is that a person on being a minister becomes the custodian of public interests. A great trust devolves upon him and he owes it to the exalted office he occupies that he should so formulate his policies and plan his activities that there is no possibility of a class between his personal interests and the public interests. This is specially true in the set up of a nascent democracy like ours wherein the role of a minister has got to be that of a pioneer rather than of a pirate, of a public sentinel rather than of a self seeker, of one dedicated to the public weal and not one obsessed with the desire of personal gain. The moment a minister gets into a situation wherein there may be conflict between his personal and the public interests he is bound to make the tongues wag and his conduct must necessarily become the subject of criticism and censure. The old adage that the Ceaser’s wife should be above suspicion is equally true of the ministers in a democratic set up.”

One of the questions which consequently arises in the above context is whether a convention should be established or a norm of conduct evolved according to which the family members of a minister, their firms and the companies with which they are associated as directors, should have no commercial dealings with the Government of which he is a minister? The answer to this question would have to be in the affirmative if we are to ensure purity of administration and a clean and healthy public life. The rule may admit of an exception for the companies in well defined, unavoidable cases in public interest for which necessary safeguards may be provided against abuses. A minister’s position, as observed above, *qua* the funds and other assets of the State is that of a trustee. Consistently with such a fiduciary role, he cannot allow the members of his family to have commercial dealings with the State. A commercial deal necessarily postulates two parties, the seller and the buyer. The laws of economics being what they are, a seller must keep the profit motive in his view while a buyer has to see that he pays the minimum price for which the articles can be procured and nothing extra is paid. There is thus conflict of interest between the buyer and the seller. If the family members of a minister through their concerns have dealings with the Government of which he is a minister, he can obviously not protect the State interests to the extent he would have if his family members had no dealings with the State. The commercial dealings of his family members with the State should constitute a disqualification for the minister. A person in public life has to make a choice. He can either allow his family members to have business dealings with the Government or he can become a minister. He cannot have the best of both the

worlds—become a minister and also allow his family members to trade with the Government of which he is a minister. It would not also result in the closure of the business of family members of a minister, as has been argued on behalf of the respondents, because a ban on business with the Government does not prevent business with private parties and other non-governmental agencies.

I may also observe that clause (4) of the notification expressly deals with the respondents permitting their family members, relations, friends and others in whom they were interested to enter into contracts and other monetary transactions with the State Government in disregard of law and administrative procedure relating thereto and in breach of the confidence reposed in the respondents by virtue of their constitutional position. If the plea were to be accepted that the word 'improprieties' in clause (1) is too vague to warrant a finding, in such an event the cases relating to commercial and monetary dealings by the concerns of the family members of the respondents would have been covered by clause (4) of the notification. As things, however, are, I find that the word 'improprieties' has definite connotations and is not vague and indefinite.

Question has been raised as to whether a minister is liable for the improper acts of the civil servants even though the minister himself passes no order and issues no direction in the matter. I have dealt with this matter in the Chapter relating to the Guiding Principles and have observed :

"The principle of vicarious liability of the minister cannot in my opinion, be extended to the point of holding him guilty of impropriety because of the impropriety of a civil servant unless the circumstances of the case show that a minister by some positive act or deliberate omission has abetted the commission of that impropriety by the civil servant."

A rider may be added to the above observation. In case an order by a civil servant is for the pecuniary or other benefit of the minister or the members of his family and is vitiated by an impropriety, a minister cannot escape his liability on the ground that he himself did not pass any order in the matter. A transaction involving commercial or financial dealings between a minister and his family members on the one hand and the Government of which he is a minister on the other is *ex facie* something not free from suspicion. If the said transaction is vitiated by an impropriety, it would constitute no excuse on the part of the minister that he was not aware of

that impropriety. The potentiality for impropriety in such a case lies in the minister allowing the members of his family to have commercial and other financial dealings with the Government of which he is a minister. It is obvious that if the members of the family of a minister have dealings with the State Government, many officials would be prepared to oblige those members of the family of the minister at the cost of the State with a view to be in their good books and through them of the minister.

