GOVERNMENT OF ORISSA
HOME DEPARTMENT

# REPORT
## OF
# THE ORISSA INQUIRY COMMISSION
## 1971-72

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**Ex-Chief Justice of**
**Rajasthan and Assam High Courts**

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# Contents

# VOLUME I

# GENERAL

## *Preamble*

The Orissa State Government, under Home Department notification No. 10-EC., dated 8-1-1971, published in the *Orissa Gazette* Extraordinary, dated 8th of January, 1971, (Annex. A), appointed the undersigned as a one-man Commission under Section 3 of the Commission of Inquiry Act, 1952, with all the powers under Section 5 of the said Act, to inquire into and report in respect of certain charges specified under four different heads as formulated in his report by the Honourable Shri Justice J. R. Mudholkar, a retired Judge of the Supreme Court, and in respect of which he had found a prima facie case against Shri H. K. Mahtab. It is but necessary here to give the background and the circumstances under which the present Commission of Inquiry came into existence, though it may need to be considered later.

On the 26th of June, 1967, Shri Sadasiba Tripathy an ex-Chief Minister of Orissa and Leader of the Congress Assembly Party, along with 24 Members of the Orissa Assembly submitted a Memorial to the President of India (Annex. B) alleging certain administrative improprieties and corruption as against several persons including some ex-Chief Ministers and ex-Ministers of Orissa, who held office some time or other between 1947 and 1961. A copy of the said memorial was sent by the then Home Minister, Government of India, Shri Y. B. Chavan, to the then Chief Minister of Orissa, Shri R. N. Singh Deo, who wrote back to the Home Minister, Government of India, saying that on examination, he found that there was no prima facie case in any of the allegations made in the memorial as against persons who held office as Chief Ministers or Ministers during the aforesaid period. Shri Singh Deo, however, mentioned in the letter that in the interest of integrity in public life there should be no scope for any doubt and that the matter might be examined by a person of the standing of a Judge of the Supreme Court or of a High Court to see if there was any prima facie case in any of the allegations made against any of those persons, who held office as Chief Minister or as Minister in the past, so as to necessitate a Commission of Inquiry. Shri Y. B. Chavan in reply intimated to the then Chief Minister, Shri R. N. Singh Deo, that he should himself take the responsibility of entrusting the task of preliminary verification into the allegations to any retired Judge of

the Supreme Court or of a High Court. Consequently, Shri J. R. Mudholkar, a retired Judge of the Supreme Court was authorised to hold a preliminary verification into any definite allegation contained in the memorial, pertaining to the discharge of official duties, as against any person who held office as Chief Minister or Minister some time or other during the period 1947 to 1961.

It is equally important to mention here some of the ex-Chief Ministers and Ministers who held such offices from 1947 to 1961. At the time when the country became free on August 15, 1947, Shri Harekrushna Mahtab headed the Congress Ministry which lasted till May, 1950, and was succeeded on 12th May, 1950, by another Congress Ministry headed by Shri Nabakrushna Choudhury which lasted till October 18, 1956. During the interrugnum Shri H. K. Mahtab appears to have joined as the Union Minister for Industry and Commerce from 1950 to 1952 and was later appointed Governor of Bombay from February 1955, which post he held till 18th October 1956. Again on October 19, 1956, a Congress Ministry headed by Shri Mahtab was formed in Orissa and it continued to function till May 22, 1959. On the last mentioned date, the Ganatantra Parishad also joined the Government and a Coalition Ministry was formed headed by Shri Mahtab. Shri R. N. Singh Deo, the Leader of the Ganatantra Parishad Party, then became the Deputy Chief Minister. This Ministry lasted till February 24, 1961, when the President's rule was imposed in Orissa from February 25, 1961 to June 22, 1961. The mid-term elections took place in Orissa in June, 1961 and 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 the Ministry with Shri Biren Mitra as the Deputy Chief Minister, while Shri R. N. Singh Deo became the Leader of the Opposition. This Ministry with Shri Patnaik lasted till October, 1963, when Shri Patnaik resigned under the 'Kamraj Plan and Shri Biren Mitra headed the Congress Ministry from October 2, 1963, up to February 20, 1965. After Shri Biren Mitra, Shri Sadasiba Tripathy became the Chief Minister and continued as such from 21-2-1965 till 8-3-1967. After the General Election of 1967, Shri R. N. Singh Deo, the Leader of the Swatantra Party formed his Cabinet as Chief Minister in coalition with the Jana Congress. It was during this period that on 26-6-1967 Shri Tripathy and 24 M. L. As. submitted the Memorandum to the President of India to which reference has been made earlier.

On receipt of the letter dated 3rd of May, 1968, (Annex. C) of Shri R. N. Singh Deo, the then Chief Minister of Orissa, requesting him to hold a preliminary inquiry as mentioned therein, Shri Mudholkar embarked upon his task and sent letters to each memorialist requesting him to appear before him. Shri Mudholkar held the preliminary enquiry into all the allegations levelled against the ex-Chief

Ministers and ex-Ministers as mentioned in the memorial and submitted his report dated 26th September, 1968 to the Orissa Government. While exonerating others, he recommended the appointment of a Commission of Inquiry into certain allegations against Shri Harekrushna Mahtab alone, who was the Chief Minister of Orissa during the period from 23-4-1946 to 11-5-1950 and from 19-10-1956 to 25-2-1961. The relevant findings of Shri Mudholkar to which the present inquiry is directed are as follows :—

(*i*) That prima facie there was little justification for granting remission of dues to lessees from Government, that serious allegations made against Dr. Mahtab in respect of this need to be thoroughly enquired into ;

(*ii*) That the grant of a lease of a Chromite Mine to Md. Serajuddin even after receipt of a telegram from Government of India withdrawing permission to the grant of lease does not, prima facie seem to be justified and the transaction needs to be enquired into, including the responsibility of Dr. Mahtab in this regard ;

(*iii*) That there is prima facie evidence justifying a probe into the question relating to rapid acquisition of wealth within four years by Dr. Mahtab ;

(*iv*) That the question pertaining to the withdrawal of prosecution launched against iron and steel traders needed to be enquired into for ascertaining as to whether Dr. Mahtab was mainly responsible for their withdrawal.

The Report of Shri Mudholkar was placed and discussed before the Legislative Assembly of Orissa leading to the appointment of the present Commission by the Cabinet of Shri R. N. Singh Deo. Accordingly, in the Notification appointing the present Commission, the reference to the Commission is inter alia in the following terms :

".....to inquire into and report on/and in respect of the following :—

(*a*) Whether Dr. H. K. Mahtab committed acts of misconduct, misappropriation, acceptance of illegal gratification, favouritism, illegalities, irregularities, improprieties and abuse of his power as Chief Minister in matters of administration of the State in respect of the following :—

(1) Grant of remission of Government dues to Kendu leaf Contractors in 1959-60 ;

(2) Grant of lease of Chromite Mine to Md. Serajuddin in 1957 and the significance in this context of the extracts from the accounts of Md. Serajuddin, dated the 15th November, 1953, containing entries showing receipts of money by Dr. H. K. Mahtab from Md. Serajuddin ;

(3) Rapid acquisition of wealth by Dr. Mahtab between 1956 and 1960 ;

(4) Withdrawal of criminal prosecution against ten iron and steel dealers ;

which are definite matters of public importance.

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

The Commission shall inquire into detailed particulars pertaining to the aforesaid matters contained in the said Memorandum along with such other incidental and ancillary matters that shall be placed before them by the State Government or members of the public or organisations. The Commission shall inquire into the financial implications of the aforesaid matters."

The Commission commenced working from the 17th February, 1971. As I had accepted the Commission on the understanding that it would be subject to my other engagements, the Head Office of the Commission was maintained at Delhi with a minimal staff to manage its Secretariat; but from time to time the Commission held its sittings also at Puri and Bhubaneswar to suit the convenience of parties and witnesses. In due course, the Commission issued notices to the Memorialists who had submitted the memorial, dated 26th January, 1971, to the President of India requiring them to make their representations to the Commissions supported by affidavits relating to the said allegations made against Shri H. K. Mahtab. The Commission also issued a general notice to the public, which was published in the Government of *Orissa Gazette* and the local papers. In that notification every one interested was asked to file affidavits along with relevant documents. These preliminary stages naturally occupied a good deal of time. The Commission regrets to note that out of all the memorialists, only Shri Dibakar Patnaik filed an affidavit and none other came forward with any statement or affidavit to support the allegations made in the memorial. Even Shri Sadasiba Tripathy in response to the notice wrote back to the Commission that he had "nothing to send" and never appeared before the Commission. Party alignments, if any, should not prevent people from assisting such Commissions in arriving at the truth. I think it is to the interest of every citizen, may, it is even obligatory on

him, to see that public life in the country is rid of its impurities, and ethical standards are not only respected but duly followed and maintained. Of course, three other persons did file affidavits covering some of the allegations made in the memorial. They are (1) Shri Akshaya Kumar Das, (2) Shri Udayanath Pujapanda and (3) Babubhai Patel. The State Government, however, has filed statements and affidavits concerning all the points under inquiry. In respect of the notice initially issued to Shri H. K. Mahtab, a written statement was filed by him on 18th March 1971, denying all the allegations and raising some preliminary objections as to lack of jurisdiction of the Commission, want of details, etc. This was prior to the filing of statements by the State Government which was eventually filed on 10th of June 1971, with elaborate details on each count along with relevant annexures from Government records. Shri Dibakar Patnaik, one of the memorialists, Shri Udayanath Pujapanda and Shri Babubhai Patel also filed their affidavits. So also Shri Akshaya Kumar Das, a member of the public, submitted a statement through Shri G. S. Patnaik, an Advocate. Copies of the above statements were served upon Council for Shri H. K. Mahtab who was given ample time to file his rejoinder, which he did on 7-7-1971. Some more statements were filed by the State Government on 21-11-1971 to which a reply was filed by Shri Gopinath Das, a brother of Shri H. K. Mahtab. It may be added that it was the Standing Order of the Commission that no statement or petition should be presented to the Commission without serving a copy thereof on the opposite party concerned.

The Commission had its first regular sitting at Puri on 10th June, 1971, when Counsel for the State Government and Shri H. K. Mahtab as also Counsel for some other parties were present. During the course of its sittings at Puri, Counsel for the State Government opened their case in respect of the various points under investigation with elaborate reference to the annexures forming part of the Government statements. Shri Akshaya Kumar Das was given an opportunity to present himself for examination before the Commission, which he never did. Thereafter, the Commission had three sittings at Bhubaneswar on different occasions where it recorded the statements of nine witnesses. The remaining witnesses were examined at New Delhi on different dates. The witnesses material to the investigation were summoned by the Commission in consultation with the Counsel for the parties, namely, the State Government and Shri H. K. Mahtab and the procedure usually followed by the Commission was that the witnesses would be first examined by the State Counsel, then by Counsel for Shri H. K. Mahtab and only when it was necessary to clarify certain statements or elucidate some relevant facts

relating to the investigation that the Commission put questions to some of the witnesses. In one or two cases it allowed Shri Mahtab's Counsel to put questions to the witnesses even after the Commission had done so. The procedure followed by the Commission had to be elastic in order to promote the nature of the investigation, but it was by and large in accordance with the rules framed by the State Government under the Commission of Inquiry Act, 1952 and with the concurrence of the Counsel for the parties. One deplorable feature of the proceeding is that very few of the witnesses appeared on the date for which they were summoned. Generally, applications were made for postponement of their evidence to some other date on one ground or another and in some cases even coercive processes had to be adopted in order to enforce their attendance by issuing warrants and in one case even a proclamation for attachment of properties. I have no doubt that some of the witnesses had valid grounds for postponement, but in respect of some others I felt that they were playing for time and wanted to avoid appearance before the Commission. I wonder why there was this reticence on the part of those witnesses to assist the investigation. Unfortunately, Shri Dibakar Patnaik, one of the material witnesses, who had filed his statement on affidavit and who was also one of the memorialists could not be examined. It was reliably represented to me that he was suffering from a serious ailment and was almost on his death-bed. The number of witnesses examined, though not very large, yet, their deposition is comparatively lengthy, covering nearly 206 closely typed pages and the value of their evidence has to be assessed in the context of various documentary materials on record.

In dealing with the procedural part of the matter, the Commission regrets to have to record its frustration and failure in that, in spite of repeated effort, it could not obtain certain documents from the Ministry of Home Affairs or from the Cabinet Secretariat of the Government of India, particularly a copy of the report of Shri S. K. Das which was considered necessary by the parties for the examination of Shri K. D. Malaviya. The correspondence on the subject reveals that originally the plea taken was that the report was a secret documents; but later a further plea was taken that it was not possible to trace the same. The Commission, therefore, seriously felt at one stage that it should direct a search of the official archives, but gave up the idea when Shri Malaviya himself had been examined and made his statements in connection with the report of Shri S. K. Das. The Commission cannot help observing that in order to make the functioning of these high-powered Commissions really effective and purposeful, the authorities concerned should adopt an attitude of helpfulness and co-operation and not that of evasiveness and indifference.

I am fully conscious of the fact that I have embarked upon this inquiry in relation to a period long past, as if I were trying to rake up the dead-bones of the past and breath life into them. Even so, there is one advantage. Much of the materials are derived from official records and inferences have to be drawn from them in the light of the evidence given by competent witnesses. It is true that most of the memorialists, including some of those who assisted Shri Mudholkar in his preliminary probe, have kept away from the Commission—may be due to changes on the political stage—yet, many of those witnesses examined by the Commission have been able to throw much light upon the points under investigation. In dealing with the evidence, the Commssion has to be undoubtedly cautious lest suspicion may be taken as a substitute for proof.

Dr. Mahtab has raised the question of *mala fides* and lack of jurisdiction in the oppointment of the Commission. At the outset, I may point out that it is not for the Commission to decide about these matters. However, having examined the objection, I feel that there is hardly any substance in it. The delay, if any, in the appointment of the Commission was due to unavoidable factors. On 23-3-1967 the Governor in the course of his address to the Orissa Legislative Assembly referred to the question of inquiry into charges of corruption and improprieties alleged to have been committed by Ministers in the sphere of administration prior to 1961. In the course of the debate on the Governor's address, Shri H. K. Mahtab in his speech dated 30-3-1967 voluntarily agreed to the appointment of a Commission of Inquiry against all persons including himself, if a prima facie case was made out after scrutiny by a Judge.

I have already stated how a memorial was submitted to the President and then after correspondence with the Central Home Minister and Shri R. N. Singh Deo, the then Chief Minister, ultimately, Shri J. R. Mudholkar, a retired Judge of the Supreme Court, was appointed to make a preliminary verification. Shri Mudholkar submitted his report on 26-9-1968 recommending the appointment of a full-fledged Commission on certain specific points against Shri Mahtab. In the meantime, while the matter was pending consideration of the Government on 23-10-1968, Shri Mahtab filed a writ petition in the High Court and obtained an order of injunction. The matter was then held up until the High Court dismissed the writ petition on 23-9-1970. Then the report of Shri Mudholkar was placed on the table of the Legislative Assembly on 28-9-1970. In the meantime, the Chief Minister had gone on tour and when he returned from tour, it was decided on 4-1-1971 to place the report of Shri Mudholkar before the Cabinet for taking follow-up action. A Memorandum was accordingly prepared for information of the

Cabinet and the matter was placed before the Cabinet at its meeting on 6-1-1971. It is true that the matter was included in the agenda of the meeting as a special case, but it could not have been otherwise. The Cabinet after due consideration decided on that very day to set up a Commission of Inquiry.

The setting up of the Commission was done in the ordinary course of business and in response to persistent demands from political parties and the public that the matters referred to in the report of Shri Mudholkar should be enquired into by a regular Commission of Inquiry. It is, therefore, hardly fair to suggest that Shri R. N. Singh Deo acted in a spirit of political vengeance against Shri H. K. Mahtab. At least I did not notice any such trace of malice in his deposition before me. In fact, he said nothing against Shri Mahtab, except the fact that the Cabinet decided to grant remission to the kendu leaf merchants at the instance of the Chief Minister. It should also be remembered that so far as he was concerned, in his correspondence to the Central Home Minister he did not find any prima facie case in any of the allegations. How could he then be accused of any political vendatta or grudge against Shri Mahtab ? Many of the allegations, therefore, in the statement of Shri Mahtab relating to setting up of the Commission are not germane to the investigation at all and are more in the nature of a political or polemical outburst. I do not feel urged to discuss those numerous allegations or the kaliedoscopic changes in the political sphere which are hardly relevant to my present investigation.

I must at this stage refer to an incident almost at the fag end of the inquiry, i.e. the date on which Shri H. K. Mahtab and his brother were to be examined. Shri Gobind Das, Counsel of Shri Mahtab, on that date filed a petition asking permission to withdraw from the Inquiry. This was in the presence of Shri Mahtab himself. In my order passed on that day I have pointed out how unfounded the allegations were. It is Annex. D to this report. I must say that throughout the inquiry I had allowed ample latitude to the Counsel of Shri Mahtab in fixing dates in the examination of witnesses and in allowing all legitimate facilities that could be given. The application, therefore, came almost as a shock to me. At the same time, I must admit that I received valuable assistance from them in the discharge of my duties. Their withdrwal was, therefore, all be more regrettable. I offered to adjourn the case to enable Shri Mahtab to engage some other Counsel, but Shri Mahtab himself did not like the matter to be postponed and wanted his evidence and that of his brother to be recorded. I, therefore, proceeded with my work, uninterrupted by the incident. It must be said to the credit of the Counsel for the State that in examining Shri Mahtab both

Shri Rao and Shri Roy acted with great fairness, specially because he lacked the assistance of his lawyers. I do not think that Shri Mahtab was handicapped in anywise on that account. Whenever he wanted any relevant record to refresh his memory, it was promptly placed before him. In any case, I am thankful to all the advocates for the assistance that I received from them. Shri Bhandare, Smt. Bhandare and Shri Gobind Das and Shri Jagannath Das were always zealous and vigilant in pursuing and protecting the interest of Shri Mahtab as long as they were there. I cannot also help in complimenting Shri Sanyasi Rao and Shri Sovesh Roy, Advocates for the State, who had taken pains to make themselves thoroughly conversant with the record and placed their case on behalf of the State with the utmost fairness.

I am grateful to the Government of Orissa for unhesitatingly placing at my disposal all the relevant files that I wanted and looking after my stay and comfort whenever I visited Puri or Bhubaneswar. They also deputed a retired Under-Secretary, Shri R. N. Patnaik, to attend to all the arrangements for the Commission. The acquaintance of Shri Patnaik with the voluminous records which he had to handle was almost enviable. He could spot out any paper from the records instantly and without any delay. He also took meticulous care to attend to all the arrangements for the proper functioning of the Commission. I naturally have much appreciation of his work.

During the course of the sessions I lost the valuable assistance of my Secretary, Dr. Phul Chand, who was allowed to leave because of a permanent assignment elsewhere. He was substituted by Shri D. C. Sharma, a retired District and Session Judge from Rajasthan. I am thankful to all my staff for their assistance and co-operation in my arduous task, particularly to my steno-typist, a Government pensioner, Shri Hariharan, who worked very hard, almost day and night, to type out my report with great care and efficiency and could even decipher my casual and illegible notings.

SARJOO PRASAD

# CHAPTER I

## *Grant of Permission to Kendu Leaf Contractors in 1959-60*

The charge under this head is that the grant of 20 per cent remission to Kendu Leaf Contractors in payment of their dues to the State for the year 1959 which caused a net loss of nearly Rs. 17 lakhs to the State Government was quite unjustified and brought about by Shri Mahtab by the abuse of his power as Chief Minister and by the acceptance of illegal gratification.

Kendu leaves are used for the manufacture of bidis. These leaves grow mainly in fallow lands inside and nearabout forests. The bushes of Kendu leaves grow spontaneously in the forests and 'Atta' lands mainly in the districts of Western Orissa and some pockets of other districts, largely on the territories appertaining to the then princely States and provide raw material for the maintenance of industries both inside and outside the States. On the merger of the princely States in the State of Orissa in 1948-49, the sale of the leaves provided a major source of revenue to the State exchequer and various legislations were enacted to regulate the trade in Kendu leaves. In view of its importance, the Kendu leaf was declared an essential commodity under the Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act, 1947. In 1949, the Orissa Kendu Leaves (Control and Distribution) Order was passed with an attempt to reconcile the interests of the State, the trade, the tenants and the pluckers. The Order was in force for about a decade with necessary amendments from time to time and was later substituted by a new Control Order, namely, the Orissa Kendu Leaves Control Order, 1960. ' It is unnecessary for me to refer to the various amendments as detailed in the Statement filed by the State Government. I gather from the evidence that the original system of settlement of Kendu leaves with traders was by private agreement or negotiation. This enabled the traders to make huge profits while the State gained only a small share in its revenue. Shri Nabakrushna Choudhury was the Chief Minister of the State from 1950—56. He decided that in the interest of the State Kendu leaves should be settled by inviting tenders and then settling them with the person or persons who offered the highest tender. This he did in the interest of

earning maximum revenue for the State. It appears that by the earlier system the State was actually getting only about Rs. 20—30 lakhs annually, but by the change of the system, the State got Rs. 90 lakhs I will have to revert to this evidence of Shri N. K. Choudhury later in another context.

On October 19, 1956, Shri H. K. Mahtab succeeded Shri N. K. Choudhury as Chief Minister and continued to hold that office till 24-2-1961. During his tenure of office leases were granted to Kendu leaf merchants for 3 years beginning from 1-1-1957 to 31-12-1959. The statement of Government shows that only 4 days after the commencement of the lease the Kendu leaf contractors filed a petition on 5-1-1957 before the Chief Minister for changing the schedule for the payment of instalments on the ground that they had to pay a heavy amount as royalty. The Chief Minister made an endorsement on the petition :

"The request seems to be reasonable and may be considered."

By itself there is nothing objectionable in the Chief Minister receiving the petition and making an endorsement for the matter to be processed in due course. It is not unusual in this country that people try to approach the highest authority for relief, being somewhat distrustful of the subordinate staff. It is also pointed out for Shri Mahtab that the deferment of the payment of instalments by the Kendu leaf traders was no part of the charge which relates to the grant of remission only. The State Counsel, however, appear to treat this as a part of the general scheme of favour to Kendu leaf traders for illegal ends. Even of I assume this as a part of the general scheme to show favour to the traders, I will have yet to consider the other question of remission of rent given to the Kendu leaf traders which is the graveman of the charge before I attach any importance to this part of the case.

On the general question of showing undue favour to the Kendu leaf traders, we have the affidavits filed on behalf of the State Government, and the affidavits of Shri Dibakar Patnaik, one of the memorialists, and Shri Babubhai Patel, one of the partners of the Kendu leaf traders, who has given evidence before me. I have already stated my reasons why Shri Dibakar Patnaik could not be examined, but Shri Mahtab had full notice of all these affidavits and has submitted his reply thereto. Shri Dibakar Patnaik appears to have joined the Non-co-operation Movement in the year 1921 and claims to have been ever since a political worker. He actively participated in the struggle for independence and courted imprisonment on several

occasions. He was elected President of the District Board, Ganjam, for a period of 9-10 years. He was also the elected representative of the Orissa Legislative Assembly for 3 terms and was a member of the Rajya Sabha for one term of 6 years. Shri Mahtab has nothing to say against Shri Dibakar's political career in reply to the affidavit. All that he says is that at present he belongs to the Utkal Congress Party, which Party is opposed to him. This by itself need not necessarily detract from the value of his affidavit, if it is otherwise corroborated in material particulars. Defections in political parties were common.