Another question, which has been posed on behalf of Shri Patnaik, relates to a person occupying the office of Chief Minister. It is stated that if a matter affecting the interests of his family members comes up before a minister, he can without dealing with it himself refer the same to the Chief Minister. What procedure, it is asked, should a Chief Minister adopt if papers relating to a matter affecting the interests of his family or concerns in which he is interested are put up before him ? In this respect, I am of the view that a Chief Minister should see to it that matters relating to the interests of his family or concerns do not arise for being dealt with by him during the time he occupies that exalted office. In case, however, such a problem arises in spite of his efforts the same should be dealt with not by the Chief Minister himself but by some other agency which is not subordinate to him. It may perhaps be desirable to put the whole matter before the Cabinet.

It has been argued on behalf of the State Government that a number of projects like Balimela Dam, Tikerpada, Paradeep Port and Express Highway and a number of Corporations, like Industrial Development Corporation, Orissa Mining Corporation and Orissa State Commercial Transport Corporation, were started by Shri Patnaik after coming into power in 1961. It is urged that the object of Shri Patnaik in doing so was to make illicit money. Most of these Projects are stated to have been put into operation and most of these corporations formed at the cost of education and other social welfare activities. The revenue account, which stood at a figure of minus 16.51 crores in 1961-62, is stated to have deteriorated to a figure of minus Rs. 52.79 crores in 1966-67. As regards the capital account, it is stated that figures stood at minus Rs. 142 crores in 1961-62 and at minus 271 crores in 1966-67.

In respect of the above contention on behalf of the State Government, I find that there is nothing on the record justifying an inference that the above Projects were started and the above Corporations were formed by Shri Patnaik

with a view to make illicit money or with any other ulterior motive. The contention that the Projects were put into operation and the Corporations were formed at the cost of education and other social welfare activities, is also not well-founded. The Audit Report of 1966 shows that against an amount of Rs. 4.33 crores spent on education in 1960-61, Rs. 7.89 crores were spent in 1963-64, and Rs. 9.65 crores in 1964-65. The total expenditure on social and development services was Rs. 29.73 crores in 1963-64 and Rs. 33.34 crores in 1964-65, as against the figure of Rs. 15.56 crores in 1960-61. The Independence Number, August 1968 of Orissa Review, which is being published by the Home Department of State Government and is edited by the Director of Public Relations, shows that the percentage of literate persons in Orissa in 1961 was 21.7, as against 24 per cent for India as a whole. The enrolment of students in age-group of 6—11, 11—14 and 14—17 rose to 75 per cent, 23.3 per cent and 10.8 per cent respectively by 1965-66 from 63.8 per cent, 9.6 per cent and 3.7 per cent at the end of 1960-61. The State had one University during the pre-Plan period. Two new Universities, one at Berhampur and the other at Sambalpur, were established during January 1967. This was in addition to the provision for technical education.

As regards general financial policy by the State Government and the budget figures, it is not disputed that the same were approved by the Legislature. These were also policy matters and, in my opinion, the Commission cannot and should not sit in judgement over the wisdom of the policies approved by the Legislature. Somewhat similar questions arose in England during the 18th Century and they are linked with Sir Robert Walpole. The Whigs, who were in majority under the leadership of Sir Robert Walpole, set up successive Committees of Inquiry to enquire into alleged acts of misconduct of Ministers in previous Tory Government. When the majority of Sir Robert Walpole dwindled and he resigned after having been at the helm of the affairs for two decades, a public petition was presented to Parliament demanding an Inquiry into the harmful consequences of the policies followed by his Ministry. A Committee of Inquiry was then set up to investigate into the charges of corruption and other acts of misconduct against Sir Robert Walpole. It is not necessary to go into other details; suffice it to say that a principle was established that, in so far as policy is concerned a minister, who has enjoyed the support of the House for what he has done, cannot be punished subsequently by any other penalty than loss of office. It has accordingly been observed :

"After Walpole's resignation there is no longer any expectation that when a Prime Minister leaves office it will be possible to impose penalties upon him for the execution of policy, however mistaken. This immunity is, in fact, the outstanding characteristic of Parliamentary Government, by means of a Ministry whose members are also members of one of the Houses of Parliament. By maintaining the Ministry in office, Parliament inescapably shares with the Government responsibility for policy." (See Trial By Tribunal by George W. Keeton).

Question has been posed at the time of argument as to how far it is desirable on the part of the State Government to give advance money to parties from whom Government stores are purchased with a view to enable those parties to invest in State Loan Bonds. This question arises because the payment of advance to parties for investment in State Loan Bonds is the subject of a number of allegations. From the facts, as they emerge on record in various allegations, I find that the advance of moneys to parties without adequate safeguard is fraught with considerable risk. The parties, who take advance from Government, thereafter take a loan for the balance of the amount from the bank and after purchasing the loan bonds pledge those bonds in favour of the bank. For example payment of advance amount of Rs. 5 lakhs for purchase of State Loan Bonds of value of Rupees 50 lakhs leads to the taking of a loan by the party from the bank of about Rs. 45 lakhs. As the interest payable to the bank is at a rate higher than is realized on the bonds, the parties generally suffer loss in the transactions of the purchase of the bonds. To compensate those parties and to facilitate recovery of the amount of advance, orders of huge amount for purchase of stores are placed with the said parties. Quite often the parties, whether because of genuine or feigned difficulty, express their inability to recoupe the advance and ask for further orders. The result is that a very large number of further orders have to be placed with those parties to ensure the recovery of the full amount of advance. The alternative to that is resort to civil suit which is a time consuming process and invariably results in great delay. In the light of this experience Shri Tripathy passed an order on September 19, 1966, of stopping the practice of giving advances for raising Government loans. He observed :

"The advance should not be interest-free, nor it should be a guarantee to enable him (the dealer) to get more and more contracts or supplies from Government for a future period and that too for long periods. This will be more or less a kind of monopoly to some selected suppliers."

The present State Government also issued a circular on August 21, 1967, containing a number of directions to safeguard the amount of advance paid to suppliers for investment in State Loan Bonds.

I have given the matter my consideration and am of the view that the payment of advances to suppliers for investment in State Loan Bonds is not very desirable as it entails risk and also tends to create a kind of monopoly, as pointed out by Shri Tripathy. If, however, a decision is taken to pay such advances to suppliers for investment in State Loan Bonds, adequate safeguards should be provided to ensure that the money paid as advance is not lost and that the party to whom it is given pays interest on the same.

On behalf of Shri Patnaik it has been argued that his life has been one of challenge and adventure. During his early youth he was one of the finest sportsmen of the country. He was an ace-Pilot engaged in air-transport command, flying sorties between Middle East, China and the far East. During the Quit India Movement of 1942, he worked underground with leaders like Shri Jayaprakash Narayan and Mrs. Aruna Asaf Ali. Coming out of Jail in 1945, he set himself to build industries in Orissa. He promoted, it is stated, the first textile mill in Orissa, the first tube-mill in India, the first refrigerator factory in India and the first low shaft furnace in India. He is also stated to have invested money for the purpose of development of Scientific and Technical Education in Orissa. He is further stated to have founded Kalinga Foundation Trust, which established the chair of Geology in Utkal University, the International Kalinga Prize for Science and scholarships for hundreds of meritorious students in Orissa (vide affidavit of Shri Ananta Tripathy Sharma, Member of Lok Sabha). Reference has also been made to the following quotation from an Article in the Far Eastern Economic Review dated January 9, 1964:—

“During the War, he became an air-ace. He did not Join the Air Force which attracted numerous young Indian pilots, but became a dare-devil transport pilot when the British commandeered all Commercial planes into a sort of Air Transport Command. He pioneered risky operations over the Himalayan Hump into Chiang's China and even made a long hop into war-torn Stalingrad. . . . When the Dutch were at the throat of the infant Indonesian Republic, Biju Patnaik flew Clendestine missions into Indonesia and brought Sjahrir and later Mohammad Hatta for personal conference with the Indian Prime

Minister Nehru. Patnaik flew the Indonesian Leaders out of the fighting Republic by landing in improvised air-strips and fuelling his plane with petrol left over in little known Japanese war-time dump."