It appears from the materials and the evidence placed before me that Shri Mahtab had been taking keen interest in the Kendu leaf trade. He was Governor of Bombay prior to his assuming office as Chief Minister of Orissa in October 1956. Just over a month before he resigned his office as Governor and became Chief Minister of Orissa, he wrote a letter on 7-9-1956 (Ex. 69) to Shri Radhanath Rath, the then Finance Minister and Development Minister of Orissa. In that letter he desired that the monopoly of Kendu leaf trade should be stopped because the Kendu leaf trade was practically sold to non-Oriya people. He, therefore, suggested that there should be State trading in Kendu leaf. A photostat copy of the letter was filed along with the affidavit of Shri Dibakar Patnaik and Shri Mahtab in his evidence has admitted the correctness of this letter. Shri Mahtab sent another letter to Shri Radhanath Rath, dated 19-9-1956 (Ex. 71) with which he enclosed a letter, dated 7-9-1956 (Ex. 70) supposed to have been received by him from one Shri Hari Shankar Misra. The genuineness of these photostat copies of the above letters are admitted by Shri Mahtab himself and so the Commission did not insist upon the production of the originals. The letter of Shri Hari Shankar Misra shows that he prayed for Shri Mahtab's intervention in the matter of Kendu leaf trade in Orissa. Shri Misra desired that the settlement of Kendu leaf by calling tenders was full of mischief and that the settlement of Kendu leaf if made by public auction, would very much augment the public revenue. The letter clearly anticipates that Shri Mahtab was soon to assume the office of Chief Minister of the State of Orissa. The letter ended with a note that 22nd of September had been fixed to call for tenders for leasing out Kendu leaves of the State and it suggests that if it were stayed till Shri Mahtab's return, it would not only help "newcomers" of business' but would also add to the revenue of the State by about 20 lakhs and prevent the opposition from making capital of the situation in the coming election. Shri Mahtab only noted on this letter :

> "Radhanath Babu will please see this and realise how and why public opinion is estranged."

At places passages in the letter have been underlined. In the forwarding letter (Ex.71), which is a fairly long letter, the relevant portion which refers to Kendu leaf trade is as follows:

"The monopoly of Kendu leaves is a typical instance of this nature. The Zamindari system has been abolished with the ostensible object of protecting the cultivators from exploitation. At the same time, however, it is not realised that to grant monopoly of the Kendu leaf trade to merchants is to allow them to exploit the cultivators as much as they can. I know how the common people are bitter against these Kendu leaf merchants in the western part of Orissa. Since these merchants happen to be outsiders, the feeling is that the non-Oriyas are being looked after by the State more than the Oriya interests. That apart, it has to be seen that all elements of exploitation are eliminated systematically and in a planned manner. It has so happened that these merchants have virtually taken possession of the Congress Organisation in many areas, and by this means they have usurped the political power to a great extent. As I told you in the course of my prsonal discussion with you, if the political power of the people of the State, where there is no wealth nor high education. is taken away by vested interest not belonging to the State, then the resentment of the people is legitimate and that will be the reason for serious political disturbances. This is a matter for serious consideration." (the underlines are mine). With reference to the above letter, Shri Radhanath Rath States as under :

"I had received a number of personal letters from Dr. Mahtab while he was Governor of Bombay. Certain representations were made to Dr. Mahtab in respect of Kendu leaf trade and that made him write to me on that subject. This is the photostat copy of the letter, dated 7-9-1956 written to me by Shri Harekrushna Mahtab wherein he advocated that State trading in respect of Kendu leaf could be tried in the interest of the people of Orissa (Ex. 69). This is another letter, dated 10-9-1956 written by Dr. H. K. Mahtab. This is a photostat copy of the original letter sent to me. Here also he suggested the abolition of Kendu leaf monopoly and suggested State trading (Ex. 70). This is the photostat copy of the letter, dated 7-9-1956 addressed to Shri Harekrushna Mahtab by Pandit Hari Shankar Misra which was forwarded to me by Shri Mahtab as stated in his letter, dated 10-9-1956 (Ex. 70). This letter contains reference to Kendu

leaf settlements to be made on the 22nd of September and that they should be stayed till the return of Dr. Mahtab to Orissa". (Ex. 71) (the underlines are mine).

The contention of the State Counsel is that under cover of these letters what Shri Mahtab really wanted was to have the settlement of Kendu leaves stayed until he took over charge as Chief Minister. His so-called advocacy of State trading in Kendu leaves was a mere pretence. He knew that the traders in Kendu leaves in order to obtain settlement gave large sums of money to politicians in order to keep them in power and it was to exploit that situation that he wanted the settlement to be stayed. Against this background, it is contended that the presentation of the petition by the Kendu leaf traders to Shri Mahtab only 4 days after the grant of the leases to the traders is significant. It is, of course, somewhat surprising that having advocated State trading so strongly, Shri Mahtab as Chief Minister should have so easily compromised in the matter and considered the demand of the merchants for deferment of payment as reasonable when he knew that they were making huge profits at the cost of the State. Shri Mahtab, however, says in his evidence :

> "When I became the Chief Minister, Kendu leaf settlement on tthe basis of tender had already been done for three years. Besides, the election manifesto of the Ganatantra Parishad, which was representing the old princely States and a partner in the Government, by and large contained a promise to the voters that all control over Kendu leaf must be lifted and the trade should be made free. As the Chief Minister, I had to balance between this extreme view and the other view of State trading. After a good deal of discussion, a via media was evolved and the new law was passed in 1959 or 1960."

This in my view was quite a reasonable explanation.

It appears from the records that although the request for deferment of payment of instalments was considered *prima facie* as reasonable, it was seriously opposed by the Forest Department and the Minister concerned. But while this representation was still pending disposal, a further memorial was submitted by the traders for remission of royalty to the Chief Minister, Shri Mahtab, on 5-1-1958 (Ex. 73) just a year after the first representation. This memorial to the Chief Minister was based on the grounds :

(1) that they had submitted very high tenders for these years as they had earned reasonable profits during the preceding year 1955-56 and also because the price of Kendu leaves in the market at the time of submission of tenders was high ;

(2) that there was a total failure of Kendu leaf bushes and the contractors collected the Kendu leaves indiscriminately which were not of high quality ;

(3) that there was an abnormal slump in the market due to restriction imposed on the export of Kendu leaves to Pakistan.

The memorialists, therefore, prayed for a remission of 25 per cent for each year of the royalty payable in the State. Here again, the memorial was presented direct to the Chief Minister and not to the Minister-in-charge of the Department. On this memorial Shri Mahtab made the following endorsement on 9-1-1958 :

"**Minister (Development):**

Request made here requires serious consideration. This may be examined."

It is contended by Shri Rao, Counsel for the State, that the fact that time and again such representations were made directly to the Chief Minister and not to the Minister-in-charge shows the liaison between the Chief Minister and the traders. He also contends that instead of making the endorsement that the "request made in the memorial requires serious consideration", the Chief Minister should have rejected the memorial out of hand. According to him the first two grounds mentioned in the memorial were absolutely frivolous because the traders had taken the lease with their eyes open and had admittedly made large profits in previous years. They would not pay higher royalty because of higher profits. Then again, Government revenue could be made to suffer because of the stupidity of the traders in plucking leaves indiscriminately as stated in the second ground. As to the last ground also, the record shows that there was really no ban on the export of Kendu leaves to Pakistan; all that had happened was that there was a ban on trade by smuggling through the barriers and Government could not be expected to help the trade because smuggling at the barriers had been stopped. There is certainly strength in these submissions of Shri Rao, but it should not be forgotten that this Commission has its own limitations. It cannot decide about the merits of the matter. It can keep the above submissions in view only to see if there was any illegal gratification, abuse of power or favouritism involved in dealing with the subject.

On a reference to the Chief Conservator of Forests about the prayer contained in the memorial the officer observed in his letter, date 28-2-1959 (Ex. 75) that he did not propose

to give any comments paragraphwise because he was "absolutely opposed to tthe grant of remission for the reasons stated by the contractors". He was of the veiw that if there was an unfavourable market in one year, the loss, if any could be made up in subsequent years. When the file was put up before the Development Minister, he recorded in his minutes : (Ex-75/B)

> "No question of any remission now. Let us watch the situation till June next, by which time the trend of the trade could be seen."

This was on 13-3-1958 and Shri Mahtab, the Chief Minister, approved it on 20-3 1958. I do not think there is much to be said against Shri Mahtab so far.

Apparently, in pursuance of the earlier order that the situation should be watched till June next, a fresh representation was made by the Kendu leaf contractors again directly to the Chief Minister on 23-8-1958, which the latter endorsed to the Minister (Development), who in normal course passed it on to the Secretariat. It should be noted that the representation contained an alternative prayer for extension of their leases for one year without the payment of any royalty. The representation was strongly opposed by the department. It was ptointed out that this was another attempt on the part of the Kendu leaf merchants to get out of the terms of the contract which they had voluntarily entered into after protracted negotiations with the Government, and if the prayer were conceded, there would be loss of revenue to the tune of Rs. 83 lakhs to the Government, which it could ill afford to lose. At the same time, it was observed in the departmental note that the contractors had raised a number of points in their representation without supplying the relevant details which had to be cross-checked by the Forest Officers before any concession could be granted (vide Annex. 4). The Minister (Development), Shri Radhanath Rath, under his minutes, dated 6-9-1958 ordered an independent enquiry for States like Madhya Pradesh, etc. who trade in Kendu leaves (Ex. 78). The Chief Conservator of Forests after due enquiry submitted another report dated 22-1-1959 in which he noted that there was a slight fall in the Kendu leaf trade and he suggested a remission of 16 per cent to be granted (Ex. 79) for the year 1958 only. The Deputy Secretary (Development), in his note, dated 62-1959 after a very exhaustive discussion of the matter opposed on principle the remission prayed for and pointed out that if any such remission was granted, then various other lessees of forest produce would also approach Government for grant of remission on the allegation of fall in the market. He also

opposed the prayer for extension of the lease by a year within payment of royalty because it meant complete loss of revenue to the State. This note was entirely opposed to the plea of the traders.

Thereafter, the note of the Secretary (Development) shows that the Chtief Minister sent for him to discuss the mattter. After discussion, the Secretary prepared a note sheet (Ex. 82) for the Chief Minister. The Secretary further says in his earlier note of the same date, i.e., 14-2-1959 that the Development Minister may discuss the matter with chief Minister. The note sheet prepared by the Secretary, however, does not recommend any remission. It concludes with the observation that it was possible to assess the situation more correctly in June, 1959, when the collection season is over. Shri Mahtab admits that he did call for the Secretary and discussed the matter with him (Ex. 81). I am not concerned with the merits of the Secretary's note, but I take serious exception to the procedure adopted by the Chief Minister in discussing the matter with the Secretary in the absence of the Minister, and then leaving the Secretary to apprise the Minister with a note on the file that he should discuss the matter with the Chief Minister. The procedure, in my opinion, was highly irregular and even improper indicating, to an extent, some personal interest in the matter on the part of the Chief Minister.

Enquiries also appear to have been made from the Government of India with a view to ascertain if there was any slump in the export of Kendu leaves to Pakistan as alleged by the traders and the Government of India on the authority of the information supplied by the First Secretary (Foreign), Karachi, wrote back to say that :

> "Our exports in bidi leaves to Pakistan have been more or less steady during the past few years."

This letter of the Government of India is dated 30-6-1958.

On 26-2-1959 Shri Radhanath Rath in his minutes recorded on the file that since the traders by their representation sought revision of the revenue, therefore, all necessary information must be collected and placed before the Government. Curiously enough, I then came across a note on tthe office file, dated 6-10-1959 made by the Deupty Secretary (Development) to the effect that the Finance and Development Secretaries wanted to examine the accounts of some of the contractors about their profit and loss. The contractors were, therefore, asked to be present with their accounts on 26-10-1959 at 10-30 A.M. There is no indication on the file of any order by any of

the Ministers or the Chief Minister giving a direction to the Secretaries about the scrutiny of the accounts. Shri Mahtab, however, admits that it was done not only at his instance but also at the instance of the Ministers of Finance and Development. The Development Minister, Shri Radhanath Rath, says that he never authorised the Secretaries to hear the representative of the merchants in the matter and he had no occasion to give any such authority to his Secretary, though he justifies the examination of the books of accounts by those authorities. I can quite believe that the examination of the books of accounts by the Secretaries was done at the instance of the Chief Minister, who had admittedly discussed the matter earlier with the Development Secretary. The Development Minister does not appear to have given any such direction. The Forest and Development Department was under Shri Radhanath Rath and the Finance Department was under Shri R. N. Singh Deo, of his own, the Finance Secretary could not have instructed the Kendu leaf contractors to appear with their accounts for scrutiny on 26-10-1959.

However, the fact remains that on 26-10-1959 the Secretaries of the Finance and Development Departments heard some of the traders and an Income-Tax Consultant, Shri H. T. Sodha on behalf of the leading traders. Shri Sodha was related to Shri Tapulal, being his wife's brother, proprietor or partner of T. R. & Co. (Tribhovan Das Raghavji & Co.). The result of the Secretary's inquiry is contained in an exhaustive and elaborate note on the file (Ex. 21). In conclusion, they recommended a slab system on the basis of which remission could be granted to the traders. This note by the Secretaries is dated 3-11-1959. The very next day, i.e,, on 4-11-1959, there is another note by the Finance Secretary. In that note the officer says "As desired by the C. M., I heard Shri Harilal T. Sodha again today". It appears from this note that the traders had come to know the contents of the earlier note, dated 3-11-1959, recommending reduction on a slab system basis, which did not suit them. Their association wanted reduction on the basis of a flat rate of percentage, and this time the Finance Secretary recommended that on the basis of price trends, an overall reduction of about 25 per cent was indicated. This note is Ex. 22. A draft memorandum on the lines of the recommendations contained in the above note was prepared and placed for approval before the Development Minister. The Minister then recorded his minutes, dated 21-11-1959 in which he suggested that the matter should be placed before the Cabinet and considered in the light of the recommendations of the Forest Commission of which he himself was a member. The note of the Minister does not show that he had approved of any remission.

It thus appears that at the instance of the Chief Minister, Shri Sodha was given opportunities twice to appear before the Secretaries on behalf of the traders, once before a joint sitting of the Development and Finance Secretaries and next day before the Finance Secretary alone. It is also clear that the recommendations of the Secretaries, dated 3-11-1959 had immediately come to the knowledge of the traders or their representative.

At this stage, it is important to note that the record made by the Secretaries Ex. 21 mentions that on 26-10-1959 Shri Babubhai Patel was also present. Therein he is described as a person who, though not a lessee, was conversant with the problems of the trade and had close connection with some of the lessees and the association of the bidi merchants.

After the above notings by the Secretaries on 24-11-1959, Shri Radhanath Rath, the Development Minister, recorded his minutes as follows :

> "Today C. M. invited Finance Minister, Health Minister and myself for giving a hearing to the Lawyer of the bidi merchants at 3-00 P.M. in C. M.'s office. Secretary, Finance, yourself and C. C. F. were present. The lawyer put forward his view-points and prayer regarding remission of lease money for the period of the current lease and extension of lease period for next year. Certain tentative decisions were taken regarding reduction that could be given only for the current year on the note of the Finance Secretary."
>
> (underlines are mine)

The minutes further recite :

> "Regarding reduction, the final recommendation of F. M. to settle it at 20 per cent of this year was accepted on the advice of C. M. and you have been asked to prepare a memorandum on the subject. Since it was ultimately agreed to by me after the department's points were placed before this Cabinet Sub-Committee by C. C. F., you may please record the discussions and recommendations and prepare a memorandum for consideration of Cabinet in its next meeting."
>
> (underlines are mine)

On 25-11-1959, the Secretary (Development) prepared a draft memorandum for inclusion of the subject as a new item on the agenda of the Council of Minister to be held on 26-11-1959 and placed it before the Chief Minister for approval. The Development Minister then happened to be absent. Shri Mahtab approved the inclusion of the new item on the agenda; and the matter of grant of remission to Kendu leaf contractors to the extent of 20 per cent of the lease amount payable for the current year, i.e., for 1959, was approved by the Cabinet.

The above approval of remission was on the 26th of November and just a day after, i.e., on the 27th of November the Bidi Leaves Merchants' Association, through their Vice-President, presented a fresh petition. This petition, as usual, was presented to the Chief Minister and it was prayed therein to adjust the security deposit money in payment of the lease money and further that the contractors who wanted to pay the balance dues after adjusting the security deposit and the remission allowed, should be permitted to export the full stock of Kendu leaf collections. The Chief Minister made an endorsement on the petition to the Secretary, Development, as follows :

"Secy., Development.

Please see to this and let me know.

This seems to be urgent"

On 30-11-1959 the Secretary, Development, noted thus :

"Communicate orders about remission to C. C. F. and ask him to take action accordingly. I am afraid I would not recommend adjustment of security deposit for adjustment against consideration money. Security deposit is to be kept till a certain date after the termination of the lease and then only released."

On the next day the Secretary, Development, put up a note to the Minister suggesting adjustment of security deposits of the Kendu leaf contractors and retaining only 5 per cent thereof for future release. The Minister wanted the Chief Conservator of Forests to be consulted in the matter and then on 2-12-1959 the Development Minister ordered adjustment of security deposits provded the balance dues were cleared up in advance. The Minister also observed

in his minutes dated 5-12-1959 that the remission of royalty was recommended on 24-11-1959 by the informal Cabinet and not by any committee of the Cabinet.

On the above narration of facts, the following points emerge :

(1) That even as Governor of Bombay, Shri Mahtab took interest in the settlement of Kendu leaves and just a month before he took office as Chief Minister, he wanted the settlement to be stayed until he himself returned to Orissa ;

(2) That the petitions (i) for change in the payment of instalments, (ii) for remission of royalty and (iii) for adjustment of security deposit towards the payment of royalty were each presented to the Chief Minister and not to the Minister-in-charge ;

(3) That on each occasion the Chief Minister made endorsements on the petitions giving a certain direction about the manner in which they were to be processed, pointing out that the prayers contained therein were either 'reasonable'. 'serious' or 'urgent';

(4) That when the departmental notings were found to be adverse, he himself discussed the matter with Secretaries, even in the absence of the Minister-in-charge, in order to support the claim of the traders ;

(5) That it was at his instance that a novel procedure was adopted of allowing a tax consultant to appear before the Secretaries to explain the books of accounts of certain traders to the Secretaries on two successive occasions and when the first note was unhelpful, a second note was called for;

(6) That the traders appear to have immediate information of whatever notes were given by the Secretaries ;

(7) That at his instance a formal meeting of himself, the Finance Minister or the Development Minister took place in the office where again Shri Sodha appeared to represent the case of the traders ;

(8) That it was at his instance that the Finance Minister agreed to a grant of 20 per cent reduction at that meeting of the informal committee of the Cabinet; and

(9) That finally the Cabinet agreed to the remission of 20 per cent for 1959 at a meeting held in the absence of the Development Minister.

The above facts undoubtedly lead to the conclusion that Shri Mahtab showed undue eagerness in granting remission to the Kendu leaf traders and at times he went to the length of adopting procedures which were not only novel or unorthodox but even improper.

I must, however, refrain from going into the justification or otherwise of the relief granted to the traders. The decision to grant remission to them being that of the Cabinet, I cannot be expected to re-open or question the same all that I am concern to see as the part played by Shri Mahtab himself in the whole affair. As the Chief Minister of the State, he is entitled to act with some amount of lattitude and give an appropriate lead to his colleagues or the department concerned, where such a lead is necessary. He could even direct some matters to be disposed of urgently. I was, therefore, prepared to assume initially that there was nothing improper in his receiving the petition for variation of instalments himself and making certain endorsements thereon which *prima facie* appear to be innocuous ; but when I find that time and again the same process has been repeated, I cannot but feel the force of the argument advanced by the State Counsel that there was something more behind the move. He could have told the traders to put up their representation to the Minister concerned and if there was any complaint, they could represent to him later. I can quite appreciate the apprehension which people generally have of the proverbial delay in red-tape, but the delay could be avoided by interference at a later stage, if at all necessary. The cumulative effect of all these facts point to the conclusion that Shri Mahtab was unduly eagar to help the Kendu leaf traders.

Evidence has been placed before me to show that monetary consideration was the influence which worked on Shri Mahtab in showing that favour to the Kendu leaf contractors. Shri Babubhai Patel has filed his affidavit and has also given evidence before me. Shri Babubhai Patel's evidence is important and has to be discussed somewhat elaborately. Although a native of Baroda State, he has been in Orissa since 1944 and he went there in connection with the business of bidi tobacco. He settled first in Jharsuguda and then in Sambalpur in Orissa. He was in politics from his school days. For some years he was the Secretary of the Sambalpur Bidi Leaves and Tobacco Merchants' Association. He came to know Shri Mahtab when Shri Mahtab went to Sambalpur for selecting candidates for the 1946 Election for the Congress Party. He was offered a ticket by Shri Mahtab to contest the Assembly Election as a member of that party from the Karihar area but he declined. From the time he came into contact with Shri Mahtab in the year 1946, he continued his contacts with him even when he was Governor of Bombay. Shri Babubhai Patel was the Secretary of the Committee formed for celebrating the Golden Jublee of Shri Mahtab in 1949 when a purse of Rs. 51,000 was

presented to him at a public meeting held in Cuttack. Out of the amount, a Trust was created for a sum of Rs. 36,000 for the propagation of the ideals of Mahatma Gandhi. He was one of the trustees along with the late Mr. Justice Jagannath Das and Shri Motilal Pandit, the Chairman of the Public Service Commission, Cuttack. The balance of Rs. 25,000 was given to the Utkal University. He was also the General Secretary of the Gandhi Smarak Nidhi of Sambalpur ; and it appears from his affidavit that in addition to these public functions he was connected in one capacity or another with several other educational institutions. He says that he was a Kendu leaf lessee for the years 1950—56. From 1956 to 1967 he was a partner of one Ramakumar Makanlal, a firm of Kendu leaf traders. He knew Shri Tapulal of T. R. & Co., Bolangir, the biggest Kendu leaf merchants of the State. He also knew Shri Hiralal T. Sodha, an Income-tax Consultant, who was the brother-in-law of Shri Tapulal. Shri Hiralal T. Sodha was engaged by T. R. & Co. in his capacity as Income-Tax Practitioner to plead their case for remission of royalty ; and then he was also engaged to represent the case of all the Kendu leaf traders. This was in 1959. Along with Shri Sodha came one Mrs. Kelly who was then running a school in music in Bombay and happened to be known to Shri H. K. Mahtab while he was Governor of Bombay. Both Shri Hiralal T. Sodha and Mrs. Kelly stayed in the Guest House at Bhubaneswar and Shri Sodha and Mrs. Kelly were both meeting Shri H. K. Mahtab on behalf of the Kendu leaf merchants at his 'Ekamra Nivas' residence pleading for remission of royalty in favour of the merchants. He says further that Shri Hiralal T. Sodha and Mrs. Kelly accompanied by many Kendu leaf traders met Shri Mahtab at his 'Ekamra Nivas' residence and pleaded for remission. Their plea was that 25 per cent remission should be granted for all the three years tfrom 1956—59 and for extending the lease period for another year, i.e., 1960 at 50 per cent of the royalty payable. Subsequently, Shri Sodha and Mrs. Kelly gave the Kendu leaf merchants to understand that they would get 25 per cent remission for all the three years and that the lease period would also be extended for another one year at the reduced royalty, provided the Kendu leaf merchants contributed 3 per cent of the lease amount for the period of the lease, for payment to Shri Mahtab. On the instructions of Shri Mahtab, they met the Secretaries of Finance and Development Departments of Orissa Government along with Shri Sodha in the Secretariat at Bhubaneswar. Shri Sodha argued the case on behalf of the merchants before the said Secretaries in his presence. On the day the informal Sub-Committee met under the presidency of Shri Mahtab at the Chief Minister's Office at the Secretariat, there again Shri Hiralal T. Sodha argued the case of the merchants before the Sub-Committee. After the Cabinet approved the remission of 25 per cent of the lease amount payable for the year 1959, Shri Sodha told them that in accordance with the previous arrangement

with Shri Mahtab, 3 per cent of the lease amount for the year 1959 for which the remission had been allowed should be paid by the merchants to Shri Mahtab. This amount was accordingly collected from the lessees by T. R. & Co. and Shri Nathubhai and Raghavji Purushottam and a sum of Rs. 2½ lakhs so collected was paid to Shri Mahtab at his 'Ekamra Nivas' residence. His affidavit is also to the same effect. Shri Babubhai Patel was present at the time when Shri Sodha appeared before the Secretaries of Finance and Development. It is borne out by the note prepared by the Secretaries on that date. His evidence about the payment of money to Shri Mahtab is definite and direct. The witness had been put to a severe test of cross-examination but I am unable to find anything material to affect the evidence.