Shri Patnaik, it is further pointed out, was summoned to Delhi by Pandit Jawahar Lal Nehru at the time of Chinese aggression in 1962 to assist Pandit Nehru in the External Affairs Ministry. Shri Patnaik was also sent to America in that connection.

As against the above, the stand taken up on behalf of the State Government is that the aim of Shri Patnaik has been to set up and control a large number of industries and thereby to amass wealth for himself and the members of his family. He is further stated to have deprived the State Government of the amount of Rs. 6 lakhs by taking it for a Project of Synthetic Petrol near about 1948. Reliance in this connection is placed upon letter dated June 15, 1949 of Dr. Syama Prasad Mookerjee. As regards Kalinga Foundation Trust, it is stated that the same has been used for the purpose of keeping tax evaded money.

Most of the above matters are outside the scope of the present Inquiry and as such it is not necessary to express any opinion about them. In case any matter had any bearing on any particular allegation, the same has been dealt with in the course of the discussion relating to that allegation.

CHAPTER 2

Secretaries and other officers

In the Chapter dealing with the Guiding Principles, I laid stress upon the moral responsibility of a minister to see that he does not put the officials under him in an embarrassing position wherein the officials in the discharge of their duties have to deal with the matters which may impinge upon the pecuniary interest of the minister and the members of his family. I then pointed out that the element of conflict between the pecuniary interest of the minister and the members of his family on one side and the public interest on the other was inherent in such a situation. There are some other aspects of the matter relating to public services to which I want to advert in this Chapter.

No attempt, in my opinion, should be made to mix up public services with the ministers. The Secretaries and other public servants give an element of continuity and permanence to the administration, for while ministers may come and go, the administration with the members of public services goes on forever. The denunciation of the public servants because of their having carried out the policies of the ministers has to be deprecated as the inevitable consequence of such denunciation is to demoralize the public servants. The Secretaries and other public servants have in the discharge of their duties to record various notes on the files and to pass a number of orders. The notes and orders have to be judged on their own intrinsic merit and in the context of the totality of circumstances then prevailing. It would be altogether wrong, in my opinion, to judge and assess a note or an order of a Secretary or other public servant from an angle as to how far it furthers the case of a successor ministry in the impeachment of the former ministers. Likewise, it would not be a proper approach to suspect the intention and good faith of the Secretaries and other public servants and to consider them to be servile, with conscience hypothecated to the previous ministers, because of their having carried out the policies of the then ministry, or because of their having made orders which are not helpful to the successor ministry in proceedings of an inquiry against former ministers.

In Para. 14 of the Statement filed on behalf of the State Government in respect of allegation No. 15, it is stated:

“The recommendation of the Inspector-General, if any, was apparently motivated and manipulated through administrative influence of Shri Routray as the circumstances indicate.”

In Para. 5 of the particulars of allegations relating to allegation No. 18, it is stated on behalf of the State Government that the Registrar of Co-operative Societies changed his views and recommended the sanction of Rs. 60,000 to Almunda Forest Marketing Society under the influence of Shri Sanganna. The Registrar of Co-operative Societies was then Shri B. B. Rath, the present Home Secretary of the Government of Orissa, and under whose signatures the notification appointing this Commission of Inquiry has been issued. In Para. 1 of the particulars of allegations relating to allegation No. 23, it is stated:—

“Both Shri Biju Patnaik and Shri Biren Mitra committed and caused commission by exercising influence on the Chief Secretary, Shri Sivaraman, the Joint Secretary for Commerce, Shri Gyan Chand and also partly Shri K. Lalit, Secretary of the Department of Finance, all of whom were men of their confidence and colluded with them in appointing their ‘own man’ Shri A. Srinivasan as the Chief Engineer and Administrator and permitted him to exercise full control in all matters connected with the Port construction, in gross violation of all established laws, rules and procedure and completely by-passing the views of the departmental heads concerned and also completely ignoring them.”