Shri Mahtab in his statement appears to suggest that Shri Babubhai Patel operated essentially as a broker and was not a lessee for Kendu leaf for the relevant period, but the note of the secretaries, to which I have referred earlier, shows that Babubhai Patel had intersted in the Kendu leaf trade and was present on the occasion when Shri Sodha argued for the traders before the Development and Finance Secretaries. Shri Mahtab admits that Babubhai had contacts with him even while he was Governor, nor has he denied the various offices that Shri Babubhai Patel was holding as stated in his affidavit. It is true that his statement on the point of payment of money to Shri Mahtab stands by itself; but he appears to be a man of some respectability and there are important circumstances to which I will immediately refer, which go to show that money did pass by way of consideration for the favour shown to the Kendu leaf traders during the period. His statement that one Mrs. Kelly had also come to please on behalf of the merchants with Shri Mahtab and that he had known her while he was Governor of Bombay appears to be borne out by the records.

The guest house register shows that Mrs. Kelly and Shri Sodha were at Bhubaneswar during the relevant period. If I had to rely upon the entries in the guest house register, I would have rejected the same outright as the entries in the register do not appear to have been kept in regular course of business. I wish the authorities in charge of the Register were much more careful and maintained the Register in a regular manner. Fortunately, the entries have been proved both by Mrs. Kelly and Shri Sodha. Mrs. Kelly says that she stayed in the guest house from 23rd October 1959 to 28th October 1959, on one occasion and again she was there from 2nd of November 1959 to 10th of November 1959. It should be noticed that her second visit was only 4 days after the first one. When she was asked why she repeated her visit on the 2nd of November, when she had left Bhubaneswar on the 28th October, she replied that she

was anxious for consultations with Shri Mahtab in connection with some trust deed in respect of the Hill Grange School which she had been running. On both the occasions, it was Shri Mahtab who paid for her stay, a fairly good sum of money. On her own showing, no trust deed was in existence even till the date of her examination before me. It is true that Shri Mahtab also supports her statement that her visit was in connection with some trust deed in respect of her institution. But this story is not at all convincing. If it were true, she could have completed her consultations even on her first visit and it is impossible to believe that there was any such urgency in the matter as to make her repeat her visit only four days after her first visit, when she confessed that she did not like frequent visit to Orissa, because she found the journey tiresome. It is true that the journey from Bombay to Cuttack must be tiresome. Therefore, there must be some stronger and more urgent reason for repeating her visit which she was evidently concealing. That she was sufficiently familiar with Shri Mahtab and his wife is apparent from the fact that on one occasion she admittedly stayed with them at 'Ekamra Nivas' with her daughter. It is true that when it was suggested to her that taking advantage of her acquaintance with Shri Mahtab, she had been requested by the Gujarati Kendu leaf merchants to intercede on their behalf and use her good offices with Shri Mahtab, she denied the suggestion; but that denial has to be taken with a grain of salt, when there is the positive evidence of Shri Babubhai Patel that she had been there to intercede for the traders.

She admits that she knew Shri H. T. Sodha, whose son was reading in her school, and whom she consulted on a few occasions on income-tax matters; but she denies having ever met him during her stay at the guest house. Shri Sodha proves the entries in the State guest house register relating to his stay at Bhubaneswar (Exs. 30, 31 and 32). Those entries show that Shri Sodha was there on 25-10-1959 and again from 3-11-1959 to 8-11-1959. Shri Sodha also says that he did not remember to have seen Mrs. Kelly either in the guest house or at Bhubaneswar during the period of his stay in connection with the remission of Kendu leaves; nor did he remember to have seen her during representation of Kendu leaf merchants before Shri Mahtab or before the State Government. I do not think the witness could take shelter under the plea of lack of memory. He further says that he had not gone to Bolangir along with Mrs. Kelly to attend the wedding of Tapulal's daughter. It is impossible to believe the version of Shri Hiralal Sodha. They both knew each other very well; they both came from Bombay and were staying at the same guest house during the relevant period, and yet they are reluctant to admit that during this period they ever met

each other. This reluctance to admit must have been with the ulterior object of concealing the real purpose of Mrs. Kelly's visit. Tapulal's attendance to depose was secured by the Commission with much difficulty. When, in spite of repeated warrants he succeeded in evading attendance, the Commission had to direct attachment of his movables. It is only then at the last moment that he turned up. His deposition is vague and unworthy of reliance. He even denies that Shri Sodha showed the accounts of T. R. & Co. or represented it before the authorities in connection with the remission. He appears to be a liar and his evidence did not at all impress me. It, however, appears from his evidence that in the year 1959-60 his firm was assessed on an income of Rs. 1,34,728 which clearly shows that the firm had made profits and suffered no loss during the relevant period. Even the income-tax assessment order produced by Shri Babubhai Patel shows that his partnership firm had earned profits and had not suffered any loss during the period (Ex. 66). In all this background I have no hesitation in placing reliance upon the evidence of Shri Babubhai Patel and his affidavit which definitely proved that monetary consideration passed to Shri Mahtab for showing favour to the traders.

There is another yet important factor which more than confirms my earlier finding and that is the confession of Shri Mahtab himself as deposed by two important witnesses, namely, Shri Satyapriya Mohanty and Shri Radhanath Rath. Shri Satyapriya Mohanty says that sometimes after the Cabinet granting remission of royalty to the dealers, he had fallen ill. Shri Mahtab and Shri Radhanath Rath then happened to visit his house to enquire about his health. It was then that Shri Mahtab mentioned casually that Shri Rath was against remission, but a political party could not be managed without such a decision; as a result of which a sum of about Rs. 6 lakhs was collected from the Kendu leaf traders, out of which about Rs. 2½ lakhs was taken by Shri Mahtab for the Congress Party. Shri Satyapriya Mohanty was pressed hard in his examination by Shri Mahtab's Counsel about some confusion which he had made in connection with some note of dissent prepared by Shri Radhanath Rath. The note is mainly with reference to the change in policy which formed part of the same memorandum; but I am not prepared to discard the evidence of Shri Satyapriya Mohanty simply for that reason. Otherwise, his evidence is quite straightforward and reliable. His evidence is strongly corroborated by the evidence of Shri Radhanath Rath on this point. I was much impressed by the evidence of this witnesses, who, in spite of his serious ailment, was subjected to a long and tiresome examination by Shri Gobind Das, Counsel for Shri Mahtab. Shri Rath very definitely says' that, left to himself, he could have never agreed to any remission; and if he had not

agreed, the only alternative for him was to have faced humiliation before the officers or to have resigned. About the above talk he says :

> "On my return from Delhi after the Cabinet meeting I went to see Shri Satyapriya Mohanty, who was living in an adjacent house. He was suffering from some respiratory trouble. It was about 7-00 or 7-30 in the evening when I met him. By the time Shri Mahtab, the Chief Minister, also happened to come there. Both of us discussed with Shri Satyapriya Mohanty about his health. In the course of the talk, this question of Kendu leaf came up. The Chief Minister, Shri Mahtab, in the course of his talk said that the traders had made some contributions to the party fund. If I remember alright it was about Rs. 6 lakhs or so. Both the Ganatatra Parishad and the Congress Party shared the funds. It was to be shared as Rs. 3½ lakhs by the Congress and Rs. 2½ lakhs by the Ganatantra Parishad".

Whether two and a half lakhs was paid to the Ganatantra Parishad is more than I can say; but I have no doubt about the truth of the statement that Shri Mahtab got Rs. 6 lakhs from the traders. Shri Rath appears to be a man of great integrity. He had been associated with the ruling Cabinet in Orissa for a very long time and even when the Coalition Cabinet consisted of only three persons, he was one of them. That shows the confidence which both Shri Mahtab and Shri R. N. Singh Deo had in him. His long examination and cross-examination by Shri Mahtab's Counsel have brought out nothing of any importance to detract from the value of his testimony. Shri Mahtab himself when asked about his opinion of Shri Rath, says that his opinion about Shri Rath was very good and about his present relations with Shri Rath, his answer was that they were normal, except that the latter held different political views. It is suggested that the statement that Shri Mahtab received rupees six lakhs from the Kendu leaf traders is not consistent with the evidence of Shri Babubhai Patel and, therefore, the entire evidence on the point should be ignored. Shri Babubhai Patel had seen the payment of rupees two and a half lakhs but that does not mean that Shri Mahtab had not received rupees six lakhs. I find no inconsistency in the two statements. It is quite probable that earlier or later Shri Mahtab may have taken the other amount from some of the leading traders. It is not expected in normal course that people who pay illegal gratification would come and depose, because in the eye of law the person who pays and the person who accepts are both guilty. It is not without regrets that I have had to arrive at the above conclusion.

The fact that Shri Mahtab received this money from the Kendu leaf traders sets out in bold relief his earlier observation in his letter (Ex. 71) to Shri R. N. Rath, dated 10-10-1956, wherein he opines :

> "It has so happened that these merchants have virtually taken possession of the Congress organisation in many areas, and by this means they have usurped the political power to a great extent".

Shri Nabakrushna Choudhury, who was the Chief Minister of the State from 1950—1956, before Shri Mahtab succeded him, gives vent to the same feeling, when his attention was drawn to a speech which he made on 14-7-1963, as reported in the local paper "Samaj". He says:

> "It is a fact that Kendu leaf traders contributed Rs. 12 to Rs. 13 lakhs as donation during the election period to the Ruling Congress Party, and in return they were allowed to get an extra Rs. 50 to Rs. 60 lakhs every year, which should have come to the State out of the profits which they earned. It is a fact that Kendu leaf business had played an important part in Orissa politics".

The fact that a man of the ability and calibre of Shri Mahtab, who has held high offices and rendered many valuable services to the State should be found guilty of accepting illegal gratification in order to show favours to the Kendu leaf contractors unmistakably indicates that there is some serious malaise in the body politic and the political system under which we are living. Shri Mahtab has, of course, been exposed; but there may be many more in high places who have sufficiently enriched themselves and are still enjoying their positions of power and authority. Corruption if it seeps from the top rapidly contaminates the lower layers of our social and political life; and that is why we find it corroding and eating into the vitals of almost every phase of our social and political structure. It is common knowledge that in spite of the law limiting the expenses of election, people have to spend huge amounts in their election propaganda and for feeding and maintaining a vast machinery for that purpose. That is inevitable because of the big constituencies from which they seek elections and in collecting funds in the name of the party, the temptation to fill their own coffers is not easily avoidable; that is also because they feel uncertain of their political future. I wonder if we could not in the circumstances delimit our constituencies and create a hierarchy of electoral colleges beginning from a cluster of villages, to subdivisions and districts and then to the State Assemblies. That may eradicate voting on communal or caste lines which is another very deplorable feature of our political

life. I know that I am hazarding my opinion on a subject which is beyond the terms of my reference, but as a citizen of my country, I feel that the matter is worth serious consideration of our administrators and political thinkers. What I have said above is not in extenuation of the conduct of Shri Mahtab. Delinquency in persons occupying high offices can never be tolerated and they should be made to face the consequences, so as to make it an object lesson to others who swerve "or are inclined to swerve from the path of rectitude in the discharge of their public duties".

The settlement of Kendu leaves appears to be a fruitful source of corruption. As advised by Mr. Justice Mudholkar, I feel in agreement with him that some suitable scheme should be devised to plug the source of corruption for ever.

In conclusion, I find Shri Mahtab was guilty of accepting illegal gratification, impropriety and abuse of his power as Chief Minister in granting remission to Kendu leaf contractors, resulting in appreciable loss to the State revenue.

SARJOO PRASAD

## CHAPTER II

### *Grant of Lease of Chromite Mines to Md. Serajuddin*

Under this head it is stated that Shri Mahtab was guilty of favouritism and abuse of power in granting the lease of chromite mines to Md. Serajuddin to the detriment of the interest of the State.

One Md. Serajuddin of P-16, Bentinck Street, Calcutta-1 had preferred an application for grant of mining lease for chromite for a period of 20 years with the option of renewal for another period of 20 years. It was in respect of an area of 5·98 sq. miles in Sukinda Taluk of Jajpur Subdivision, Cuttack. The application was dated 29-3-1953 and was pending consideration when Shri Mahtab assumed office as Chief Minister in October 1956.

The Government of India issued on the 30th April, 1956, their Industrial Policy Resolution. According to the Resolution, the industries listed in Schedule 'A' consisted of such industries, the future development of which was the exclusive responsibility of the State. "Chromite" was listed in Schedule 'A' and therefore according to the Industrial Policy Resolution, industries having chromite ore as their raw material were to be generally established and conducted as State undertakings. The State Government jointly with the Central Government had set up an undertaking known as the Orissa Mining Corporation Ltd., in which each had equal share till 1961, but which later became a fully-owned Corporation of the State Government.

The application of Serajuddin, dated 29-3-1953, when it came up for consideration by the State Government, the Deputy Secretary in his note, dated 20th April 1957, pointed out several defects in the application in the light of the Mining Laws then prevailing and in the background of the Industrial Poilcy Resolution. Apart from the defects in the application which violated the Concession Rules, the officer pointed out that the area applied for was covered by the prospecting licence granted to TISCO LTD; and although the date of the licence had expired, the area could not be thrown open for re-grant under Rule 68 of the Mineral Concession Rules and as such the application was premature. The then Minister of Mines, under his note,

dated 1-8-1957, vide Ex-54, in this connection considered whether the State should lease out the mines to private parties, or they should be operated through the Orissa Mining Corporation. He was of opinion that although under the Industrial Policy Resolution mining of chromite ore was the exclusive responsibility of the State Government, it did not preclude the State from seeking co-operation of private entrepreneurs; and eventually he decided that pending consideration of the grant of mining lease to MD. Serajuddin of a larger area, a mining lease of 244 acres should be granted to Messrs. Serajuddin & Co. The note, further suggests that lease of even the above small area may be given to Messrs. Serajuddin & Co.,

> "specially for feeding a Ferro-Chrome Plant for which they are making efforts. We should not lose royalty till the Ferro Chrome Plant is established. We may give five years time to them to establish the plant and the lease may be granted now giving them permission to work the mine, providing a clause that the lease may be terminated in case of failure to establish a plant within five years."

This note was endorsed to the Chief Minister, who, under the minutes, dated 2-8-1957, ruled out the possibility of the Orissa Mining Corporation working out the area and asked the Minister to dispose of all pending applications with respect to various portions of the mining area in favour of the private applicants. The Chief Minister's minutes have not been exhibited but entire file relating to the subject has been placed for my inspection. The Chief Minister had discussed in his note some of the practical difficulties involved in entrusting the undertaking to the Mining Corporation; nor did he approve of the idea of the Corporation working through an agency system.

So far, there can be no complaint against Shri Mahtab. His preference for private entrepreneurs to work the chromite mines over the Orissa Mining Corporation might well have been influenced by the minutes of the Minister-in-charge (Ex-54), wherein the Minister was of the view that the working of such mines by the public sector was not feasible and the plan did not provide for sufficient finance or organisation for any such undertaking; and he rejected the idea of partnership or agency as being both dangerous. After the minutes of the Chief Minister, when the matter went back to the department, the Secretary, Mining and Geology, Shri A. G. Menon, in his note, dated 11-8-1957 (Ex-41) raised some very important considerations. He pointed out:

(1) that, apart from the fact that Serajuddin's application was defective in many respects, his application had in fact no priority as against various other applications which were prior to his;

(2) that the area was completely overlapped by the grant to Tatas who had since withdrawn their right over that area but which had not yet been thrown open for re-grant;

(3) that though a small portion of that area was free from prior applications and technically that area could be available to Serajuddin & Co., the remaining area also would have to be granted on the same principles to other parties;

(4) that Serajuddin & Co. had on many occasions mentioned the setting up of an industry as their object, yet, they never even took the preliminary steps to that end; and the grant of a prospecting licence shiuld at any rate precede the grant of a mining lease.

Finally, the Secretary in that note entered a strong plea requesting the Chief Minister to reconsider his order in view of the fact that the Orissa Mining Corporation should not be confined only to mining iron ore. He also pleaded that unless the Corporation was allowed to work all minerals and particularly those minerals with the largest margin of profit, such as chrome and manganese, it would not be worthwhile to continue with the Corporation. He pointed out that if the Corporation was allowed to work the mines even through the agency system, Government would make a minimum additional profit of Rs. 50 per ton over and above the royalty, inasmuch as the proponent of the agency idea was himself prepared to guarantee Rs. 60 per ton profit. He argued that the prize at stake was so large that it would be improper to let the matter go without an attempt being made to work the area departmentally or through the Corporation. He also added that since Government had a departmental agency and since the Corporation was organised to do the work and had a trained geologist waiting at Sukrangi for the last 4 months, "he humbly submitted that Government should atleast try the Corporation before thinking of giving this area or any area near about to a private party." This was a very illuminating and practical note submitted by the Secretary of the department which squarely met the objections in the minutes of the Chief Minister. The application of Serajuddin was accordingly rejected by Shri Dinabandhu Sahu, the Minister-in-Charge, by his order, dated 26-11-1957. Thus, closed the first chapter. Mysteriously enough, this order of rejection was never officially communicated to Mohd. Serajuddin and was held up by the Secretariat.

It appears that in another linked file there was a proposal regarding Serajuddin putting up a Ferro-Chrome Plant and the file was put up before the Chief Secretary with a note, dated 23-12-1957 of the

Secretary of the department, in which it was stated that if a new organisation is set up tc produce raw materials for any industry, that organisation should get a licence overruling all priorities. The officer, therefore, proposed that after the pending applications were all rejected, Serajuddin might succeed perhaps in getting a licence for ferro-alloy plant and then Government could start negotiating with Serajuddin for the formation of a new company for providing raw materials for the proposed ferro-alloy project. To me, it seems that this proposal in the linked file should have been brought to the notice of the Minister before he passed the order of rejection and since this was altogether an independent proposal still in its nebulous condition, there was no reason why the order of rejection should not have been communicated to Serajuddin. On the basis of the Secretary's note discussed in the earlier paragraph, no other order could be justified. The file shows that at all subsequent stages the authorities appear to have treated the application of Serajuddin, dated 4-4-1953 (when the Collector received it) which had already been rejected, as if it was still pending.

Meanwhile, the Orissa Mining Corporation had applied for a prospecting licence over the area and had written to the Secretary, Mining and Geology, to permit them to do preliminary investigation, pending the grant. On 11th February 1959, the Under-Secretary, to the Government of India worte a letter to the Secretary, Government of Orissa, strongly supporting the Corporation's request for the grant of a prospecting licence. Further, the Government of India suggested that the Corporation might be granted permission to start work immediately. But there were some other developments taking place behind the scene and Serajuddin, in spite of the order, dated 26-11-1957 rejecting his application, does not appear to have been sitting idle. The minutes recorded by Shri Dinabandhu Sahu, the Minister of Mines, dated 17-2-1958 give an inkling of the developing situation which threw the application of the Corporation in cold storage. Shri K. D. Malaviya, the Central Minister, appears to have visited Orissa and in the course of his talk with Shri Sahu he expressed the opinion that the area might be leased to Serajuddin if that was necessary for the Ferro Chorme Plant. Shri Sahu, therefore, proceeded to observe in his minutes as follows:—

> "Now we have to enquire as to how far has he proceeded in finalising the contract with M/s Demag and what steps has he taken to do other preliminaries for establishing the Plant. The licence that he has obtained must have indicated the time within which he has to perform certain acts. How far has he acted up to the time schedule should be enquired from him and a report may be asked of him to let us know as to what stpes he has taken for putting up the plant."

Shri K. D. Malaviya, who was at the relevant time the Minister of State in the Government of India in charge of Fuel in the Ministry of Steel, admits that Md. Serajuddin met him once in his office in the Ministry in connection with some application which he had made to Government and he wanted that the matter to be expedited; and as far as he could remember, it was in connection with an arrangement for setting up of a Ferro Chrome Plant in Orissa in order to process its own mineral; and it was thus that the matter came to be revived. When I put it to Shri Dinabandhu Sahu as to how, when he had rejected the application of Md. Serajuddin by his earlier order, he came to record the minutes to which reference has been made above. He added another reason also for re-opening the matter. I may as well quote his own words which are as under:—

> "As far as I remember, when I was a member of the Cabinet in 1957-58 under the leadership of Dr Mahtab, Shri Biren Mitra was the best confidant of Dr. Mahtab. I, as a member of the Cabinet, even felt that Dr. Mahtab had more reliance on Shri Biren Mitra than on member of the Cabinet like us. Shri Biren Mitra was managing the party in the Assembly to keep the minority Government, in power because there were only 56 or 57 members in the party and for keeping the Government in power, huge amount of money was required to get the measures passed in the Assembly and to avoid a no-confidence motion in the Assembly. Shri Md. Serajuddin was one of the contributors for maintaining the party in power. Shri Biren Mitra used to come and pester me to give a mining lease to Md. Serajuddin saying that it was the wish of the Chief Minister. Considering his position *vis-a-vis* the Chief Minister, and in casual talk with the Chief Minister, I also found out that, that was his desire. That is how the matter was re-opened."

He, however, goes on to explain that on the files it had to be done on some ostensible reason. This added reason given by Shri Dinabandhu Sahu may have a good deal of importance when we come to examine further developments on the subject.