After going through, the material on record I find that the above allegations against the senior officers of the State Government were not well-founded. There is nothing to show that the recommendation of the Inspector-General of Police, referred to in allegation No. 15, was not made in good faith but was motivated and manipulated through administrative influence. Likewise, I find that Shri B. B. Rath, Registrar of Co-operative Societies, gave convincing reasons in his letter dated June 4/6, 1966 (material part of which has been reproduced in the discussion relating to allegation No. 18) in support of his recommendation for sanction of Rs. 60,000 to Almunda Forest Marketing Society. So far as the use of words “our men” in the note of the Chief Secretary, Shri Sivaraman is concerned, I have already held in the course of discussion dealing with allegation No. 23 that no sinister significance attaches to those words and that the words “our men” in the note were used in the sense of the men appointed by the State Government as distinct from those

appointed by the Central Government. The allegation of the State Government that the Chief Secretary, Shri Sivaraman, and the Commerce Secretary, Shri Gyan Chand, were interested in Shri Srinivasan, Chief Engineer, as he was their favourite and permitted him to exercise full control in the matters connected with the Port construction in violation of the established rules, is belied by the following circumstance. When Shri Srinivasan revised the earlier estimate and mentioned the new estimate for the completion of the first stage of the Paradeep Project to be Rs. 25 crores, Shri Gyan Chand in the course of his note dated May 21, 1964 observed :

“The point which I wish to emphasise is that in order that Government is not ultimately confronted with the situation in which they will have to find funds beyond what they have contemplated would be required for the construction of the Port, it is absolutely necessary that there should be strict control on the Chief Engineer's taking up the work on items of work which pleases him, as he has been doing so far, and the items on which he is to be authorised to incur expenditure should be clearly specified along with the ceiling within which he will be allowed to incur expenditure. Unless we are prepared for this elementary financial discipline, the situation will become difficult.”

When the papers were put up before Shri Sivaraman, he stated in the course of his note:—

“Many things can be done and many things may have to be done but the financial background shall and must control our decisions. Chief Engineer does not really seem to realise that money is not easy to come by. Therefore, he has been rather extravagant in his suggestions. Unless our Technical Expert helps us in tackling the financial problems, I do not see how Government can take correct decisions. The picture as now present is not very happy.”

It would follow from the above that there was no substance in the allegations made on behalf of the State Government against some of its senior-most officers. It is for this reason that it becomes necessary to emphasise the principle not to bring the Secretaries and other officers as far as possible into controversy between politicians or between ministers of to-day

and ministers of yesterday. The public servants as a rule should be kept outside the pale of such controversy. As observed on page 722 by *Finer* in the *Theory and Practice of Modern Government* :

“ And, supremely, it owes to the nation the deep sincere obligation of treating public servants as average business men and women working for their living in the business of the public. This implies that partisan injustice and spiteful sneers be restrained, and that the legislature conduct its necessary and desirable investigations not as operations of torment or as self-righteous exhibitions of hatred and contempt or as invitations the public to spit upon alleged sensational scandals. It is easy in a democracy to get the public to laugh away its political assets, and someone is always ready to cheer the iconoclast. If the members of the legislature make a goat of public officials, they cut off democracy's right hand.”

It was further observed :

“ Finally, the public has its duties. It must recognize that the consumer is sometimes wrong. It need not condone inefficiency; it ought to make complaints. But it owes a self-control over spite and derision and it ought to hear both sides. It should not permit its legislators to cry out, ‘Good hunting’ whenever they see a civil servant. To hate Government is infantile, for government is necessary. And what is necessary should be sufficiently respected to encourage the invention and application of improvements.”