In his letter, dated 12th/14th July 1958 Md. Serajuddin approached the Government of Orissa for permission to prospect over an area of 2.80 sq. miles out of the area of 5.98 sq. miles for which he had applied for a mining lease, but which application had been rejected on 26-11-1957, though the decision was not officially communicated. In his letter, Md. Serajuddin stated that he had obtained a licence for import of machineries, furnaces and other equipments for the manufacture of Ferro Chrome and Ferro Silicon. He enclosed with his

letter a copy of the import licence, dated 5-6-1958 on West Germany for a sum of Rs. 68,46,000; and he submitted that it was not possible for him to take concrete steps and commit himself by placing a firm order to obtain such costly machineries, unless sufficient reserves of suitable chromite areas were placed at his disposal to feed the plant for its minimum life. He pointed out that the Surabil area of Sukrangi for which his application for mining lease was pending with the State Government had already been accepted and approved by his consultants, Messrs. Demag A. G., West Germany. He therefore, wanted that he should be allowed to prospect over an area of 2.80 sq. miles in the first instance, including probe by drilling, as a necessary preliminary to further action for obtaining the machineries. This proposal of Md. Serajuddin was examined in the department. The Secretary recommended that a part of the area asked for might be given to him for the present and later if the plant came up, it may be considered if other areas would be made available to Md. Serajuddin. When the file went up to the Minister of Mines, the Minister was prepared to give the whole of the area asked for to Md. Serajuddin, provided the establishment of the Ferro-Chrome Plant was a certainty. He therefore, sought the advice of the Chief Secretary; firstly on the point whether the whole of the area could be allotted to Md. Serajuddin and secondly, on the point whether it would be possible to burden the lease with a condition that the lease would be cancelled if the party does not put up the Ferro-Chrome Plant within a reasonable time. The Chief Secretary in his note, dated 30th of August 1958, advised that in the interest of the industry the whole area available for grant may be passed on to Mohammed Serajuddin, provided (i) he undertakes to put up the Ferro-Chrome Plant within a certain period; (ii) but until he puts up the plant, he could only prospect the area and the ore own should be used in the plant itself and should not be sold or exported. The Chief Secretary was of the view that the Government of India would agree to those conditions being imposed as the State Government was recommending a special grant to Md. Serajuddin against the Mineral Policy for establishment of an industry. The validity of the proposed stipulations suggested by the Chief Secretary was also considered and approved by the Law Department to whom the matter was referred. Accordingly, on 5-9-1958, the Secretary of the Mining Department endorsed the file to the Minister of Mining. While these steps were progressing, Shri Mahtab appears to have intervened on the 7th of September 1958, with the following observations in his minutes:

> 'I am told Shri K. B. Lal, Joint Secretary, Commerce, New Delhi, is anxious that the Chromite Mining Lease should be granted to Serajuddin & Co. as soon as possible, because the Commerce Minister in Delhi expects the Ferro-Chrome

> Plant to come into existence as soon as possible so that they will earn foreign exchange. As far as I remember, decision with regard to Serajuddin's application was taken long ago and I understand the file is with you for the last some weeks. Will you please expedite its disposal ? I shall be obliged if you kindly dispose it of by the 10th instant."

It is clear from the above order that the Chief Minister not only directed expeditious disposal of the file but also fixed a date line for the purpose. The matter was placed before the Minister of Mines, who indicated in his minutes, dated 8th September 1958 that "it was not necessary to grant the whole area when the party asked for prospecting only half of it. Therefore, the area applied for by Md. Serajuddin should be granted to him on the terms and conditions suggested earlier and examined by the Law Department." He further observed in his minutes : "The party has written to the Chief Minister and the Chief Minister has made some queries about it. The file may go today to the Chief Minister for acquainting him with the position at which the file is and he may send for the party as the party is anxious to meet him."

On 9-9-1958, the file was again put up to the Chief Minister, when the latter observed that whatever area had been applied for by Md. Serajuddin on 29-3-1953 had to be reserved for him on lease for the Ferro-Chrome Plant. What he immediately wanted was to have the permission to prospect half the area. Out of this area, some portion was claimed by one Misri Lal Jain who had been litigating the matter in the High Court and in case Shri Jain loses, that portion also should go to Md. Serajuddin. He noted:

> "As far as I remember, the Union Minister, Shri K. D. Malaviya, left this matter for us to decide. Therefore, the Government of India's approval is only a formal matter. Pending formalities, immediate permission should be given to Md. Serajuddin to prospect the area. (Shri Malaviya's letter should be referred to in this connection). I do not see that letter on the file."

The order appears to have been passed by the Chief Minister in the presence of Md. Serajuddin who was in the Chief Minister's office at the time. This is evident from the letter of Serajuddin, dated 4th of October 1958. The Minister of Mines in his note, dated 11th September 1958, pointed out some difficulties in implementing the above order of the Chief Minister. He said he had a discussion with the Secretaries from which he gathered that out of the area which Md. Serajuddin had applied for, some parts, covering 175 sq. miles had

already been leased to certain person and only the rest of it was available to be reserved for Md. Serajuddin. As regards the letter from Shri K. D. Malaviya as observed by the Chief Minister, there was no such letter or any letter from the Secretary, Ministry of Steel, Mines and Fuel on the file. The only letter that was on the file was the letter from Shri Kaul which was in reply to the Chief Minister's letter to Shri Malaviya, wherein it was stated that though the Government of India broadly agreed to the suggestion that the mines in respect of minerals in Schedule 'A' might be leased out for putting up industries, but they wanted to have a specific proposal. He, therefore, suggested that the grant of permission to prospect immediately without waiting for the approval of the Government of India might not be quite appropriate in view of the stringent provisions of the new Act that no one could prospect the area without holding a prospecting licence or a mining lease; but since the Ministry of Commerce and Industry was anxious to have the plant erected within the quickest possible time and Md. Serajuddin was anxious to carry on prospecting in order to enable him to know the quality and quantity of the available ore to be able to proceed to finalise the agreement with Messrs. Demag for erection of the plant. Md. Serajuddin's purpose would be served if the Government recommended for a prospecting licence in respect of the area indicated by him. Shri Mahtab, the Chief Minister, made notes in the margin of the minutes in which he substantially agreed with the proposal of the Minister of Mines. In one of his notes (Ex. 50/A) he added :

> "Hence our letter to Government of India should be an assertive one. When the letter goes, I shall write personally to Malaviya because he told me so"

and in the end he finally noted thus :

> "Please see my comments on the margin of the note. Action may be taken accordingly. The policy is now settled. It is to be executed in regular form and according to rules as usual. I have indicated the policy." (Ex. 50/C).

Finally, the Government of Orissa addressed a letter to the Secretary to the Government of India, Ministry of Steel, dated 13th September 1958, requesting the approval of the Central Government for grant of a prospecting licence for chromite over an area of 1·9 sq. miles in favour of Md. Serajuddin. The letter, dated 27th September 1958 of the Government of India conveyed their approval (Ex. 36) to the grant of a mining lease for chromite over the aforesaid area of 1·9 sq. miles in Sukrangi to Md. Serajuddin specifically "with a view

to ensuring supply of mineral to the Ferro-Chrome Plant for the setting up of which Md. Serajuddin & Co. had been granted a licence under the Industries Development and Regulation Act, 1951." The letter further reads :

> "I am also directed to say that the condition may be incorporated in the lease deed to the effect that if Messrs. Serajuddin & Co. fail to set up the Ferro Manganese Plant the State Government will be entitled to cancel the mining lease without any compensation."

It was also observed in the letter that if the applicant desired to undertake preliminary action to assess the quality and quantity of ore reserves in the area, the Central Government had no objection to the State Government affording necessary accommodation to the party as a special case.

This letter of the Government of India was received by the State Government on 29th September 1958, and immediately on the 30th September 1958, the Government of Orissa wrote to Md. Serajuddin informing him that the State Government proposed to grant a mining lease for chrome over an area of 1½9 sq. miles in Sukrangi in Cuttack district with the stipulation that he should establish a Ferro-Chrome Plant within the given period; and unless he erects the plant within that period, the State Government would have the right to terminate the lease without compensation and further the chrome ore raised in the leased area should be used in the Ferro-Chrome Plant itself and not sold or exported. In this letter, Md. Serajuddin was asked to indicate his willingness to accept the above stipulations.

I would like to observe here that although the Government of Orissa had written to the Central Government for the grant of prospecting licence in favour of Md. Serajuddin, the Central Government apparently in their anxiety to expedite the establishment of the Ferro-Chrome Plant at an early date gave their consent to the grant of a mining lease for chromite over the said area. But the whole idea underlying the lease was that the Ferro-Chrome should be used for purposes of the plant and not for any other purpose because the Central Government wanted a condition to be incorporated in the lease deed that if the company failed to set up a Ferro-Chrome Plant, the State Government would be entitled to cancel the mining lease without compensation. The State Government in its letter therefore specifically mentioned the two stipulations :

> (1) that if the plant is not erected within the stipulated date, the State Government will have the right to terminate the lease without compensation; and

(2) that the chrome ore raised in the leased area should be used in the Ferro-Chrome Plant itself and not sold or exported privately.

In my opinion, these two stipulations were absolutely essential in order to ensure the erection of the Ferro-Chrome Plant and the earning of foreign exchange for which the Central Government appeared to have been anxious.

In his reply, dated 4-10-1958 Serajuddin wrote to say that on 9-9-1958 the Chief Minister had given him a very patient hearing in respect of his application, dated 29-3-1953 and he felt convinced and satisfied when he passed the order that Serajuddin should be given a mining lease over an area of 4·23 sq. miles in village Surabil out of the applied area of 5·98 sq. miles ; and since the execution of the mining lease required the fulfilment of certain formalities, he should be given special permission to prospect over an area of 1·9 sq. miles with a view to assess the quality and quantity of the ore available in that. He, therefore, prayed for lease of the mines and also for a special permission to prospect immediately. It is to be noticed that in this meeting on 9-9-1958 the Minister of Mines was not present. I have already discussed this order of Shri Mahtab earlier, which was being duly processed by the Secretariat; but not content with this on 7-10-1958 Shri Mahtab sent for the file from the department without being routed through the Minister of Mines and commented on the file as follows :

"I sent for the file because it came to my notice that the matter is not moving smoothly in this case. In fact, when I was last in Delhi, Shri K. D. Malaviya, Minister for Mines and Fuel, spoke to me about it. In fact, I find that instead of recommending mining lease, the Orissa Government in their letter at page 66/c recommended prospecting licence. I do not know how it happened. It is not expected that anybody should go in for prospecting licence in order to start an industry. While going through the notes, I find that our decision was to recommend mining lease. Pending that, he should be allowed to prospect. Obviously, the intention was that the mining lease should be recommended to the Government of India. However, that did not happen.

"Then I find the Government of India on their side corrected our mistake and asked us to grant the mining lease. At the same time, they have said that the condition may be incorporated in the lease deed to the effect that if the

firm fails to set up the Ferro Chrome Plant, the State Government will be entitled to cancel the mining lease without any compensation. This is not obligatory. Therefore Government, by themselves, could have taken a decision giving a time limit of, say, 3 to 5 years to the firm to set up the industry, as has been done in the case of B. Patnaik & Co. Instead I find that the Orissa Government have written to the Government of India recommending conditions which are incapable of being fulfilled. This is not the way how any industry can be asssisted.

"The simple condition should be that the industry should be set up within 5 years. If it is not set up during that period, then Government will have the option to cancel the lease, without compensation. The condition that the chrome ore raised in the lease should be used in the Ferro Chrome Plant itself and not sold, exported or transported otherwise, is incapable of being fulfilled. Even the Tatas who have large iron ores leased out to them for industrial purposes Sometimes export iron ore if and when they raise more ore than is necessary for the plant.

"The department should now reconsider the conditions. I do not think any reference to the Government of India is necessary in view of their letter. Therefore, the only condition in the lease should be that the industry should be set up within five years, failing which Government will have the option to cancel the licence without compensation. The Government of India have disposed of the matter from their side. The matter should not be delayed or complicated from our side.

"The file may be put up to me after action is taken. Minister (Ind.) will please see this."

It is apparent from the letter of Serajuddin that from 9-9-1958 Shri Mahtab took the intiative in his own hands left the Minister-in-charge of the portfolio to play the second fiddle. When Shri Mahtab held consultations in his office with Serajuddin and the Industrial Adviser, it does not appear that he invited the Minister-in-charge to be present and he passed the order on that date entirely in his absence and presumbly without consulting him. Later, when the difficulties in implementing the order were pointed out in the minutes of the Minister of Mines, in his marginal note, Shri Mahtab appears to have agreed. Further Shri Mahtab referred to some letter of Shri Malaviya which was not there at all. With reference to Shri Kaul's

letter which was the only letter received and in which Government of India wanted specific proposals with regard to parties to whom leases of minerals in Schedule 'A' might be granted, Shri Mahtab says that their letter to Government when a reply is sent should be "an assertive one" and offered to write to Malaviya himself. This may show his deep interest in supporting the case of Md. Serajuddin, but I do not see the significance of the reply being "an assertive one" when the Government of India had broadly agreed to the mines being leased out. Later, he even sends for the file directly from the department without its being routed through the Minister of Mines. This unsavoury steps taken by Shri Mahtab were evidently opposed to normal conventions for the healthy functioning of a democratic Cabinet. Shri Dinabandhu Sahu, the Minister-in-charge, therefore, says that after the file had been taken away by the Chief Minister, he lost all interest in the matter. His only option was either to resign or to submit the wishes of the Chief Minister. It is true that the Chief Minister has the power to override the views of his Cabinet Ministers, but that power should be exercised with caution and not so as to compromise the position of his colleagues in the eyes of the subordinate staff. Any such action is destructive not only of the joint responsibility of the Cabinet but also destructive of all discipline in the rank and file.

In his order dated 7-10-1958, recorded on receipt of the file from the department he appears to be indignant. He says that "he sent for the file because it came to his notice that the matter was not moving smoothly in this case". He observes therein that "Why anybody should go in for a prospecting licence in order to start an industry"; but the fact is that Serajuddin did want to prospect and needed a licence for that purpose. Besides, I find that Shri Mahtab himself said in his marginal note on the minutes of Shri Dinabandhu Sahu that "permission to prospect may be given". Be that as it may, on receipt of the letter of the Government of India dated 27-9-1958 (Ex.-36), sanctioning the grant of mining lease to Serajuddin "with a view to ensure supply of the minerals to the Ferro Chrome Plant, for the setting up of which Messrs. Serajuddin & Co. have been granted a licence" the Deputy Secretary to the Orissa Government almost promptly wrote to Md. Serajuddin on 30-9-1958, mentioning the terms and conditions on which the lease was to be executed and requesting Serajuddin's willingness to the above stipulations. The reply to the letter of the Deputy Secretary was not sent by Serajuddin until the 4th of October. 1958. I wonder how faster and more smoothly the files could have moved; If anybody was slow to move in replaying, it was Serajuddin. In his reply to the above letter of the Deputy Secretary, Serajuddin, an astute and shrewd

businessman, keeps mum about the stipulations contained in that letter. He appears to have left it to Shri Mahtab to champion his cause. In his order dated 7-10-1958 Shri Mahtab observes :

> "The simple condition should be that the industry should be set up within 5 years. If it is not set up during that period, then Government will have the option to cancel the lease without compensation. The condition that the chrome ore raised in the lease should be used in the Ferro Chrome Plant itself and not sold, exported or transported otherwise, is incapable of being fulfilled. Even the Tatas who have large iron ores leased out to them for industrial purposes sometimes export iron ore, if and when they raise more ore than is necessary for the plant".

The fact that the ores extracted were primarily meant for the Ferro Chrome Plant and not to be exported or sold privately is almost implicit in the Government of India's letter sanctioning the lease. It says "with a view to ensuring the supply of the material to the Ferro Chrome Plant for the setting up of which Messrs. Serajuddin & Co. have been granted a licence, "Shri Mahtab submits that he was anxious in the interest of the State that the Ferro Chrome Plant should be established as early as possible. So I suppose was Shri Dinabandhu Sahu also; and the above condition that the minerals extracted were to be utilised mainly for the Ferro Chrome Plant and were not to be otherwise sold or experted was clearly meant to put pressure on Serajuddin to have the plant set up at an early date; otherwise, it is obvious that it would be open to Serajuddin to continue to extract the rich mineral for a continuous period of 5 years and sell and export them without setting up a plant at all. Eventually, this is what he did and even worse : An experienced and intelligent person like Shri Mahtab could not have failed to notice this aspect of the matter. It has to be remembered that Serajuddin was getting the lease as a special favour, overriding the claims of others having priority over him and against the Industrial Policy of the Government, mainly because he proposed to set up the Ferro Chrome Plant and had an import licence in his favour. Since Shri Mahtab had sent for the file, it must have been apparent to him that the Secretary, Mines, had already warned that Serajuddin was a slippery customer and while he made promises on earlier occasions of setting up industries, he never fulfilled them. Shri Mahtab was unable to explain in his evidence how he could equate Serajuddin's case with that of the Tatas. The Tatas had a long established plant and it is only the surplus ore which they sold outside. Serajuddin's plant had still to come into existence and even the agreement with his collaborators or the project report was not available until very much latter as admitted by Shri Mahtab himself (Ex.-35).

I am unable to understand why the condition regarding prohibition of import of chrome was incapable of fulfilment, provided the erection of the plant was not delayed. On the erection of the plant, the ore extracted would naturally go to feed the plant. It is not suggested that any surphes left after feeding the plant (a contingency too remote) could not be exported or sold outside.

Thus, an irksome condition which would have compelled Serajuddin to put up the Ferro-Chrome Plant at an early date was eliminated, not because Serajuddin himself had made any protest against the incorporation of the condition in the lease deed, but because the Chief Minister made that concession in his favour over-riding the stipulations proposed in the letter of the Deputy Secretary. Therefore, the only condition in the lease deed had to be that the industry should be put up within 5 years, failing which the Government will have the option to cancel the lease, without payment of any compensation. Under the above order dated 7-10-1958 the Chief Minister further directed that the matter should not be delayed or complicated from their side, and the file should be put up to him after action had been taken and requested the Minister (Ind.) to attend to the same. Accordingly, a fresh letter was addressed to Md. Serajuddin on 10-10-1958 containing the conditions as directed and dropping the condition that the ore raised should be used in the plant itself and not transported or exported. Serajuddin on 31st October, 1958, objected even to this stipulation and wanted a modification to the effect that if he failed to erect the plant within the specified period due to causes beyond his control, the Government would have the option to cancel the lease with compensation. Significantly, this letter was addressed directly to Shri Mahtab who made a note on it directing the Joint Secretary of Mines to look into the matter and to incorporate some provisions to protect the lessee in case the factory did not come up due to any fault of the lessee. This matter was pursued in the department and on 5-11-1958 the Deputy Secretary noted :

> "Government's intention in leasing out the area is to promote a Ferro-Chrome Industry in the State. It is Shri Serajuddin who was to prove his *bona fides* in the matter of establishing the industry. If there would be circumstances over which Serajuddin would not have any control, the State Government can favourably consider his difficulties and extend the period of 5 years by any reasonable period that the State Government may consider necessary in the face of the difficulties. The Government may, therefore, not agree to the proposed condition that the Government will have option to cancel the lease with compensation."

This was a very salutary advice tendered by the Deputy Secretary. What would be the failure due to in putting up the plant within the specified period, would be largely a matter in the knowledge of Md. Serajuddin, and who knows that plea he would raise under the protection of that proviso in the deed in order to gain compensation from the Government in case the Government took steps to cancel the lease. But, on the same day, even prior to the above note of the Deputy Secretary, Shri Mahtab wrote on the file that Serajuddin did not want compensation, except when the lease was to be cancelled for no fault of the company. Since the company was serious to put up the plant and since both foreign exchange and necessary licence had been granted, as a special case the matter had to be expedited. Serajuddin, therefore, again gained his point in spite of the adverse comments of the Secretariat, calculated to protest, the interest of the State, because the Chief Minister himself sponsored his cause.

Before, however, any lease deed could be prepared incorporating the proviso, it was discovered that the Industrial licences were given to Md. Serajuddin & Co., whereas the mining lease was to be in favour of Md. Serajuddin. The Secretary pointed out that this might create a lacuna which would prevent enforcement of Government's intention to cancel the lease, if the plant was not put up in time. He, therefore, considered that in all fairness the matter should be placed before the Government of India to obtain their consent to the lease. When the file went to the Chief Minister, he in his minutes dated 26-12-1958 overruled all the objections raised by the Secretary and the Chief Secretary. He directed that facts relating to the applications along with the Mining Concession Rules should be placed before him within a week, so that, if necessary, he should write a personal letter to the Union Minister. He concluded his note with the emphatic observation :

> "I am anxious that persons who are coming forward to put up industries are not obstructed by anybody in any manner."

I hardly think that the notes put up by the Secretaries was by way of obstruction. They were simply discharging their duties in protecting the interest of the State. While the matter was still under examination by the department, a telegram, dated 22-1-1959 was received from the Government of India to withhold, until further communication, the issue of the mining lease for chromite. On receipt of this telegram. Shri Mahtab wrote a long note on 1-2-1959. The note shows that Shri Mahtab is again indignant. He opens with the observations :

> "This case, and perhaps many other cases of this nature, do not speak well of the way in which the Mining Department

is working. I have pointedly drawn the attention of the Minister, Secretary and Joint Secretary to this question but nothing seems to be happening. I follow individual cases just to know how the department works".

He then briefly states the history of the case, objects to the re-opening of certain matters about the defects in the petition of Serajuddin, which I agree should not have been re-opened after all these stages; and severely comments upon the Secretary and the Joint Secretary for not having cared to go into the matter themselves and to have relied always on office notes. Further, he comments upon the fact that without anybody's order, a letter was written to the Government of India laying down conditions which were subsequently re-considered. He also points out that ultimately Serajuddin accepted the terms offered to him under the Government letter dated 10-10-1958. He then concluded :

"Since the lease order has already been issued on the 10th October 1958, it cannot be withheld on any ground. Therefore, the telegraphic communication from the Government of India, if at all it has any legal value, cannot be given effect to, because already the order has been issued some months ago. Therefore, the lease should be executed immediately."

It appears from this note that Serajuddin did not insist on his counter-proposal contained in his letter dated 31-10-1958, already considered by me earlier and hastened to accept all the terms and conditions as conveyed to him under Government letter, dated 10-10-1958.

The telegram sent by the Central Government, dated 21-1-1959, advising holding up the issue of mining lease to Serajuddin until further communication, was followed by a letter dated 23-2-1959. Why this confirmatory letter which should have been sent much earlier was delayed so long, has not been satisfactorily explained. Shri Malaviya in his evidence says that the telegram was sent on his instructions but after the despatch of the telegram he appears to have gone abroad. He therefore, could not account for the delay which is another mystery in this case and at least indicates the laxity in our Secretaries. However, to come back to this letter (Ex. 40) it definitely says:

"I am directed to say that the grant of mining lease for chromite over an area of 1·9 sq. miles was approved on the basis that Md. Serajuddin has secured an industrial

licence to set up Ferro Chrome Plant. It appears that the certificate under the Industries (Development and Regulation) Act for setting up of a Ferro Chrome Plant has been issued in favour of the firm M/s. Serajuddin & Co., and not in favour of Md. Serajuddin. The exception from the Industrial Policy Resolution of April 1956, therefore, would be difficult to be made under these circumstances and the inclusion of a special condition regarding setting up of a Ferro-Chrome Plant by the lessee would not be capable of satisfaction at his hands unless an industrial licence is issued in his favour. I am, therefore, directed to say that the approval conveyed in this Ministry's letter of even number dated the 27th September, 1958, may kindly be considered as withdrawn." (underlines are mine).