Dealing with the role of civil servants *Harold Laski* on page 312 of *Parliamentary Government in England* observes :

“ What the Civil Service really does is to maintain the Government as a going concern. It corrects the risks of popular election by subduing its results to a medium where ascertainable knowledge is the protective envelope of action. It oils the machinery of politics by relating the popular will, as the party in power reflects the impact of the popular will to what a detached and disinterested experience believes to be practicable. Its authority is that of influence, not of power. It indicates consequences; it does not impose commands. The decision which results is the minister's decision; its business is the provision of the material within which, in its judgment, the best decision can be made.”

A civil servant, if he is to be of real assistance to the minister, would never allow his deference for or loyalty to the minister to strangle his freedom of expression, nor would a civil servant refrain from acquainting the minister with all the pros and cons of the problem. A minister is not ordinarily a specialist, he needs, therefore, the expert advice of the departmental officers. The minister, however, brings the impact of a broad outlook of a people's man, of one who is in tune with their impulses and feelings and knows their difficulties and demands. The Secretary may sometimes remain unaffected by a popular demand, but not so the minister. A civil servant may also on occasions find it difficult to shed off his authoritarian, stand-offish and paternalist attitude inherited from pre-independence days in dealing with the general public, for minister it would be suicidal to adopt such an attitude. The art of good administration is to bring about a synthesis of that broad outlook of the minister and the expert knowledge of the civil servant. The fact that a minister is not an expert should not be looked upon as a handicap or infirmity. Harold Laski while dealing with this aspect observes on page 228 of "Parliamentary Government in England":

"It is said that as compared with the civil servants whom they will control, they (the ministers) are amateurs, there are at least two answers. It is, firstly, highly undesirable for a cabinet minister to be a specialist in the work of his department; he then runs the danger, that is common to all specialists, of sacrificing width of view to intensity of gaze. And, secondly, his business as a cabinet minister is not the manipulation of detail but the definition of a general direction."

The need of full freedom of expression for the civil servants on the problems facing the administration and the correct attitude on their part, in case they are overruled by the Ministers, has been discussed in the Report of the Dardanelles Commission (quoted on page 295 of Parliamentary Government in England) :

"It is the duty of the official not to resign, but to state fully to the head of his Department, and, should any proper occasion arise, to other members of the Ministry, what is the nature of his views. Then if, after due consideration, those views are overruled, he should do his best to carry out the policy of the Government, even although he may not be in personal agreement with it.....Undue loyalty would tend to cripple independence of thought and would leave the parliamentary heads of the various departments without that healthy assistance which they have the right

to expect, and which is at times much more likely to be rendered by reasonable and deferential opposition than by mere agreement resting wholly on the ties of discipline."

The relationship between a Minister and his Secretary, it has been observed, is founded on two conventions, neutrality and anonymity. By neutrality is meant impartial service with equal loyalty rendered to any chief of whatever incoming political party. Anonymity ensures that the names of the public servants would not be brought into debate as the inventors or executors of policies. The effect of that is that all responsibility, all praise and blame, are concentrated on the Ministers and the Cabinet. Regarding the relationship of the Minister with his Secretary, Lord Hankey, who held the post of the First Secretary to the Committee of Imperial Defence for a number of years observed:

"The permanent head of a great department of state is on almost the same footing of intimacy with his political chiefs as they are with one another. Ministers talk before them with the same freedom as they do with their colleagues. These men would sell their souls before they would sell their chiefs." (See page 616 of Theory and Practice of Modern Government).