Shri Malaviya in his evidence is emphatic on the point that the

"setting up a plant for processing of the mineral was a necessary condition for the mining lease, without which he could not get the lease. At that time, the rule was that Government of India's permission was necessary in order to give lease of these strategic minerals."

He again adds that :

"The policy of the Government is to exploit the mineral ore to process it within the country with a view to earning foreign exchange by export of the finished products. It was the policy of our Ministry to see that the ore is not exported only as raw material coming out of the mines, but exported after being proceessed as a finished product,"

and he deposes that the matter of dual authority was brought to his notice just one or two days before he went abroad leaving instructions for sending a telegram, cancelling the mining lease if the conditions was not fulfilled.

In response to the above communication of the Government of India, Shri Mahtab addressed a personal letter to Shri Malaviya in these words :

"The lease which has already been granted to Mr. Serajuddin can be transferred to the Company, if it is necessary, by a request from Md. Serajuddin".

It is significant that in the first part of this letter Shri Mahtab simply states that the letter sanctioning the lease of the mine had been issued to Serajuddin. He does not say that Serajuddin had accepted the terms of the lease. In the last part of this letter, he however, observes that the lease "has already been granted to Md. Serajuddin." Shri Mahtab in his evidence says that there is a distinction between grant of the lease and the execution of the deed; in reply to the contention of the State Counsel that the above observation in the letter was clearly misleading since the lease was actually executed much later, i.e., on the 26th of March 1959. The use of the word 'granted' in my opinion, is certainly unhappy and may very well convey the impression that the document of lease had been already executed according to the usual form of leases granted by Government. In fact, Shri Malaviya also took it in that light, as his reply shows. His reply is dated 19-3-1939 (Ex. 38) in which he says :

> "As the mining lease has already been granted in favour of Md. Serajuddin, in order that the special condition incorporated in the mining lease deed may become enforceable and which was one of the main grounds in granting a lease to the party for a mineral in Schedule 'A' of the Industrial Policy Resolution of April 1956, I would suggest that Md. Serajuddin may either transfer the lease in favour of M/s. Serajuddin & Co., or arrange to get the industrial licence originally granted in favour of M/s. Serajuddin & Co., transferred in his own name." (the underlines are mine).

The use of the words "special condition incorporated in the lease deed" clearly shows that by the grant of the lease he understood that the document had been already executed. In common parlance also the words "grant of lease" mean that all formalities in connection with the lease have been completed. Shri Mahtab, therefore, should have made it clear in his letter that the State Government's letter conveying the terms had been issued to Serajuddin and the terms were accepted by him. The use of the words "lease deed had been already granted" was almost misleading. In his evidence, Shri Malaviya says that he was convinced that without rectifying the mistake that the licence was in favour of the Company, while the lease was in favour of Serajuddin alone, the policy of the Government of earning foreign exchange by finished products could not be imposed; and so the "mistake or trick" whenever it be, had to be rectified in the best possible way. The reply of Shri Malaviya does not show that the order withdrawing the approval of the lease had been cancelled. In pursuance of the above letter Shri Mahtab; it appears that the Secretary of the State Government also wrote a letter on 25-3-1959 to the

Secretary to the Government of India (Annex. 33). The language of this letter is, however, more cautious. After mentioning some other relevant details it proceeds to say:

> "It will, therefore, be seen that the telegram No. 162(384)/58, dated 22nd January 1958, in which the Government of India advised to withhold until further orders the granting of mining lease to Md. Serajuddin was received after the mining lease was sanctioned and the conditions of the lease were accepted by Md. Serajuddin". (underlines are mine).

It was, therefore, requested in that letter that the Government of India might re-consider their decision and rescind their orders conveyed in their telegram, dated 22-1-1959 and letter, dated 23-2-1959. It is obvious that the Secretariat was anxious to have the position regularised. But, the letter was sent too late, since the lease was executed the very next day, before the Government of India could take any further action on the letter of the Secretary. The next letter of the Government of India is dated 2-4-1959 in which they suggest that if Serajuddin is agreeable to transfer the lease in favour of M/s. Serajuddin & Co., the Ministry had no objection to accede to the suggestion of the State Government.

I need not refer to the other correspondence which passed between the State Government and the Government of India, except to one more letter (Annex. 35) from Shri Mahtab to Shri Manubhai Shah, the then Minister for Industry. It appears that the Government of India contemplated revoking the licence granted to Messrs. Serajuddin & Co., for their failure to take effective steps as provided in the Rules, within the prescribed time. Shri Mahtab forwarded with this letter their representation to the Government. In extenuation of their conduct, Shri Mahtab observes:

> "As you will see from their letter, the matter of final selection of site, supply of power, the question of rate, etc., have been and is under active consideration of the firm and the State Government. These questions could not finally be decided due to the delay in receipt of the project report from Messrs. Demag, West Germany, who are their technical consultants. Now that the project report has been received, both the Party and the State Government will take the matter in right earnest and final decision. In the circumstances, could you kindly take interest in the matter and see that the period of validity of the licence is extended, as also the period for taking effective steps. The firm, I understand, has also applied to the Chief Controller of

> Imports and Exports, New Delhi, for re-validating the Import licence for import of Capital Goods. This may also be kindly looked into."

By the execution of the lease deed on 26-3-1959, Serajuddin got into possession of the mines; but the irony of it is that no Ferro-Chrome Plant was ever put up by Serajuddin or by Messrs. Serajuddin & Co., within the stipulated period, and even after extension had been granted from time to time. On 13-12-1962, the Government of India revoked the industrial licence granted to Messrs. Serajuddin & Co., and therefore on 5-12-1963 the lease was determined by the State Government. Even then, Md. Serajuddin did not deliver possession of the mine, with the result that the State Government was forced to file a suit. The suit was decreed by the trial court on 24-12-1966, but Serajuddin carried the matter in appeal which was dismissed by the Orissa High Court and leave to appeal to the Supreme Court was also refused and ultimately the State Government got possession on 15-4-1970. In other words, Serajuddin merrily continued to extract minerals and reaped a rich harvest of profit from their sale during all this long period of 11 or 12 years, eliminating all his rivals who had a claim of priority over him, eliminating even the public sector, the Orissa Mining Corporation, who, under the Industrial Policy of the Government, were primarily entitled to work the strategic materials which had a good marketable value.

The fact that the Orissa Mining Corporation was being starved of State support was thus commended upon in the Lokanathan's Orissa Taxation Enquiry Committee Report:

> "All this goes to show that although the Orissa Mining Corporation is a public sector company deserving special support and sympathy in terms of the Industrial Policy Resolution, it was not given necessary facilities to expand its business and make a significant contribution to the development of mines in the State and the growth of non-tax revenues. We would strongly recommend that the State Government in its own interest should adopt a more positive and helpful attitude towards the Corporation."

This was all the upshot of Shri Mahtab's endeavours to help the development of industry in the State of Orissa, which is supposed to be one of the most industrially backward States in India:

I have shown during the course of my discussions how from stage to stage Shri Mahtab appears to have taken almost a partisan attitude and gone out of his way to help Serajuddin, in spite of all the cautious notes submitted by the Secretaries. Even at the earliest stage, the

Secretary, Mines, had sounded a note of warning against the conduct of Serajuddin ; but Serajuddin appears to have gained personal access to him so much so that during an important consultation with Shri Mahtab even the Minister of Mines was not invited and an order was obtained ignoring the Minister-in-charge. Serajuddin addressed letters directly to Shri Mahtab ignoring the Minister and the Secretaries and obtained favourable response from him. Shri Mahtab even entered special pleas in favour of Serajuddin and fell foul of the Secretaries if they pointed out anything which was material to the interest of the State. His letter to the Government of India that the lease had been granted, when no such document had been executed, was quite misleading and in the context of the steps taken by him ealier, I can only say it was a deliberate move. Personally speaking, I think it was open to the Government of India which was entitled to approve the grant of the lease to revoke the same. It is trite to say that the authority to approve has also the power to revoke the approval, subject to just exceptions, and no rules are necessary to vest that power of revocation, which is implicit in the power of approval itself. Even if two views were possible in this case, why should not Shri Mahtab have placed the actual facts before the Government of India, which was later done by the Secretary, Mines, when it was too late to stop the execution of the lease. For all these reasons, I am inclined to agree with the finding of Mr. Justice Mudholkar that Shri Mahtab had shown unusual eagerness in granting the lease to Md. Serajuddin and in permitting him to prospect the mines.

Shri Mahtab's plea is that whatever he did was done with a view to help and expedite the development of industry in the State and he had no other motive in doing what he did. The then Minister of Mines, Shri Dinabandhu Sahu, in his evidence has paid him very great compliments. He calls him a dynamic, determined and assertive administrator. He also refers to several beneficient projects which have been introduced and undertaken in the State entirely due to the efforts of Shri Mahtab. There can be no doubt that Shri Mahtab is a dynamic personality in the State of Orissa and still commands a sizeable following. It is true that rapid industrialisation was the quickest method of raising the living standards of the people in the State. But, Shri Dinabandhu Sahu confesses at the same time that the difference between him and the Chief Minister was in respect of temperamental attitudes towards problems. Shri Sahu was trying to safeguard the interest of the State, so that in haste they might not be induced to grant the lease without being sure of the establishment of the plant. He further says that he had a lurking suspicion in his mind that the proposal for establishing a Ferro-Chrome Plant might have been a device for taking out a mining lease from the State Government defeating the right of priority of the other applicants. That is why he was trying to make the establishment of the plant a dead certainty,

before he could permit a lease to be executed in favour of Serajuddin. If it were a mere case of haste, no blame would attach to Shri Mahtab nor would any blame attach to him if Serajuddin had played a dodge and outwitted Shri Mahtab, which, of course, was not so easy to do. Any how, the evidence here points entirely to a different conclusion, namely, that Shri Mahtab was trying to favour Serajuddin at any cost and went out of his way to do things for him which, as Chief Minister, he should not have done.

Indeed, there is no evidence before me of any monetary consideration having passed to Shri Mahtab. The old Serajuddin, I was told, is dead ; and it was difficult for me to trace out and procure his books of accounts as his firm appears to have been involved in various litigations in which books of accounts have been requisitioned and it was not known where they may be lying. Shri Sahu has said that he was surprised that after his orders to suit his needs, Shri Serajuddin would meet the Chief Minister and get orders from him more favourable in the matter of getting the lease. Perhaps, the reason for the extraordinary attitude of Shri Mahtab in unduly favouring Serajuddin and even abusing his position as Chief Minister may lie in the statement of Shri Sahu which I have quoted earlier. The letter to which Shri Mahtab refers in his written argument does not necessarily detract from the value of that statement.

Shri Dinabandhu Sahu definitely stated that Shri Serajuddin was one of the contributors for maintaining the party in power. Shri N. K. Choudhury has also made similar observations with reference to his speech, dated 14th July 1963, as reported in the local paper "Samaj" I may extract the relevant part from his evidence as follows :

> "I particularly mentioned the name of Shri Serajuddin in the context of publications in the Press that contributions were being realised. The whole excitement was that Serajuddin had given money to different persons and institutions, who were connected with the Congress, which was in power at that time. "At that time" the reference in that part of the speech is the period during which I myself happened to be the Chief Minister of the State. It is a fact that people in power decide the manner in which the big businessmen were to be compensated by making profits in other ways in return for the big amounts they paid as contributions for Congress Election Fund and other party expenses. The period to which the speech refers also includes the period till after 1957."

In conclusion, I hold that Shri Mahtab was guilty of gross favouritism, improprieties and abuse of his power as Chief Minister in granting lease of Chromite Mines to Serajuddin to the great detriment and loss of the State.

SARJOO PRASAD

## CHAPTER III

### *Rapid Acquisition of Wealth by Shri Mahtab between 1956 and 1960 through Illegal Means.*

This is a serious charge and one of the most important charges against Shri Mahtab. Before Shri Mahtab took charge as Chief Minister of Orissa in October 1956, he had been the Governor of Bombay for about a year and eight months. He continued to hold the office of Chief Minister till the 24th February, 1961. The alleged acquisition of wealth relates to the period when Shri Mahtab was the Chief Minister. If it is found that during the relevant period Shri Mahtab acquired wealth or assets much in excess of his ostensible source of income, then, it would be for Shri Mahtab to explain how he came by the acquision, because the matter is entirely within the knowledge of Shri Mahtab himself. The same principle underlies Section 106 of the Evidence Act and Section 5(*e*) of the Prevention of Corruption Act.

Mr. Justice Mudholkar, while recommending that the matter should be referred to a full-fledged Commission of Inquiry, made the following observations :—

> "There is prima facie evidence of acquisition by Dr. Mahtab of considerable wealth during a time when he held the high office of a Chief Minister and occupied a prominent place in the political sphere not only in Orissa but in the whole country. Therefore, the public is entitled to know how much wealth he acquired during the period when he held the office of Chief Minister. Further, if the acquisition of this wealth or of any portion of it is not reasonably ascribable to his known and undisclosed private means, they are also entitled to know what those means were. Even lapse of time and inaction of successive Ministries in the State are not circumstances which can outweigh public interest. Further, if Dr. Mahtab has become a victim of false or malicious propaganda, he too is entitled to be offered an opportunity to dispel the cloud that has thrown its shadow on his great reputation. If the final outcome is his complete exoneration, then, as everyone values his reputation, perhaps above everything else, to him "it is a Consummation Devoutly to be wished", and so it can never be too late when it comes.

> If, however, it is the other way, it would be an object lesson to others who are swerving "or are inclined to swerve from the path of rectitude in the discharge of their public duties".

The above observations are apposite not only because of the public importance of the subject, but also because of the legal principles which they envisage. The findings of Shri Mudholkar, however, can be of little assistance to the present Commission which has now all the relevant materials and evidence before it and is competent to form its own conclusions.

At the outset, I should refer to some details of the allegations on the point as set out in the affidavit of the State Government. It states that when Shri Mahtab assumed office as Chief Minister of Orissa on 19th October, 1956, he had a debit balance of Rs. 11,684-4 annas in his bank account in the United Commercial Bank Ltd., Cuttack. Thereafter, it appears that he deposited heavy amounts in the bank during the period from October, 1956 to February, 1960, in the shape of cash and cheques. The total deposits made from time to time during the period in cash amounted to Rs. 3,08,115·87P., while the amount deposited by cheques came to Rs. 35,717·35, thus making a total sum of Rs. 3,43,833·22 P. A copy of the bank account has been filed as Annex-1 to the Statement. It is further pointed out that most of the cash deposits had been made between January and June, 1957, totalling about Rs. 2,91,000. After June, 1957, most of the deposits are largely in cheques, excepting for a few items of cash deposits. From the above accounts Shri Mahtab had issued cheques to the extent of Rs. 2,29,000 during the period from 26th June, 1957 to 1st July, 1957, both days inclusive, in favour of the State Bank of India and the Post Master-General, General Post Office, Cuttack, for the purpose of investments. Out of this amount of Rs. 2,29,000, a sum of Rs. 73,000 was invested in the purchase of National Savings Certificates through the General Post Office, Cuttack, in the name of his natural brother, Shri Gopinath Das, and in the names of his nephews and nieces, who are the children of the natural brothers. The details of purchases of National Plan Savings Certificates are as under:

(1) Twelve-Year National Plan Savings Certificates for Rs. 25,000 were purchased in the General Post Office, Cuttack, on 28-6-1957 in the name of Shri Gopinath Das through cheques issued on the United Commercial Bank Ltd., Cuttack. The cheque was encashed by the General Post Office on 28-6-1957.

(2) Twelve-Year National Plan Savings Certificates for Rs. 8,000 were purchased in the G. P. O., Cuttack, on 28-6-1957 in

the name of Ashok Kumar Das through guardian, Gopinath Das, by cheque issued on the United Commercial Bank Ltd., Cuttack. The cheque was encashed by the G. P. O., Cuttack, on 28-6-1957.

(3) Twelve-Year National Plan Savings Certificates for Rs. 8,000 were purchased in the G. P. O., Cuttack, on 28-6-1957 in the name of Goutam Kumar Das, minor, through guardian, Gopinath Das, by cheque issued on the United Commercial Bank Ltd., Cuttack. The cheque was encashed by the G. P. O. on 28-6-1957.

(4) Twelve-Year National Plan Savings Certificates for Rs. 8,000 were purchased in the G. P. O., Cuttack, on 28-6-1957 in the name of Bai Jayantimal Das through guardian, Gopinath Das, by cheque issued on the United Commercial Bank Ltd., Cuttack. The cheque was encashed by the G. P. O. on 28-6-1957.

(5) Twelve-Year National Plan Savings Certificates were purchased in the G. P. O., Cuttack, on 28-6-1957, in the name of Santosh Kumar Das, minor, for Rs. 8,000 through guardian, Gopinath Das, by cheque issued on the United Commercial Bank Ltd., Cuttack. The cheque was encashed by the G. P. O. on 28-6-1957.

(6) Twelve-Year National Plan Savings Certificates for Rs. 8,000 were purchased in the G. P. O., Cuttack, in the name of Smt. Santilata Das, minor, through guardian, Gopinath Das, on 28-6-1957 by cheque issued on the United Commercial Bank Ltd., Cuttack. The cheque was encashed by the G. P. O. on 28-6-1957.

(7) Twelve-Year National Plan Savings Certificates were purchased in the G. P. O., Cuttack, on 28-6-1957 in the name of Pruthiraj Das for Rs. 8,000, minor, through guardian, Gopinath Das, by cheque issued on the United Commercial Bank Ltd., Cuttack. The cheque was encashed by the G. P. O. on 28-6-1957

He further invested a sum of Rs. 1,56,000 in buying Treasury Savings Certificates, National Plan Certificates and Annuity Certificates in the names of himself and his wife, Smt. Subhadra Mahtab. This, it is alleged, was mentioned by Shri Mahtab in his letter dated 2nd August 1960, to Shri Sanjiva Reddy, the then President of the Indian National Congress, a copy of which letter is Annex-2 to the statement. Shri Mahtab made also a further investment of Rs. 47,900 in the Postal

Savings Bank Account, apart from the investments referred to above. Thus, in all the investments amount to Rs. 2,03,900 in the name of himself and his wife in addition to the investment of Rs. 73,000 in the names of his brother, his nephews and nieces. According to Government statement, these investments were admitted by Shri Mahtab in his letter dated 22nd December, 1962 to the Income-tax Officer, Salaries Circle, Puri and has also been referred to in the D. O. letter dated 24th December, 1962 to the Assistant Inspecting Commissioner, Cuttack.

It is also alleged that the bank account of the United Commercial Bank Ltd. at Bombay in the name of Shri Mahtab revealed a debit balance of Rs. 3,601·01 when the account was transferred to Calcutta. This debit balance continued until the end of 1956 when, for the first time, in January, 1957, his account showed a credit balance and there was a sudden spurt in his income leading to those deposits mentioned earlier from 26th June to 1st July, 1957.

It is further alleged that Shri Mahtab made acquisitions of immovable properties in addition to the cash investments. These acquisitions were made in the name of himself and also in the names of his close relatives. The acquisitions are :

(*a*) a residential house known as "Ekamra Nivas" at Bhubaneswar in the name of his brother, Shri Gopinath Das. This building, which was originally known as 'Usha Villa', with an area of over 1 acre, belonged to one Shri S. C. Bose of Calcutta, and was purchased from him in February, 1957, for 20,000. The building was reconstructed and remodelled and provided with most modern amenities and fittings before it came to be occupied by Shri Mahtab himself. There were also outhouses with two rooms and modern fittings constructed near the gate. The allegation is that, although this purchase was in the name of Shri Gopinath Das, it was really purchased by Shri Mahtab himself and all the subsequent constructions and improvements were done by him. He has been occupying the house ever since its renovation and has also been paying the taxes in respect thereof. It is stated that one Shri Udayanath Pujapanda, a priest of the Lingaraj Temple, negotiated for the purchase on behalf of Shri Mahtab with Shri S. C. Bose of Calcutta. Shri Bose agreed to sell the house at a reduced consideration of Rs. 20,000 only since he knew that the purchase was made by Shri Mahtab himself.

In support of the above allegations, there is an affidavit filed by Shri Udayanath Pujapanda along with a letter dated 28th February, 1957, written by Shri Bose to the latter and sent under an envelope by post from Calcutta. The original letter which is in Bengali with its envelope and English translation thereof have been placed on the record.

(*b*) The statement of the State Government further proceeds to allege that Shri Mahtab also constructed a house at Gautam Nagar, in Bhubaneswar, on plot No. 86-A, bearing holding No. 287, within the Bhubaneswar Notified Area Committee. The plot on which the house stands was acquired on 10th of January, 1961, during the period that Shri Mahtab held office as Chief Minister and he subsequently constructed a pucca 4 double-storeyed building with modern amenities and fittings on the said plot, which was later let out to the Central Family Planning Department on a monthly rental of Rs. 655 on the basis of the estimated cost of the building of Rs. 1,25,000. A copy of the estimate of the building as made by the S. D. O., P. W. D., Maintenance, is Annex-6 to the statement. The construction of the house, although commenced in March 1961 after Shri Mahtab had relinquished office as Chief Minister, was completed by 1-8-1962. According to the State Government, the value of the immovable properties so acquired in the names of himself, his brother, Shri Gopinath Das, and his nieces, and the cost of remodelling of his houses and other improvements would be nearly Rs. 3 lakhs.

I need not refer to the other immovable properties which find mention in the affidavit of the State Government, because the learned Counsel for the State does not seriously press his case in respect thereof. Nor have I adequate materials before me to come to definite conclusions in regard to them. Even in respect of the Gautam Nagar house, much stress has not been laid by the Counsel for the State since the construction of the house was evidently beyond the period under reference to this Commission.

Reference is also made in the affidavit of the State Government to the acquisition of a station wagon in the year 1957 at a cost of Rs. 20,000 in the name of Shri Gopinath Das which was later sold to Shri Radha Mohan Misra of Bolangir in the year 1961 for Rs. 11,000.

The Government statement then proceeds to point out the known sources of Shri Mahtab's income :

(a) Salary as Chief Minister at the rate of Rs. 1,000 per month; Rs. 100 for up-keep of the car and Rs. 100 for house rent allowance per month.

(b) Admittedly, Shri Mahtab was not assessed to agricultural income tax at any time as shown from his letter dated the 24th December, 1962 to the Income-tax Officer. The return of income shown by him to the Income-tax Officer for the financial year 1957-58 was Rs. 12,000 only from salary with a house allowance of Rs. 635.

(c) As compensation for zamindari uptill 2nd of August 1950, as revealed from a copy of his letter to Shri Sanjiva Reddy, he received an amount of Rs. 35,000 only.

It is, therefore, submitted on behalf of the State Government that from the above data it would appear that the acquisition of the assets in the shape of cash and immovable properties are highly disproportionate to Shri Mahtab's known sources of income which lead to the necessary conclusion that the acquisition of wealth during the period from 1956 to 1960 is by means other than legal and by misuse of his office as Chief Minister. It is also submitted that his brother, nephews and nieces had not adequate resources of their own to have made the acquisition.

The Commission has obtained extracts of accounts of Shri Mahtab for the relevant period from the United Commercial Bank, Bombay, as also from the United Commercial Bank, Cuttack. They have been marked as Exs. 106 and 107 respectively in this proceeding. They fully support the statements on affidavit filed by the State Government in regard to the state of account of Shri Mahtab in the two Branches the above bank. His bank account at Bombay reveals that on 13th October, 1956, he had a debit balance of Rs. 3,601 when the bank account was closed and transferred to Calcutta. It further shows that Shri Mahtab's salary as Governor of Bombay was deposited after deduction of taxes from month to month in the said account. Shri Mahtab appears to have opened an account in his name in the Cuttack branch of the Bank 1948, but the earlier deposits from time to time are almost negligible and we find that in October, 1956, there is a debit balance of Rs. 11,687-4 annas. Thereafter, he appears to have deposited heavy amounts during the period from October, 1956 to February, 1960. The deposits so made are in the shape of cash and cheques, the cash deposits during the period amount to Rs. 3,08,115·87 P. and deposits by cheques amount to Rs. 35,717·37 P. in all totalling Rs. 3,43,883.24P. Most of the cash deposits, as seen from the accounts, are between January and June 1957, for a total sum of Rs. 2,91,000, thereafter the deposits are mostly in cheques.

Shri Mahtab, both in his statement on affidavit as also in his evidence, admits the correctness of the above figures. It would be convenient to reproduce some passages from his deposition itself to show what he has to say about the state of his accounts. He says:

"I assumed charge as Chief Minister of Orissa about the 19th of October, 1956. On 20th October, 1956, my account with the United Commercial Bank at Cuttack showed a

debit balance of Rs. 11,687·25 P. This was inclusive of the debit balance transferred from Bombay. The deposits made in the said bank at Cuttack from October, 1956, onwards till February, 1960, were Rs. 3,08,115·87 P. These were cash deposits. Further, an amount of Rs. 35,717·37 P. in the shape of cheques was also deposited into the said bank during that period. Between January, 1957 and June 1957 a sum of Rs 2,91,000 was deposited by me in the said bank, vide Ex. 107. I and my wife have a joint account in the Postal Savings Bank at Bhubaneswar. From 28-6-1957 till 22-1-1960 there had been cash deposits also and during this period a sum of Rs. 47,900 was deposited in the said bank. The Post Office Savings Bank Account is marked Ex. 106."

From the above passage it is clear that, according to the entries in his accounts he made a total investment of Rs. 3,91,732·24 P. during the relevant period. There is also a small deposit to his credit of Rs. 315 in the Orissa State Co-operative Bank as per Ex. 109, which might be as well ignored in the present discussion.

I have already mentioned earlier the details as given in the statement of the State Government about the ostensible sources of Shri Mahtab's income. If those details are correct, they would be wholly inadequate to account for the huge accumulation of wealth during the short period. Apparently, no exception can be taken to the statements of the State Government, unless Shri Mahtab is able to show how he came by those acquisitions. This is quite apart from the immovable properties to which I will refer at a later stage. Shri Mahtab has challenged the allegation that the acquisitions were made by any unlawful means or by any abuse of his official position; and both he and his brother, Shri Gopinath Das, in their statements and affidavits have tried to explain how the acquisitions came to be made.

I would, therefore, briefly indicate now what Shri Mahtab's averments are in explanation of his resources. It would be appropriate to recall at this stage that out of the deposits in the United Commercial Bank Shri Mahtab has issued cheques to the extent of Rs. 2,29,000 between 26th June, 1957 to 1st July, 1957, for the purpose of investments. Shri Mahtab admits having purchased National Savings Certificates, Treasury Savings Certificates and Annuity Certificates, all for a total sum of Rs. 1,56,000 jointly in the names of himself and his wife and having issued cheques for Rs. 73,000 in

purchasing National Savings Certificates in the names of his brother, Gopinath Das, and in the names of his nephews and nieces. In respect of this investment of Rs. 73,000, Shri Mahtab states thus:

> "The investment made by 12 years National Savings Certificates for Rs. 25,000 purchased in the name of Gopinath Das belongs to him and the money was, in fact, paid by him for the purchase. So also, the other three National Plan Savings Certificates worth Rs. 12,000 each were purchased in the names of Santosh Kumar Das, Santilata Das, Pruthiraj Das; they being sons and daughter of Gopinath Das. Gopinath Das had paid the money for the said deposits. The other three certificates, namely, in favour of Ashoka Kr. Das, Goutam Kr. Das, Vaijayantimala Das, being sons and daughters of late Kanhu Charan Das, whose widow lives in the village and who have been separate from Gopinath Das both in mess and property since 1936, have been purchased with the money of late Kanhu Charan Das. Gopinath Das, who was acting as their guardian, brought the money from the widow of Shri Kanhu Charan Das for the purpose of purchasing these certficates. It is thus to be seen that in all liquid cash to the extent of Rs. 73,000 was deposited with me by Shri Gopinath Das for the purchases of the certificates for him, his sons, daughter and his nephew and nieces. These amounts were deposited in the bank in my name to facilitate purchases of the certificates. Out of Rs. 73,000 deposited by Shri Gopinath Das, Rs. 49,000 belongs to him and Rs. 24,000 which was brought from the widow of my brother, late Kanhu Charan Das, belongs to the widow and/or the children of late Kanhu Charan."

He further states that his brothers were persons of fairly substantial means and the transactions had to be done through his account simply for the reason that they did not have any accounts in bank and such heavy sums could not possibly be carried to the post office or the bank for the purpose of exchanging it with the Savings Certificates. This explanation, in my opinion, does not carry conviction. Shri Gopinath Das or his sons, daughters and nephews might not have had any account in any bank, but that was no reason why Shri Gopinath Das or Shri Mahtab could not have bought the certificates directly on cash payment. After all, the money had to be carried to the bank for making the deposit and if there was no insecurity involved in adopting that procedure, then there could be no insecurity even if the procedure of purchase on cash payment were

adopted. But, this is hardly conclusive of the matter when I have yet to examine whether they had the means to raise the amount of Rs. 73,000. It is also important to remember that one does not find from the entries in the accounts that there was any independent lump sum deposit of Rs. 73,000 as such: and since the sum forms part of the deposits in the account of Dr. Mahtab, it would be deemed to be a part of his money, unless it is proved to be otherwise. I will, therefore, deal with their resources later.

Shri Mahtab further says that out of money so deposited, Rs. 28,000 belonged to the Congress and the Prajatantra Prachar Samiti. As to "Ekamra Nivas" house, he states that it was actually purchased by his brother, Shri Gopinath Das, in 1957 for a consideration of Rs. 20,000 and he also met the expenses of the improvements and renovation of the house at a cost of about Rs. 25,000 in that year.

As to his own sources of income, Shri Mahtab relies mainly upon the evidence and statement of his brother, Shri Gopinath Das, and also upon the incident that there was an enquiry as to the extent of his assests by the Income-tax Department which seemed to be satisfied with his explanations and appears to have exonerated him. The letter which Shri Mahtab then wrote to the Income-tax Officer and the report of the Income-tax to his superior have been produced by him and are on the record. He has also proved a copy of the letter which he wrote to Shri Sanjiva Reddy, the then Congress President, when he was called upon to disclose his assets. These materials would be helpful to some extent in testing his present claims as to the sources of his income.

According to Shri Mahtab, his brother, Shri Gopinath Das, who held a power-of-attorney, had been in charge of the management of his zamindari properties ever since 1939 and was fully acquainted with all the details. This was so because Shri Mahtab himself was absorbed in the vortex of the political movement and from time to time had to suffer incarceration in jail. When the zamindari was abolished in Orissa in 1953, and the incidental steps following abolition had been completed, Shri Gopinath Das was anxious to wind up the estate organisation. Accordingly, when Shri Mahtab eventually came back to Orissa as Chief Minister in 1956, Shri Gopinath Das submitted the accounts to him and handed over to him the sale proceeds and the accumulated income in June 1957. It was out of the receipt of such savings that Shri Mahtab claims to have made the various investments and incurred other expenses. During the period from 1957 to 1960, he also received some compensation in connection with the abolition of his zamindari and some insurance money to the tune of nearly Rs. 16,000 in respect of three policies which had matured during the period.

Shri Mahtab thus relies upon various other sources of income, apart from his salary and allowances as Chief Minister which undoubtedly did not amount to much. Even his car allowance was inadequate for his car expenses. These sources are broadly indicated here below :

| | Rs. P. |
|---|---|
| (a) Savings from salaries and allowances as Governor of Bombay. | 50,000·00 |
| (b) Income from Agricultural properties which were handed over to him in June, 1957, after rendition of accounts by his brother, Shri Gopinath Das. | 2,80,000·00 |
| (c) Compensation money on acquisition of zamindari .. | 40,858·50 |
| Total .. | 3,70,858·50 |

I, therefore, have to examine the evidence pertaining to the above sources of income in their order. As the sources of income primarily are within the knowledge of Shri Mahtab, or his brother, I have to see to what extent their claims under those heads have been substantiated and also to test the evidence given by them in the light of the materials produced by the State Government or others who have filed affidavits and statements in opposition to Shri Mahtab's claim.

Shri Mahtab does not mention in his statement either precisely or in round figures the accumulated income which he received from his brother, Shri Gopinath Das, but he relies upon his brother to furnish all the details. I shall advert to his zamindari income at a later stage. For the present, I propose to take up item (a) of his alleged source of income.

(a) Savings from salary as Governor of Bombay

He claims that as Governor of Bombay he saved Rs. 50,000 from his salary and allowances. According to him, his salary and all other allowances as Governor of Bombay were credited to his account maintained with the Bombay branch of the United Commercial Bank for which specific purpose the said account had been opened. He also says that withdrawals from the account from time to time were made during his incumbency as Governor of Bombay. Shri Mahtab had a small family consisting of himself and his wife and, therefore he was able to save almost his whole salary, as his sumptuary allowance provided for food and entertainments. On the face of it, the statement about the saving during the period would have found ready

acceptance with me; but for the fact that after the many withdrawals, the accounts shows actually a debit balance of Rs. 3,601 when Shri Mahtab left Bombay. It is significant that in his affidavit filed before the Commission he did not mention about the saving. His explanation for this important omission, namely, that it was not specifically raised in the Government affidavit or that it escaped his notice, does not carry conviction. It should also be noted that any saving from his sumptuary allowance could not be a part of his income. It is also stated by him that as Governor he received donations to the extent of Rs. 31,000. The entries in the account do show some substantial sums of money having been credited on certain occassions. Those credits in the account, Shri Mahtab is naturally unable to explain at this distance of time. It may be that those amounts refer to the donations received by him for some purposes, but he frankly admits that those donations were paid to the different institutions for whom they were meant. I, however, cannot understand why this sum of Rs. 50,000 alleged to have been saved by him from his salary as Governor would not be credited in any bank, either at Bombay or even at Cuttack, on his return from Bombay till about June, 1957. Shri Mahtab further admits that he did not mention this saving of Rs. 50,000 in his letter dated the 2nd August 1960 (Ex. 109) to Shri Sanjiva Reddy, the then President of the Congress, when he was asked to disclose his assets; though earlier in his statement he had started to the contrary; nor did he mention therein the accumulated savings from his agricultural income. On the contrary, he says therein that, apart from the assets mentioned, he had no other savings anywhere else. He shows therein only a debit balance of Rs. 1,040·27 on 23-3-60 in the United Commercial Bank at Cuttack and Rs. 215 as credit balance in the Orissa Co-operative Bank. The assertion of Shri Mahtab that he had mentioned about this saving in his letter to the Income-tax Officer dated 22-12-1962 (Ex. 96) is not born out by the document itself; nor do I find any definite reference to this savings in the reports of the Income-tax Officer dated 24-12-1962 (Ex. 95) sent to the Inspecting Assistant Commissioner, Income-tax, except for the vague assertion that while he was Governor of Bombay he was making a net saving of Rs. 3,000 per month, as he had free board and lodging; and even this saving was being kept at home. In any case, the version of his saving Rs. 50,000 is belied by the account itself and by the admissions now made by Shri Mahtab before the Commission. The withdrawals from the account themselves show how from month to month he withdrew from the account even small amounts until he was left only with a debit balance at the end of his term. Now he spent all his salary is more than I can understand; but the fact remains that he had spent all that he got there. I am, therefore compelled to hold that there was no such saving of Rs. 50,000 as now alleged and the story put up to support that plea is too good to be true

(b) Savings from Zamindari Income :

Coming now to the Zamindari Income, I may turn to the statement and evidence of Shri Gopinath Das since Shri Mahtab's version does not contain any details. Shri Gopinath Das's affidavit mentions the total saving of Shri Mahtab from his Zamindari properties as follows :—

| | Rs. |
|---|---|
| 1. During 1939 to 1946 by disposal of land of 579 acres 22 cents of nijchas/nijjote by way of agricultural lease, the premium or salami received was. | 1,73,759 |
| 2. Premium on account of lease of Anabadi land during the said period measuring 295 acres 37 cents. | 29,503 |
| 3. Royti land by way of sale between 1939—1956 | 14,000 |
| 4. Sale of paddy kept in different khamars from 1946 to 1956. | 24,000 |
| 5. Arrear rent received after abolition .. | 22,535 |
| 6. Income from rent from zamindari 1947—1952 .. | 18,000 |
| Total .. | 2,82,297 |

The aforesaid amount was in Shri Gopinath's custody which he handed over to Shri Mahtab in the year 1957.

In addition to the above, he received a sum of Rs. 40.888·50 during 1957-60 as compensation for abolition of Mahtab estate which he handed over to Shri Mahtab from time to time. Item 5 does not show the period to which the arrears of rent relate. Compared to the statement in Ex. 96, sent to the Income-Tax Officer, it appears that though the figures are almost identical, the period is quite different. There the period during which the entire income is said to have accrued is 1946-57 and not 1939-1946, as in the affidavit before this Commission. This difference in the period is significant. Another important point to note in Ex. 96 is that if the entire gross annual income from Zamindari of Rs. 4,373·10 P. is taken into account, as shown in Ex. 96, and admitted by Shri Mahtab also, then the further entry of arrears of rent has to be ignored, since the former would verily cover the latter. Besides, if out of yearly income Rs. 3,000 was paid to Shri Mahtab annually, then by no strentch of calculation the balance saved would come to Rs. 18,000. If the money was being paid to Shri Mahtab annually presumably for his pocket expenses, it is impossible to accept at the same time that it was a part of the accu-

mulated income in the hands of Shri Gopinath Das. Prima facie therefore, the 5th and 6th items in the affidavit are incorrect and not worthy to be entertained as savings of Zamindari income. In his letter to Shri Sanjiva Reddy sent in August 1960, Shri Mahtab gives an entirely different version of his Zamindari income. The passage may as well be extracted :

> "Before 1953, my income as a Zamindar was about Rs. 50,000 a year. After the abolition of the Zamindari, I had about 50 acres of land and my ancestral house. From the income of the land and rent collected from the market and some houses owned by me, I get about Rs. 12,000 to Rs. 15,000 a year now. Uptil now I have received Rs. 35,000 as compensation for the Zamindari taken over by Government."

These discrepancies are too serious to be ignored and very much shake the credibility of the version in respect of the Zamindari income of Shri Mahtab.

On behalf of the State Government, affidavits have been presented by the Tahsildars of various Tahsils in which the lands of the Mahtab estate lie. These affidavits show that rent payable by tenants to Shri Mahtab in the three Tahsils are as follows :

| | | Rs. P. |
|---|---|---|
| Bhadrak | .. | 15,860·77 |
| Dhamrāgar | .. | 1,256·97 |
| Soro | ... | 61·90 |
| Total | .. | 17,179·64 |
| The land revenue payable for the entire estate is | .. | 9,740·01 |
| Balance | .. | 7,539·63 |

Out of the above gross income, admittedly Shri Mahtab was drawing Rs. 3 to 4 thousand annually. Then there was the staff consisting of 15 employees who got a salary of Rs. 5 to 10 per month and also enjoyed some jagir lands. Besides, this, they also had a number of servants and other field staff for looking after the cultivation. On the top of it, Shri Gopinath and his family were maintained out of the Mahtab estate. All this is admitted by Shri Gopinath himself. It is also to be remembered that Shri Mahtab never paid any

agricultural income tax because his net income was below the minimum of Rs. 5,000 a year. In those circumstances, there would hardly be any accumulation left in the hands of Shri Gopinath Das out of the above Zamindari income. Items 5 and 6, therefore have to be eliminated from consideration.

Let be turn to examine the extent and validity of the other items of income mentioned above by Shri Gopinath Das. Those items indicate that during 1939-46, 570·22 acres of nijjot or Khas agricultural lands were leased out for a premium of Rs. 1,73,759 and anabadi lands covering an area of 295·78 acres were leased out during the same period for a premium of Rs. 29,500 and similarly, adadi lands by way of sale between 1939 and 1956 fetched a sum of Rs. 14,500. No accounts or papers have been filed in support of the above claims and the Commission is left to depend upon the ipsi dixit of Shri Gopinath Das alone without any counter-check or verification of the figures mentioned by him. Shri Gopinath Das says that at the time of the preparation of the affidavits filed by him before the Commission and Shri Mahtab's rejoinders, he had accounts with him from which he furnished the figures, but these accounts have not been produced before the Commission at all. Even in respect of his own incomes and savings he did not file any account before the Commission, with the result that the figures stand unchecked. If the statement of Shri Gopinath is true, there can be no excuse for the non-production of the books of accounts or the accounts, if any, because in the general notice issued by the Commission it was definitely stated that all persons filing statements with affidavits shall have to produce with the statements a list of documents along with the original documents or certified copies thereof where such copies may be admissible. Shri Mahtab is himself a party to the proceeding and he knew charges which he had to meet. It is an investigation and inquiry and not strictly a criminal proceeding as such, so that he could lie on his oars and refused to assist the Commission with material documents of which he claims to be in possession. In fact, Shri Mahtab has produced certain other documents before the Commission. There was no reason why, if it was true that he had accounts to support his case, he would not have filed them.

On the contrary, on the affidavits of the Tahasildars of three different tahasils within which the lands of the parties lie, it would appear that the khas and nijjoti lands leased out comprise an area of 246 acres only and not 579·22 acres. The anabadi area comprised 380 acres which is, of course, in excess of the area mentioned by Shri Gopinath Das. The State Government has also presented affidavits of Shri Suresh Chandra Panigrahi and Shri Dolgobind Shaw, both Inspectors of Police in the Home Department, who have given a

long schedule of various leases, purchases and sales affected by Shri Mahtab; his wife, Shrimati Subhadra Mahtab; and Shri Gopinath himself during the relevant period. The schedules appear to have been copied from the entries in the various registerd deeds evidencing those transactions. In summing up the figures given in the schedules, it appears that Shri Mahtab gave leases in 1940 and 1941 of 66·29 acres of land for a sum of Rs. 4,002 only. Between 1939 and 1961 he purchased 117·75 acres of land, including 8·9 acres purchased by Smt. Mahtab for a total sum of Rs. 9,691. He also sold between 1946 and 1961 5·47½ acres of land for a sum of Rs. 2,008. These figures indicate that whatever premium or consideration he may have received in the sale and lease of the lands must have been swallowed up in the purchases which he made; in fact, he had to invest about Rs. 3,681 more in the process. The deponent, Shri Suresh Chandra Panigrahi has also proved the partition deed between Shri Gopinath Das and his brother, late Kanhu Charan Das. This partition deed will need further consideration in connection with the alleged means of Shri Gopinath Das and his brother, late Kanhu Charan Das, and their competence to purchase National Savings Certificates and house properties.

Shri Gopinath Das, in his evidence, with reference to the affidavit of Shri Dologobind Shaw, says that it mentions only the sales and leasess by registered deeds but it does not indicate the leases which were granted otherwise then by registered deeds. He further adds :

> "I have seen the list of sales by registered deed made by me during 1946—61 as annexure to the affidavit of Shri Dologobind Shaw. The list is correct but the consideration mentioned therein is only for the purpose of registration. The actual consideration received by me would be double the amount mentioned in the deeds. Apart from the registered deeds listed in the affidavits of Shri Dologobind Shaw, I have not effected any other sales by registered deed regarding my property".

He, however, confesses that he had no accounts to show the consideration received by him by sale or lease of all his lands, nor had he any accounts to show that he actually received twice the amount mentioned as consideration in the registered deeds. He also admits that he did not state in his affidavit in reply to the affidavit of Shri Dologobind Shaw that the consideration mentioned in the registered deeds was actually half of what he had received. Similarly he admites the correctness of the list annexed to the affidavit of Shri Dologobind Shaw in respect of lease and alienations made by Shri Mahtab under registered documents and he further admits that the consideration mentioned therein is what was actually received

He however asserts that between 1942 and 1945 he leased out about 500 acres of land belonging to Shri Mahtab, "the details of which were not available". In the absence of accounts, as I stated earlier, I find myself quite unable to rely upon his version, in face of the figures furnished by the affidavits on the basis of registered documents.

On a close examination of the evidence, therefore, it appears that the claim of income derive from lease or sale of lands, whether cultivable or unabadi, is mostly exaggerated or fictitious.

To come back to item No. 4, in the details given by Shri Gopinath Das about having received a sum of Rs. 24,000 out of the sale of paddy kept in different khamars from 1946 to 1956, I find myself in the same difficult predicament. To start with, it does not appear to be convincing that for about 10 years the paddy saved, after consumption in the estate, would be kept stored instead of being sold from time to time, as if anticipating that if it were sold in 1956-or 1957, it would fetch a much higher price. The difficulty in accepting this statement is further enhanced by the fact that there are no papers at all to prove what was the amount of paddy sold or stores from time to time or the rate at which it was sold and none of these details appear from his affidavit either. I have already explained how item No. 5 is found to be superfluous being fully covered by item No. 6 and exposed the hollowness of these claims in the light of the entries in Ex. 96. Ex. 96 is the statement of income of Shri Mahtab from 1946—57 annexed to his letter to the Income-tax Officer. This statement as I have shown earlier mentions the yearly income from zamindari as Rs. 4,373. After incurring expenditure on the maintenance of staff and maintenance of Shri Gopinath Das and his family, as admitted by Shri Gopinath himself, and on payment of Rs. 3,000 to Rs. 4,000 annually to Shri Mahtab himself, there would hardly be any amount left, much less a sum of Rs. 18,000, as shown in the account. Nor is it possible to accept the figure of Rs. 22,535-8 annas as arrears of rent collected after zamindari abolition, which we have already taken into account in the total annual income of his zamindari. I am thus reduced to the conclusion that the sources of income as stated by Shri Mahtab or Shri Gopinath Das are either fictitious or highly exaggerated.