One fact, which emerges on record, is the difficulty and predicament of Secretaries and other senior officers when there is a change of Government and the successor ministry has differences with the members of the previous ministry not only on matters of policy but also on personal level. An administrative officer has to carry out and implement faithfully the policies of the ministry in power. He has also to be loyal to the ministry because the ministry represents the Government in power. With the change of ministry the implementation of the policies of the previous ministry is likely to be assailed and the greater the devotion with which an officer carries out those policies, the more he becomes suspect in the eyes of the successor ministry. Although in principle the public servant has to carry out policies and not the personal desires of the ministers, in actual practice the matter is not free from difficulty. There is indeed a thin line which divides the policy and the personal desire of a Minister and in border-line cases it is difficult for the public servant to distinguish between the two. It, therefore, becomes imperative that Government officers should as far as possible be not brought into the

controversy between one ministry and its successor. Likewise, one cannot eulogize an act of a public servant and condemn him if one finds another act of his not to his liking. As long as the Government servant acts conscientiously, he needs to be protected. The fact that he cannot publicly defend himself or participate in public controversies, constitutes all the more a reason for restraint in his criticism and denunciation.

CHAPTER 3

Concluding Remarks

The State of Orissa, according to the census of 1961, has a population of 17,548,846. 16,439,196 live in rural areas, while 1,109,650 live in urban areas. The members of the Scheduled Castes number 2,763,858 while those belonging to Scheduled Tribes number 4,223,757. The State has an area of 60,172 square miles out of which 25,407 square miles are covered by forests. The different statistics regarding Orissa have been given in booklet "Statistical Outline of Orissa 1965" issued by the Bureau of Statistics & Economics of the Government of Orissa. The *per capita* income in Orissa during the years 1960-61 to 1963-64 was as under :—

"YEAR	<i>PER CAPITA</i> INCOME IN RUPEES	
	At current prices	At 1958-59 prices
(1)	(2)	(3)
	Rs. P.	Rs. P.
1960-61	254·99	244·89
1961-62	259·48	248·07
1962-63	261·29	246·49
1963-64	290·78	252·81"

The State Revenue and State Expenditure during the years 1960-61 to 1964-65 in terms of thousands of rupees was as under :—

"PERIOD	REVENUE (NET)	EXPENDITURE (NET)
1960-1961	39,32,27	39,39,89
1961-1962	46,13,31	61,34,72
1962-1963	62,26,79	65,99,09
1963-1964	69,28,90	72,00,97
1964-1965	74,97,55	79,20,12

Orissa has a rich history and old traditions of the past. The region was previously known as Kalinga and, according to books, about 2,000 years ago the people of the region had taken to seafaring and this resulted in prosperous maritime state. The traders from the region travelled as far as Java, Sumatra and Bali. They had also trade relations with Burma and Ceylon.

Orissa is also the land of ancient temples with their impressive architectural beauty which speaks volumes for the skill of master masons of the region, Jagannath Temple at Puri and Lingaraj Temple at Bhubaneswar are too well known to need a mention. The 700 years old temple at Konarak represents the Sun God standing in Time's winged chariot urging on His team of seven horses with which He blazes his way through the heavens. About this temple it has been said: Konarak is a living testimony to the speculative daring and the artistic sensibility of a race that once knew how to live, love, worship and create in heroic proportions." Gurudev Tagore on seeing the temple, observed: "The language of man is here defeated by the language of stone."

Despite its rich history and despite its natural resources, Orissa is one of the poorest States in the country. The State has sometimes been described as a hapless Cinderella of modern India. Having lived in the State for more than a year and having become, in a way, a part of Orissa, I have sometimes felt that Orissa is a sad symbol of man's ingratitude to nature. It presents the paradox of poverty in plenty. Orissa has a vast coast line. It has rich mineral resources, great forest wealth, fertile soil, power potential and yet has such a low *per capita* income. "No State in India", it has been said, "has the same combination of mineral wealth, power potential water availability and deep sea port facilities as Orissa has."