Shri Sovesh Roy, who has taken pains to take me through all these details, has further submitted that even if the entire case of Shri Mahtab about the lease and sale of these lands is accepted as now admitted by him and his brother, still it would not account for the

large sum of Rs. 2,80,000 which Shri Mahtab says was paid to him by his brother in June, 1957. It is better to quote what he himself has said :

> "About the time as in June 1957, my brother, Shri Gopinath Das, rendered to me all of his accounts from zamindari and paid to me Rs. 2,80,000 due to me in cash at Bhubaneswar

The reason why Shri Roy advances the contentions is based upon the calculation of the figures which were accepted by Shri Gopinath Das. The area leased out of khas lands amounted to 246 acres. It is admitted that the rate at which the leases were given is Rs. 300 per acre, though at the same time Shri Gopinath Das admits that he sold about 70 acres of land by registered deeds upto 1961 for a total consideration of about Rs. 12,000 which, in fact, would mean that the lands were sold at nearly Rs. 170 per acre. However, even calculating at the rate of Rs. 300 per acre, we have Rs. 73,800 for the lease of the abadi lands. Unabadi area leased is nearly 380 acres. It is claimed that this was leased out at Rs. 100 per acre. That being so, it would yield a consideration of Rs. 38,000. Add to it also Rs. 14,500 for the sale of ryoti lands between 1939 to 1956, and even Rs. 24,000 for the sale of the paddy, the total comes to Rs. 1,50,000 only. This is much below the amount which Shri Mahtab claims to have received in June, 1957, from his brother, Shri Gopinath Das, and far less than the amount shown in his bank accounts. I have already given my reasons for not accepting these figures at all.

(c) Compensation :

The compensation claimed is Rs. 40,888·50P. In his letter to Shri Sanjiva Reddy, dated August 2, 1960, Shri Mahtab mentions Rs. 35,000 as compensation received by him up-to-date. The affidavit of Shri Baidhar Tripathi, Compensation Officer, Balasore, shows that Shri Mahtab was paid a net sum of Rs. 42,161-56 towards compensation and interest uptill 28-2-1961. In the circumstances, I would assume that the amount of compensation claimed by Shri Mahtab is correct. The compensation must have been paid in instalments because till August 2, 1960, he had received only Rs. 35,000.

I am now to consider whether Rs. 73,000 invested in National Savings Certificates in the name of his brother and nephews and nieces and the purchase and renovation of the house "Ekamra Nivas" was out of the funds of Shri Mahtab. At this stage, I may add that it is somewhat significant that Shri Mahtab was unable to explain how he deposited the amounts in bits, when a sum of Rs. 2,80,000 had been paid to him as a lump sum on rendition of accounts by his brother,

in June, 1957. It appears that even before June, 1957, there were various substantial deposits which Shri Mahtab has been unable to explain. For instance, he says he does not remember the source of cash deposit of Rs. 10,000 in his account on 12th January 1957, Rs. 17,000 on 18-2-1957 and Rs. 11,000 on 15-4-1957. In regard to all the other deposits also, he says it was not possible for him to remember from which source the money was received; it might be from the liquid cash that he had with him or from other sources which may be from friends. Lapse of memory is quite conceivable in respect of small deposits after such a length of time; but he cannot even recall the source from which he deposited the heavy sum of Rs. 1,80,000 on 25-6-1957 or about the deposit of Rs. 56,000 on 27-6-1957. These statements, therefore, are such that they indicate an attempt to conceal the real sources of income. If by 1953, as Shri Gopinath Das seeks to make out, he had a saving of Rs. 1,53,000 out of the estate of Shri Mahtab, there is no reason why he should not have, in consultation with his brother, invested the amount in National Savings Certificates immediately, instead of keeping the money in his house without investment. It is to be remembered that it was really a family of money-lenders and the father of Shri Mahtab and Shri Gopinath, himself, did money lending business, though on a small scale. So, they would not keep the money tied up when there were many fruitful avenues of investment.

The question now is whether the sum of Rs. 73,000 invested in the purchase of National Savings Certificates in the names of Shri Gopinath Das and his son and daughters as also in the names of the son and daughters of late Kanhu Charan Das was really Shri Mahtab's money and the purchases were made by him. This question incidentally leads me to an examination of the evidence regarding the means of Shri Gopinath Das and his late brother, Kanhu Charan Das. The evidence shows that one Shri Krushna Charan Das had four sons of whom the eldest died in 1934, a couple of years after the death of his father, leaving no issue. Shri Mahtab, the second son, when almost a baby, was adopted by his maternal grand-father, Shri Jagannath Mahtab, the latter having no male issue of his own. After adoption, the joint family was left with only Shri Kanhu Charan Das and the youngest son, Shri Gopinath Das. Shri Kanhu Charan Das is said to have inherited some property from his father-in-law by his first marriage and there was separation between the two brothers in 1936. The claim of Shri Gopinath Das is that his father was a zamindar, whose annual income from rent was about Rs. 2,000; he had also money lending business to the extent of Rs. 30,000 and his agricultural cultivable land consisted of about 40 acres of nijoti and about 60 acres of ryoti. The partition between the two brothers which took place in 1936 was under a registered document and according to the partition,

Shri Gopinath Das claims that his share in the zamindari was to the extent of Rs. 4,666 with 20 acres of cultivable land and 25 acres of ryoti. He also got the right to execute a decree for Rs. 919. In addition to these, he got Rs. 10,000 cash and 50 tolas of gold, and similarly his brother, the late Kanhu Charan Das also acquired his share of the zamindari and nijoti and ryoti lands out of the ancestral property in addition to Rs. 10,000 cash and 50 tolas of gold. He further adds that he acquired 13 acres of cultivable land in auction sale in execution of the decree. According to his statement he had practically no liability and the entire income from his agricultural lands and zamindari and money lending was saved so as to enable him to make purchases of lands of 60 acres between 1944 and 1957. He explains that from 1939 he had been acting as the Manager of the Mahtab estate till the Mahtab estate was acquired in the year 1953 by the State Government. As Manager, he did not take any salary but the entire expenses of his family were borne by the Mahtab estate; and he managed his own zamindari and cultivation through the employees of the estate. Thus, by the end of 1956 he had a net saving of Rs. 1,23,000 in cash, which he kept to himself in his house without making any investment, as there was no system of banking prevalent in the rural areas in Orissa during the said period. After the abolition of zamindari, he felt anxious to invest his savings in consultation with Shri Mahtab; and on the latter's return from Bombay in 1956, when he went to explain the accounts of Shri Mahtab's estate, he was advised to acquire some properties in the town so as to be able to rent them and have some income out of them. He accordingly requested Shri Mahtab to arrange some house either at Cuttack or at Bhubaneswar and he ultimately negotiated for the purchase of 'Usha Villa', now called Ekamra Nivas', for which he paid a consideration of Rs. 20,000 and met further expenses of about Rs. 25,000 in making improvements in the house. When the house had been renovated, he requested Shri Mahtab to stay in the house instead of staying in Government bungalows. He made this offer in token of his regards for his elder brother and though Shri Mahtab offered him rent, he declined to have it, but his sons and daughters were staying and reading there for which he never used to pay anything towards their expenses. His eldest daughter and her husband were also occupying a portion of that house, while renting out their newly built house erected at Gautam Nagar in Bhubaneswar.

It was Shri Mahtab who also advised him in the middle of the year 1957 to purchase National Savings Certificates in the names of his children, for the benefit of their marriage and education. He also advised him to ask the widow of late Kanhu Charan Das to do

likewise; and in accordance with his advice Shri Gopinath Das got Rs. 24,000 from the widow of late Kanhu Charan Das for the purchase of the said certificates in the names of Ashok, Gautam and Kumari Vaijayantimala, the minor children of his late brother. Along with the said amount, he also paid Rs. 49,000 to Shri Mahtab for purchase of National Savings Certificates for himself, his sons and daughters. Thus, he paid in all Rs. 73,000 to Shri Mahtab for that purpose. This, in short is the claim of Shri Gopinath Das as to his own means and the means of his brother, Shri Kanhu Charan Das, on the strength of which he says he purchased the National Savings Certificates as also the house named 'Usha Villa' or 'Ekamra Nivas' as it is now called and also spent over its improvements.

In reply to this, we have the affidavit of Shri Dologobinda Shaw and Shri Suresh Chandra Panigrahi, two Inspectors of Police in the Home Department, who made enquiries about the (family) assests. They stated that the registered partition deed, dated 10th January 1937, between the late Kanhu Charan Das and Shri Gopinath Das, the natural brothers of Shri H K. Mahtab, shows that the total value of the assets consisting of both moveable and immoveable properties of late Krushna Chandra Das was Rs. 17.818-14-6 only; out of which the late Kanhu Charan Das got properties of the total asset of Rs. 8,000 and Shri Gopinath Das got properties worth Rs. 9,818-14-6. Shri Kanhu Charan Das got Rs. 2,508 from the money lending business and Shri Gopinath Das Rs. 4,668. Shri Kanhu Charan's share also included a decretal amount of Rs. 1,356-6-6 and Shri Gopinath's share included a decretal amount of Rs. 919-5. All this is included in the total assets which fell to the share of each of the two brothers There is no mention in the partition deed of any brother having received any other cash or gold as testified now by Shri Gopinath Das. The assertion of Shri Gopinath Das about the receipt of Rs. 10,000 in cash and 50 totals of gold by each of the two brothers is not at all borne out by the recitals in the partition deed. The Tahsildars' affidavits also repudiate the assertion that the late Kanhu Charan Das had money lending business to the tune of Rs. 30,000 and that by 1956 Shri Gopinath Das had a net saving of Rs. 1,23,000 in hand out of which he purchased the house 'Usha Villa' and spent money on renovation. Shri Gopinath Das filed a rejoinder to these affidavits in which he has stated that the deed of partition referred only to immovable properties and to the money lending business for the sake of convenience, because the cash and gold and other movables had been already divided between the two brothers. They were not mentioned in the deed, because the partition of movable properties had been already effected, i.e., prior to this deed of 1937. It is also stated in the rejoinder that the valuations

of immovable properties given in the document were nominal for purposes of registration, though in substance the properties are far more valuable as there were 58 acres of land allotted to him. It is further added in this rejoinder that the late Kanhu Charan Das was first married to Lakshmibibi, the daughter of late Daitari Prasad Singh, of village Bodahat Trilochanpur. The annual rental of touzi 3,844, Mahal Bhagaban Chandrapur of which Daitari Prasad Singh was the proprietor, was about Rs. 2,200, besides khas dakhli nijchas lands to the extent of 50 acres and abadi lands of about 100 acres and a pucca house with thatched roof where the family members of late Kanhu Charan Das lived. On the death of his father-in-law, who had no male issue, his first wife, and thereafter the late Kanhu Charan Das himself inherited all this property. In his evidence Shri Gopinath Das admits that the recitals in the partition deed were correct and that they did not contain any mention to the effect that only immovable properties were partitioned and not movable, including gold and cash since they had already been partitioned. It is admitted that the partition deed contains words such as "in sutaru mukta prajanto" which usually means, in common parlance, the entire property both movable and immovable had been partitioned, i.e., from thread to pearl. In other words, a complete division of properties, both movable and immovable had taken place under the document. He further admits that there is a recital in the document that the two brothers were in joint possession of all properties both movable and immovable, and money lending business which belonged to their father and had decided to partition the same. Therefore, the division was in respect of both movable and immovable as also of the money lending busines:

Shri Gopinath Das tries to explain that the omission of the division of cash and gold was to avoid payment of heavy stam duty and registration charges, but this explanation on the face of it does not bear scrutiny. It could be easily mentioned in general terms that the cash and gold have been already divided without any risk of extra stamp duty and registration charges; nor would it have been so if it had been stated therein that the cash and gold would be divided in the future.

It is also significant that although in the rejoinder Shri Gopinath Das observed that the cash and gold had been divided earlier, he now tries to make out that the division was in May, 1957, just to support the evidence of Shri Mahtab in respect of this division. When confronted with the affidavit to the rejoinder which he swore on 20-12-1971, Shri Gopinath Das admitted that he had not mentioned about the division of, cash and gold between him and brother's wife

taking place in May 1957. On the contrary, he mentioned therein that as the cash and gold and other movables had already been divided, the division of the movables was not stated in the deed. If is true that Shri Mahtab's evidence is also to the effect that the division of movables and cash was done somewhere in May or June, 1937, when the zamindari was abolished and Kanhu Charan Das was not alive. This assertion, therefore, about each of the two brothers, Shri Kanhu Charan Das and Gopinath Das having got Rs. 10,000 in cash and 50 tolas of gold appears to me entirely unworthy of acceptance. It is just an assertion made to support the case of their having sufficient means to purchase the National Savings Certificates and the story has been trotted out for the first time before the Commission with all those glaring conflicting versions about the time of their division. It may be that the ladies of the family had some gold ornaments of small value for personal wear but the division of 100 tolas of gold is quite another matter.

It does not appear from the evidence that the ancestral property which the two brothers inherited had any substantial income, though it is true that the father had been doing some small money lending business. On his own showing, the estate owned by the father of Shri Gopinath Das had a rent collection of Rs. 1,770 out of which the land revenue payable was Rs. 1,268, leaving a balance of Rs. 502 only. It is also stated that his father had some other zamindari in touzi 1049 within Bhadrak tahsil whose gross income was Rs. 210 out of which half was payable as annual revenue to the State and there were unabadi land to the extent of 87½ acres and the only area of nichas cutivable lands consisted of 6·68 acres. It is obvious that out of these incomes the father could not have amassed Rs. 20,000 and also accumulated 100 tolas of gold to be divided between the two brothers, not at the time of actual division in 1936 but in June 1957. It does not appear that the father had any substantial money lending business either. The division shows that the late Kanhu Charan Das got Rs. 2,508 out of the money lending business while Shri Gopinath Das got Rs. 4,668 and that is about all. It is also to be borne in mind that the widow of late Narsingh Charan Das, the eldest brother, had to be maintained out of the assets of the joint family by Shri Gopinath Das and late Kanhu Charan Das as per recitals in the deed. I am, therefore, quite unable to believe the story that there was Rs. 20,000 in cash in the chest when they came to partition their movable and immovable properties. There is a serious contradiction in the rejoinder filed by Shri Gopinath Das earlier and the statement now made before the Commission by Shri Mahtab and Shri Gopinath Das about the division of these alleged assets in 1957. It is common knowledge that movable properties are divided earlier before the division of immovables;

and in any case, it is apparent from the affidavit filed on behalf of the State Government and the admitted recitals in the partition deed that both the movables and immovables had been divided. As a family of money lenders also, it stands to reason that if the parties had all this money in cash, they would not have kept it locked up in their houses instead of carrying on their profession of money lending as their father had been doing. For the above reasons, this story of the existence of cash and gold to the extent of Rs 10,000 and 50 totals of gold falling in the share of each of the brothers has to be discarded.

If this story of cash and gold is discarded, as it has to be for the reasons given above, then, it is obvious that with the meagre resources which Shri Gopinath Das and the branch of his late brother, Kanhu Charan Das possessed, it was altogether impossible for them to invest Rs. 73,000 in the purchase of National Savings Certificates ; Rs. 24,000 by Kanhu Charan's widow and Rs. 49,000 by Shri Gopinath Das. I have shown already that there is no independent entry in the Bank Account of Shri Mahtab of any sum of Rs. 73,000 and the inevitable conclusion is that the amount so invested was a part of the amount owned by Shri Mahtab himself who made the purchases for the benefit of his brother and nephews and nieces.

Shri Gopinath Das is not only said to have invested Rs. 49,000 in the purchase of National Savings Certificates but also to have purchased 'Usha Villa' for a sum of Rs. 20,000 and spent Rs. 25.000 over its renovation. He is also supposed to have purchased a station wagon at a cost of Rs. 20,000 making all these huge investments in the same year of grace 1957 from his own resources. His assertion that he was able to save Rs. 1,23,000 out of the meagre resources that he inherited from his father is almost fantastic. I could understand his buying a few small bits of land out of his petty savings, if at all ; but to expect him to make all that huge investment in the course of the same year is beyond my comprehension. In doing so, I am fully conscious of the evidence before me about the purchase of "Usha Villa" or "Ekamra Nivas" to which I shall refer in due course.

Before I deal with the evidence regarding "Ekamra Nivas", I should, in fairness, refer to the point in Shri Mahtab's statement to the effect that out of the deposits in the bank account, Rs. 28.578·31 belonged to the Congress and the Prajatantra Prachar Samiti and the rest of the amount belonged to himself. The amount so deposited was admittedly in the shape of cheques. I fail to see why separate accounts should not have been opened for the funds of the two organisations ; the Congress and the Prajatantra Prachar Samiti. This blending of funds is in itself quite unjustifiable and is the harbinger

of misuse and manipulation of accounts. Accounts in the names of the two Organisations could have been easily opened and the cheques deposited in their respective accounts. There is, of course, no material before me on which I could verify the above statement of Shri Mahtab. His explanation is that when he took charge as Chief Minister in the third week of October, 1956, he was immediately thereafter engaged in the work of the General Elections, which took place in February, 1957. The Congress Organisation was then not existing as it had been superceded and therefore the contributions to the Congress were deposited in his account. I have my doubts on the point but since Shri Mahtab happened to be the prime mover of the Congress party in the political arena at the time, I am prepared to concede to him the benefit of the above statement and hold that out of the funds deposited in his accounts, Rs. 28,578·31P., in fact, belonged to the Congress and the Prajatantra Prachar Samiti as claimed by him.

## Purchase of 'Usha Villa' or 'Ekamra Nivas'

The building, originally known as 'Usha Villa' standing over an area of 1 acre of land, belonged to one Shri S. C. Bose of Calcutta and was purchased from him in February, 1957, for Rs. 20,000. The sale deed stands in the name of Shri Gopinath. After purchase, the building was re-constructed and re-modelled and provided with modern amenities and fittings. It also appears that one outhouse with two rooms, with modern fitting, has been constructed within the compound near the gate. Since the sale deed stands in the name of Shri Gopinath, I would have ordinarily assumed that the apparent state of things was the real state of things ; but in the background of my findings about the means and resources of Shri Gopinath, I am quite unable to make that assumption. That apart, there is positive evidence to indicate that the purchase and the improvements were all by Shri Mahtab, who has been admittedly all through in occupation of the buildings. Shri Udayanath Pujapanda, a priest of the Lingaraj Temple, who negotiated for the purchase with Shri S. C. Bose has not only filed his affidavit but has also given evidence before the Commission and filed the original letter of Shri Bose showing that the purchase was actually made by Shri Mahtab. He says :

> "Some time in January, 1957, I was at the residence of Shri Satya Priya Mohanty, when Shri Mahtab arrived there. Shri Mahtab spoke to Satya Priya Babu to arrange for a house for him at Bhubaneswar. Satya Priya Babu asked me to find out a house for Shri Mahtab. Within 5 to 6 days, Shri Mahtab and myself went out and saw 4 to 5 houses and I showed him the houses. Mahtab Babu selected "Usha Villa" and wanted me to negotiate for the purchase of that house. I took the address of

Shri S. C. Bose from Sadananda Patnaik and wrote to Shri S. C. Bose at his Calcutta address. I had no personal acquaintance with Shri S. C. Bose at all and knew him through Shri Sadananda Patnaik. There was correspondence between me and Shri S. C. Bose regarding the sale of this house. Shri S. C. Bose had fixed Rs. 25,000 as the sale price of this house. But he agreed to sell it at Rs. 20,000 as it was to be sold to Shri Mahtab. I went with Shri Mahtab to Shri Sadananda Patnaik, the local resident. Shri Mahtab agreed to purchase the house for Rs. 20,000. Thereafter, Shri Mahtab paid Rs. 500 as advance to Shri Sadananda Patnaik in my presence and asked him to go to Calcutta, and get Shri S. C. Bose for the registration of the house."

He further says that after a few days when Shri Sadananda Patnaik returned from Calcutta with Shri S. C. Bose, he accompanied the party going to Khurda for registration of the document. Shri Mahtab then paid Rs. 20,000 to his personal assistant for payment of the consideration and disclosed, for the first time, that the documents should be in the name of his brother, Shri Gopinath Das, whose son he had decided to adopt. He also says that Rs. 20,000 was paid to Shri S. C. Bose in the presence of the Sub-Registrar, who registered the document and the advance of Rs. 500 was adjusted towards the expenses of Shri S. C. Bose and Shri Sadananda Patnaik in coming and going back to Calcutta and other registration expenses. He is, of course, an attesting witness to the sale deed. He has produced the original letter written to him by Shri S. C. Bose from Calcutta with the postal envelope, Exs-19 and 19/A. This letter he had also produced before Shri Mudholkar. The letter shows that Shri S. C. Bose sold the house for a consideration of Rs. 20,000 only, lower than the amount of Rs. 25,000 which he had originally fixed for the sale of the property, mainly because it was being purchased by an important person like Shri Mahtab. It appears that after the transaction had been completed, the local Panda of Shri S. C. Bose and his gomashta were dissatisfied with the witness for completing the transfer without their knowledge. They spread a rumour that the witness had made money out of the transaction. The witness had, therefore, written a letter to Shri S. C. Bose complaining about it in reply to which he received the letter Ex-19. I have no doubt about the genuineness of the letter and about the truth of the circumstances under which it came to be written. Shri S. C. Bose, though summoned, could not be examined in the case because of his lying ill at Calcutta and his inability to attend the Commission. The contents of the letter and the circumstances in which it came to be written could, of course, be proved by Pujapanda, who was the recipient thereof. I have found nothing in the examination of this witness by Shri Mahtab's Counsel to discredit his testimony which was well

supported by the letter and by the fact that he is an attesting witness to the sale deed. His statement regarding payment of Rs. 20,000 before the Registrar was challenged because of Rs. 500 being paid as advance, but he has already explained that the said advance was adjusted towards other incidental expenses. One small point has been raised to discredit the evidence of Pujapanda in suggesting that the boy adopted had not been born at the time of the purchase, but the evidence of Sister Francis Seiesa, the Head Mistress of St. Joseph's High School shows that the date of birth of the boy according to her records was 6-2-1957 and not as now alleged by Shri Gopinath Das.

Shri Mahtab and Shri Gopinath Das. of course, assert that the purchase of the house was made by Shri Gopinath Das himself, but there are circumstantial factors as well which go to prove that the purchase was made by Shri Mahtab. Those facts are amply borne out by the statements of Shri Mahtab himself. After the purchase, there appears to have been several improvements and renovations made in the house. To a lay man like Mr. Justice Mudholkar, who saw the house from a distance, the improvements must have cost nearly a lakh of rupees. But I got the value of the house and the improvements evaluated by a Government expert which is Ex-93 on the file. The report by the Superintending Surveyor of Works, Calcutta, shows that after purchase the following improvements were made in 1957-58 :—

1. Introduction of a porch on the south side of the building.

2. Covering of the existing open verandah to the south of the building with RCC roof over supporting RCC columns and beams.

3. Addition of 3 rooms, a bath and a covered verandah with dwarf walls on the western side.

4. Addition of a room and bath on eastern side with a connecting covered verandah.

5. Conversion of one room east of dining hall to a staircase room by provision of a stair case and a room and bath at mezzanine floor level.

6. Introduction of chajjas on north side and southern side.

7. Provision of mosaic flooring in all rooms in place of existing ordinary cement concrete flooring.

8. Renewing all doors and windows.

Based on the above, the valuation of "Ekamra Nivas" as in 1957-58 worked out at Rs. 60,000.