The people of Orissa are simple, unsophisticated and well-intentioned. Long years of poverty and under-nourishment have affected the constitution and stunted the full physical growth of vast sections of population. Not that sunken cheeks and lustreless eyes are peculiar to Orissa, compared to the rest of the country, but in the case of Orissa it has been so in spite of the munificence and bounty of the nature. The majority of people are also not averse to hard physical labour. The need of Orissa is of a leader of great calibre, inspired by the cause, dedicated, devoted and determined, who may arouse the enthusiasm, which is so far dormant, of the masses, harness it to fruitful activity and thus pave the

way to economic betterment and future prosperity. Shri Patnaik gave hope of that calibre. He had the halo of an adventurous past. He had daring, dash, doggedness and the advantage of youth, good physique and a tall imposing personality. To all these may be added a touch of flamboyance. The electorate gave Shri Patnaik a clear cut majority in the Legislature. Shri Patnaik did commendable job in certain spheres by introducing an element of dynamism in the administration and the work he did by translating the idea of a Port at Paradeep into a living reality is bound to make an impact on the history of Orissa and its future development. The irony, however, is that Shri Patnaik allowed such a sway to the pecuniary and business interests of the companies, which had been started by him and with which his family members were associated, in dealings with the State Government, that within two or three years of his stewardship his public image became tarnished and the hopes, which were built around him, were shattered to pieces. Memorials and representations, some of them not without substance, were submitted against him. The architect of party victory in 1961, lost even his own election in 1967. The fall of Shri Patnaik was not merely a loss for himself, it was a shock and disenchantment for the people who had pinned their hopes and reposed their confidence in him and with that had linked the future of Orissa.

Shri Mitra in one of his utterances is reported to have said that his role *qua* Shri Patnaik was the same as that of Bharat *qua* Shri Rama. It is, therefore, obvious that Shri Mitra looked upon Shri Patnaik as his preceptor and guide. Shri Mitra also within his limitations tried to emulate and move in the footsteps of Shri Patnaik. If Shri Patnaik felt no compunction in allowing the concerns, with which he and his family members were associated, to enter into major contracts with the State Government, Shri Mitra likewise had no such hesitation. A trading concern was set up in 1959 and the wife of Shri Mitra was shown as its sole proprietor. Compared to its modest sales before Shri Mitra became Deputy Chief Minister, the sales of the concern after he assumed charge of that office, leapt up to millions of rupees and consisted mostly of supplies made to the State Government. The one redeeming feature in the case of Shri Mitra is that his wife closed the trading concern, Orissa Agents, before he became Chief Minister. This gesture, however, could not efface and wipe out all that had been done in the past.

Shri Tripathy, who succeeded Shri Mitra, gave the State a clean administration and though a number of charges have been levelled against him, none has been proved.

There are certain aspects of the enquiry which enkindle hope and show that all moral values are not lost. The inquiry reveals that if there is impropriety or misuse of office in some quarters there are, by and large, a considerable number of public men who have occupied high offices and whose image emerges untarnished and unscathed. This is clear from the fact that out of the fifteen respondents, charges have not been proved against an overwhelming majority of them. So far as some of them are concerned, there is not even the remotest indication of their having done anything improper with a view to secure personal gain.

A very important fact, of which note must be made, is the report of the Sub-Committee of the Union Cabinet and the consequential action taken by the late Prime Minister, Shri Lal Bahadur Shastri. The Cabinet Sub-Committee did not spare and Shri Shastri did not hesitate to take action against Shri Patnaik and Shri Mitra even though they (Shri Patnaik and Shri Mitra) had led the party, to which the Prime Minister and the members of the Sub-Committee belonged, to victory at the polls in Orissa.

Lastly, I may observe that no codification of Rules of Conduct or declarations of assets can ensure rectitude among Ministers and other men in public life. What is needed is a climate of strong public opinion wherein none may dare to deviate from the path of rectitude. The ramparts of a clean and healthy administration are in the hearts of people; laws can punish only occasional lapses. Judge Learned Hand in a classic passage observed:

"I often wonder whether we do not rest our hopes too much upon our Constitution, upon laws and upon courts. These are false hopes, believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it."

What is said about liberty in the above passage holds equally true of purity in public life and administration.

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