Shri Mahtab in his deposition admits these improvements and alterations and says;

> "The additions and alterations to the house 'Ekamra Nivas' were made after it was purchased and, as listed in Ex-93 at Serial Nos. 1 to 8, they are correct. About the two outhouses, these were constructed after I occupied the house in about December, 1957, to accommodate the police guard posted for the Chief Minister. About the cost of these two outhouses, I cannot say who bore it: whether Government of Orissa bore it or myself as Chief Minister. The cost of these outhouses is Rs. 7,000. If this cost were met by the Government, it must have been recovered out of the rent from me. There was no electricity when the house was built. The residents of that area in Old Bhubaneswar, when this house was built, led by some Bengali gentleman, approached the Government for extending electricity facilities to that area. At that time, the house was also got electrified. I am paying the municipal tax in respect of 'Ekamra Nivas'."

In effect, Shri Mahtab admits that the outhouses were either constructed by him or by the Government, and if constructed by the Government the cost was deducted from his house allowance. These facts leave no doubt in my mind that the purchase of 'Ekamra Nivas' was made by Shri Mahtab, who also effected the extensive improvements for his own residence and convenience. So, if we take the cost of improvements at Rs. 60,000 and Rs. 20,000 as the purchase price, then at least Rs. 80,000 was invested in the acquisition of this property, apart from the bank deposits. I leave aside for the present the consideration of the other house properties in which Shri Mahtab made investments by way of construction of repairs.

All the above acquisitions of wealth and assets during such a short period, while Shri Mahtab held the office of Chief Minister, could not be attributed to his known sources of income, but must have been derived through clandestine or unlawful sources.

Shri Mahtab and his Council have relied very strongly upon the Report of the Income-tax Officer to his superior, the Assistant Income-tax Commissioner Exs. 95 and 96, as something final and conclusive. It is submitted that the said report of the Income-tax

Officer was made after a thorough investigation of the matter and the Income-tax Officer, having full jurisdiction to do so. the report is more or less res judicata and this Commission had no jurisdiction to re-open the matter. This argument is evidently based upon some mis-conception. It is true that the Income-tax Officer had jurisdiction to investigate about the income of Shri Mahtab during the relevant period and even if his assessment order had been produced, it would not have been binding on any court or tribunal, either civil or criminal. I have no doubt that the Income-tax Officer acted in good faith in submitting his report and due weight has to be given to it; but this Commission is entitled to consider the question on merits. It must be remembered that the Income-tax Officer had nothing to do with the agricultural income of Shri Mahtab or those of his brothers and the report shows that the officer, by and large, accepted the statement contained in the letter of Shri Mahtab as to the different sources of his agricultural income and took for granted those figures mentioned therein. Shri Mudholkar has very aptly described the perspective in which the report of the Income-tax Officer had been submitted. The learned judge observes:

> "This material discloses that the Income-tax Officer had called upon Dr. Mahtab to explain the discrepancy of Rs. 73,000 between the total amount of Rs. 2,29,000 paid by Dr. Mahtab partly on the 26th June, 1957, and partly on the 28th June, 1957, for being utilised for purchase of certificates and the value of the certificates which is Rs. 1,71,000 obtained by him in the joint names of his wife and himself. (Cheques of a total amount of Rs. 1,23,000 were in favour of the Post Master, G. P. O., Cuttack and of a total amount of Rs. 1,06,000 in favour of the State Bank of India. These are dated 26th May and 1st July). He also mentioned that according to Dr. Mahtab, he deposited Rs. 15,000 in the Post Office Savings Bank in June 1957, but that his account with the United Commercial Bank does not show any transfer of this amount, whether in a lump sum, or in instalments. Therefore, he asked Dr. Mahtab to make a clarification in respect of an amount of Rs. 73,000 as also that of the bank deposits totalling Rs. 2,92,394 admitted by Dr. Mahtab in his statement in the proceedings."

The Income-tax Officer had not the advantage of looking into all those materials that have more been placed before me. I have from time to time during the course of my discussion referred to that latter of Shri Mahtab and the statements contained therein as also to the report of the Income-tax Officer. They have furnished a good

data in testing the evidence before me, but they could not in any sense of the term be held to be conclusive and binding on me so as to preclude me from arriving at my own findings. In the written arguments filed by Shri Mahtab, a number of illustrative cases have been cited. Those cases stand on their own facts. I need hardly say that my approach to the evidence has been to take in the totality of the picture and even by adopting a most liberal view of the evidence, I could not arrive at a conclusion different from the one mentioned by me earlier. This closes my discussion on the topic of "Rapid Acquisition of Wealth by Shri Mahtab".

My finding is that the acquisition of wealth by Shri Mahtab was much beyond his ostensible sources of income, and must have been derived through unauthorised and illegal sources for which he has completely failed to account.

SARJOO PRASAD

## CHAPTER IV

### *Withdrawal of Criminal Cases*

The charge under this head is that Shri Mahtab was guilty of favouritism. illegalities, improprieties and abuse of power in the withdrawal of the criminal prosecutions against seven iron and steel dealers.

It has been already stated earlier that Shri Mahtab was the Chief Minister of Orissa from the 19th October 1956 to the 24th February 1961. When the Coalition Ministry was formed, the Cabinet originally consisted only of three persons: Shri Mahtab (Congress) as Chief Minister, Shri R. N. Singh Deo (Swatantra) and Shri Radhanath Rath (Congress). Shri Rath had amongst others the charge of the Supply Department. It was during this period that there were reports in the local Press to the effect that there was wide-spread corruption in the iron and steel goods at Cuttack. Shri Radhanath Rath, therefore, ordered search of the premises of some iron and steel dealers. Investigations revealed several violations of the Iron and Steel Control Order. 1956, by these dealers who were also found to have committed many irregularities. The violations were mainly to the following effect:

(1) Disposal of stock without Controller's Order; (2) Unauthorised acquisition of stocks; (3) Selling at prices higher than the controlled rates and (4) Non-maintenance and non-submission of accounts.

Altogether ten cases were instituted between May to August 1959 for contravention of the provisions of Sections 4, 5 and 15(3) of the Iron and Steel Control Order against the proprietors of seven different firms. Nine of these cases were pending before the S. D. O., Cuttack, and one before a Magistrate with 1st Class powers.

The Coalition Cabinet was later expanded and Shri Nilamoni Routray joined the Ministry on the 14th July 1959 and was placed in charge of the Supply Department on reshuffling of portfolios. On the 15th of March, 1960, the President of the Orissa Chamber of Commerce and Industry, made a representation for withdrawal of the above

cases pending against the iron and steel dealers. The representation was made directly to Shri Mahtab as Chief Minister. The grounds on which the representation was based were that the violations of the Iron and Steel Control Order, if any, were due to lack of clear instructions from the Iron and Steel Controller, and in view of the clarification received from the Controller at the instance of the State Government itself and also the conditions prevailing in the States, there was no need to continue the prosecution. The Chief Minister does not appear to have passed any order on the representation until about a month and a half later on the 30th April 1960. The order was as follows:—

"Minister (Supply)

Please examine this. If nothing is to come out of these cases, they may be withdrawn."

Why the Chief Minister took so much time to make the above endorsement has not been explained. The Minister (Supply), Shri Nilamoni Routray then recorded his minutes on 2nd May 1960 directing :

"C. M.'s observations above. Please examine this in the Department."

The Secretary (Supply) after an examination of the matter submitted a detailed note on 28th June 1960 on the basis of which the Minister concerned in his minutes recorded on the 6th July 1960 (Ex. 4) observed that in his opinion the cases appear to have been instituted without carefully examining the Iron and Steel Control Order and the instructions from the Controller, whose orders were conflicting. He also observed that, as reported by the Assistant Secretary (Supply), who had been deputed to study the Calcutta market, the merchants there were always selling their materials at rates higher than the controlled rates. This was due to utter confusion in the earlier circulars of the Controller which he himself later clarified by a later circular. The Minister, therefore, suggested that in the above circumstances the benefit of doubt should go to the merchants and the chances of success in the prosecution according to the Minister were very remote. He, however, closed his minutes with the observation:

"Since these cases were instituted at a time when the department was in charge of another Minister, and I was out of Office, I am submitting these cases for the consideration of the Chief Minister. If C. M. after going through these notes as examined in the Department feels that legal opinion is necessary, he may kindly consult the Law Secretary in the matter."

Shri Mudholkar has characterised these minutes of the Minister as "an exercise in special pleading and shows undue concern for the traders at the expense of the consumers". Keeping these observations in view, I had to put many searching questions to Shri Routray. It is true that the note does not take into account the interest of the consumers and it even says that a circular had been issued by the State Government to sell these free-sale goods at a rate, a little higher than the controlled rates. It must, however, be observed in fairness to the Minister that the question before him was about the withdrawal of the prosecutions, where the onus entirely lies on the prosecution to prove its case. Therefore, if there were doubtful features in the case which rendred chances of success very remote, it could not be said that the Minister went out of his way in suggesting the continuance of the prosecution which was likely to cause undue harassment to the merchants. The last part of the note, however, fairly redeems the Minister from any charge of partisanship. He definitely points out there that since the cases were instituted at a time when the department was in charge of another Minister, the Chief Minister should consider the points raised in his note and that of the Secretary and, if necessary, consult the Law Secretary in the matter.

After this, the Chief Minister, Shri Mahtab, directed by his order dated 7-7-1960, the Secretary of the Law Department to examine the position. The Law Secretary in pursuance of the order submitted his opinion (Ex. 6). The Law Secretary admitted that though strictly under the law by virtue of the 1956 Control Order the executive instructions issued in the letter of the year 1955 lost all their force, nevertheless the latest letter of 1960 appears to proceed on the basis that there was in effect no control exercised over the scrap iron and the produce therefrom. He accordingly was of the view that the appeal conveyed in the letter of the Chamber of Commerce was not without substance, and Government could very legitimately allow the benefit of the confused state of affairs in favour of the persons then proceeded against. The Law Secretary also thought that in such a position, the chances were that the court would not decline to consent to the withdrawal of the prosecutions. At the same time, the Law Secretary observed that in each of the individual cases now in question the position has to be first of all ascertained whether in fact the persons involved had obtained the materials from dealers in scrap and producers of materials from out of scrap iron. It is only if these two conditions were satisfied that the benefit of the confusion could be reasonably made available to the persons proceeded against. In concluding his note he remarked

that it was not clear from the notes of the Supply Department whether those conditions were, in fact, satisfied in all those cases. although the letter of the Supply Department addressed to the registered stockists no doubt tended to suggest that the impugned materials were from out of scrap iron and acquired from scrap dealers. It is true that in the third paragraph of his note, the Law Secretary wanted certain particulars to be ascertained in each individual case before justfying the withdrawal of the cases, but at the same time he took the view that the impugned materials were from out of the scrap iron as shown by the letter of the Supply Department addressed to the registered stockists. With this note of the Law Secretary the file was put up to the Chief Minister, who in his minutes recorded on 19-7-1960 ordered as follows :

> Minister (Supply) will please see in view of what the Secretary (Law) says. The cases may be withdrawn and to satisfy the court, the other points raised by the Secretary (Law) may be looked into.

This order is certainly not very happily worded and is both ambiguous and laconic as Shri Mudholkar has rightly characterised it, but it is capable of the interpretation which Shri Mahtab in his statement gave to this order. He says that it was only a conditional order which he had passed and he meant that if the conditions were fulfilled as suggested by the Law Secretary, the cases may be withdrawn, because no withdrawal can take place until the court is satisfied about the conditions under which its permission is sought to grant the withdrawal of those cases. Much argument has been addressed to me on the interpretation of this order and the whole charge against Shri Mahtab is concentrated on this basis.

For the present, I proceed to narrate the other facts bearing on the subject. On this order of the Chief Minister, Shri Routray recorded his minutes to the effect that action may be taken as observed by the Chief Minister. Later, it appears there is an office note suggesting that the District Magistrate, Cuttack, may be asked to review the cases of prosecution in respect of the violations of the Iron and Steel Control Order which were lauched in June, 1959. The Minister, Supply, however, on 29th July, 1960, directed that the points raised by the Law Secretary should be examined by the department itself, as the District Magistrate would not be in a competent position to check up these matters. The Assistant Secretary who deals with the subject was in a better position to examine the sources from which the scrap iron materials in question

were obtained. He further observed that according to his information the cases had not advanced in the Court and they were in a very initial stage. Therefore, a quick examination may be made in the department for early action. It appears that on further examination by the department, a note was submitted on the 13th of August, 1960, which was to the effect that there was sufficient ground for believing that the materials (rods and bars) were derived from re-rollable scrap, the price of which was not limited to the rate prescribed by the Iron and Steel Control Order. If that view were accepted, Government might be free to withdraw the prosecutions so far as the sale of rods and bars were concerned. As regards the other materials the production of invoice showing that the materials were imported would justify their withdrawal. Ultimately, on receipt of the various notes of the department, the Secretary recorded his note on 23-9-1960 in which he observed that they could not give any opinion in the matter. The cases would depend on facts. Chief Minister's orders might be carried out and the cases considered on the basis of facts as suggested above. The file was then endorsed to the Minister (Supply), who recorded his minutes on 24th September, 1960, directing that the District Magistrate, Cuttack, should now be asked to apply for withdrawal of all these cases. The materials on the basis of which the Government had come to the conclusion might be made available to the District Magistrate, who would instruct the Public Prosecutor accordingly.

It appears that according to the advice tendered by the department, the Public Prosecutor applied for withdrawal of 5 cases and obtained permission to withdraw them. The District Magistrate also took steps to apply for withdrawal of the case against one Messrs. Mahadev Prasad Krishna Prasad and this was also done. Thus, only 4 cases were left in which no orders of withdrawal were passed nor any application made for the purpose. The District Magistrate, Cuttack, thought that he was unable to extend similar consideration to the parties concerned in those four cases as the prices at which the materials were sold were unduly high. The District Magistrate, therefore, sought the orders of the Government as to whether the cases of those parties might be withdrawn or continued. With these observations of the District Magistrate when the file was put up before the Minister of Supply, the Minister passed the following orders :

> "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 confusions created by the circulars

of the Iron and Steel Controller relating to scrap iron and materials produced out of the 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 evidence has 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."

The order is dated 21-1-1961. The office, however, pointed out that those four cases were clear contraventions of different clauses of the Iron and Steel Control Order, namely, clauses 12(i), 12(ii), 14(i), 14(ii) and 23(a) and there was no confusion in these clauses with any direction given by the Controller. Hence, the benefit which was made available to the traders in the other cases which were withdrawn, could not be made available to the traders involved in these four cases. Under the circumstances, the department suggested that it might not be possible perhaps to withdraw those cases. It was also pointed out that some of those cases had already progressed in the court and some of them had reached the stage of arguments. On this note, the Minister (Supply) recorded the following minutes :—

"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 orders, dated 21-1-1961 at page 43/N. In the meantime, the iron and steel position has considerably improved and control on many iron materials has been relaxed. So, it does not look nice to continue those 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." (the underlines are mine).

As a result of this order, the four cases also were subsequently withdrawn. It appears that subsequently at the instance of the Supply Minister, the Chief Secretary submitted a note on the salient points leading to the withdrawal of the cases and breach of the Iron and Steel Control Order, 1956. This note came long after the incident on the 10th of December 1964. I need not refer to the note in detail. It was observed in the note that in the four cases above noted the Collector felt that withdrawal under Sections 4 and 5 was perfectly in order but he did not think that the cases under Section 15(3) should be withdrawn because the price charged was far in excess of the control rate. The Chief Secretary proceeded to observe in that note that the order of the Chief Minister covered procurement, disposal and price and the withdrawal of the cases under Section 15(3) was in accordance with the order of the Chief Minister. It even covered cases which involved non-production of accounts and non-maintenance of accounts. On the basis of the Chief Minister's note, dated 19th July, 1960, directing the withdrawal of those cases appeared to be justified inasmuch as reference made by the Collector and the Department were in conflict with the orders of the Chief Minister. The Supply Minister naturally waived the objections with a direction to expedite matters and carry out Government orders. Minister (Supply), therefore, simply implemented the orders of the Chief Minister faithfully.

It is true that this note of the Chief Secretary justifies the action taken by the Minister of Supply. In his evidence the Minister of Supply, Shri Nilamani Routray, has taken exactly the same position, when I pointed out to him that primarily the Supply Portfolio was in his charge and he should have, therefore, drawn the attention of the Chief Minister to the distinctive cases as pointed out by the District Magistrate and the department, Shri Routray took the plea that he interpreted the order of the Chief Minister as a blanket order directing withdrawal of all the cases. On the contrary Shri Mahtab has taken the plea that his order was a conditional order and there was nothing to prevent the Supply Minister from taking any appropriate action that he considered necessary in the circumstances of the case. As I said, the order passed by the Chief Minister was capable of both the interpretations. It may have been indeed difficult for the prosecution to prove that the materials sold by the dealers came under the control order and were not materials manufactured out of scrap iron which were not controlled. Even if it were a case

of manipulation by the dealers, the loopholes in the law as framed would afford them ample protection. I do not find that in the note of the Law Secretary there is anything pointed out about the non-maintenance and non-production of accounts. It is quite likely that the Minister (Supply) felt nettled when again and again the file was put up to him for the non-withdrawal of certain cases. He may have had the impression that the office or the subordinate staff were trying to circumvent the decision which he and the Chief Minister had taken. This is apparent from the trend of the order. Already his order, dated 21-1-1961 clearly shows that he had definitely directed the Collector to take steps to withdraw all the cases and to close the chapter once for all. I am strongly of the view that ministerial interference in judicial proceedings is highly reprehensible and the law should be allowed to take its course.

In the instant circumstances, I feel very doubtful of there being anything suspicious about the orders passed either by the Chief Minister or the Minister (Supply). There was no intention on their part, in my opinion, to give a short shrift to the points raised by the Law Secretary. I do realise that perhaps these gentlemen would have shown better discretion in examining the matter with a little more care; but that can only tantamount to an error of judgment, if at all. and not to any impropriety or favouritism. At the same time, I feel that it would also have been appropriate on the part of the Minister or the Chief Minister to consult Shri Radhanath Rath in whose time the prosecutions were started and who appears to have taken some interest in directing the prosecutions. The joint responsibility of the Cabinet also points in this direction, Shri Rath being still a member of the Cabinet. Even in one of his earliest notes, the Minister (Supply) very rightly endorsed his file to the Chief Minister, observing that since prosecutions had been started during the time of another Minister of Supply, the Chief Minister himself should look into the matter. These matters are, however, not so serious as to support the charge which is now being levelled against Shri Mahtab.

I accordingly exonerate Shri Mahtab of this charge altogether.

SARJOO PRASAD

25-5-72
Commission of Enquiry
Orissa Government

# ANNEXURES

## A, B, C, D.

## VOLUME II

# ANNEXURE A

## (Copy) THE ORISSA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 49 CUTTACK, FRIDAY, JANUARY 8, 1971

**HOME DEPARTMENT**

NOTIFICATION

The 8th January 1971

No. 10/EC—Whereas Shri Sadasiv Tripathy, M.L.A., who was the Chief Minister of Orissa from the 21st February 1965 to the 7th March 1967, and a Minister of Orissa during different periods during the 19th August, 1948 to the 2nd October, 1965 alongwith 24 other members of the Orissa Legislative Assembly submitted a memorial to the President of India on the 26th June, 1967, alleging certain administrative improprieties and corruption against several persons including some ex-Chief Ministers and ex-Ministers of Orissa, who held such office some time or other between 1947 to 1961;

And whereas arising out of correspondence in this regard between the Chief Minister and the Home Minister, India, the said memorial was referred to a Retired Judge of the Supreme Court, namely, Shri J. R. Mudholkar, for a preliminary verification into any definite allegation contained therein as against any person who held office as a Chief Minister or a Minister during the period from 1947 to 1961 and to report as to whether any prima facie case against any such persons, as aforesaid, exists and further to report as to whether in public ineterest a Commission of Inquiry should be set up in order to have a full and complete inquiry into the said matters;

And whereas Shri J. R. Mudholkar, who submitted his report; dated the 26th September, 1968, in this regard, while exonerating others,

has recommended only in respect of Dr. H. K. Mahtab, who was Chief Minister, Orissa, during the period from 23-4-1956 to 11-5-1960 and 19-10-1956 to 25-2-1961 as follows:—

"To sum up, my findings are :

* * * * *

(*ii*) That prima facie there was little justification for granting remission of dues to lessees from Government, that serious allegations made against Dr. Mahtab in respect of this need to be thoroughly enquired into;

(*iii*) that the grant of a lease of chromite mine to Md. Serajuddin even after receipt of telegram from Government of India withdrawing permission to the grant of lease does not, prima facie seem to be justified and the transaction needs to be enquired into including the responsibility of Dr. Mahtab in this regard.

* * * * *

(*iv*) that thtre is prima facie evidence justifying a probe into the question relating to rapid acquisition of wealth within four years by Dr. Mahtab;

* * * * *

(*viii*) that the question pertaining to the withdrawal of prosecution launched against iron and steel traders needs to be enquired into for ascertaining as to whether Dr. Mahtab was mainly responsible for their withdrawal;

* * * * *

(*xi*) that the figuring of Dr. Mahtab in the accounts of Md. Serajuddin may be enquired into along with the charge of grant of lease chromite mine improperly to Md. Serajuddin.

* * * * *

In view of these findings, I recommend that it is in the public interest even at this point of time to constitute a Commission of

Inquiry for making an inquiry against Dr. Mahtab in respect of the following specific matters:—

(a) grant of remission of Government dues to Kendu leaf contractors in 1959 ;

(b) grant of lease of chromite mine to Md. Serajuddin in 1957 ;

(c) rapid acquisition of wealth by Dr. Mahtab between the years 1956 and 1960, and

(d) the withdrawal of criminal prosecution against ten iron and steel dealers.

I may reiterate that not only in the public interest but also in the interest of Dr. Mahtab himself, an enquiry into these matters be caused to be made by a Commission of Inquiry, appointed under the Commission of Inquiry Act."

And whereas there have been persistent demands from different political parties as also the public that the matters referred to in the aforesaid recommendations of Shri J. R. Mudholkar should be enquired into by a Commission of Inquiry so that the facts may be found, which alone will facilitate ractification and prevention of recurrence of such lapse in securing the ends of justice and establishing a moral public order in future.

And 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 definite matters of public importance.

Now, therefore, the State Government, in exercise of the powers conferred by Section 3 of the Commission of Inquiry Act, 1952, hereby appoint a Commission of Inquiry consisting of Shri Sarjoo Prasad, ex-Chief Justice of the Rajasthan and Assam High Courts to inquire into and report on and in respect of the following:—

(a) Whether Dr. H. K. Mahtab committed acts of misconduct, misappropriation, acceptance of illegal gratification, favouritism, illegalities, irregularities and improprieties and abuse of his power as Chief Minister in the matters of administration of the State in respect of the following:—

(1) Grant of remission of Givernment dues to Kendu Leaves Contractors in 1959-60.

(2) Grant of lease of chromite mine to Md. Serajuddin in 1957 and the significance in this context of the extracts from the accounts of Md. Serajuddin, dated the 5th November 1953, containing entries showing receipts of money by Dr. H. K. Mahtab from Md. Serajuddin.

(3) Rapid acquisition of wealth by Dr. Mahtab between 1956 and 1960.

(4) Withdrawal of criminal prosecution against ten iron and steel dealers.

which are definite matters of public importance.

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

The Commission shall inquire into detailed particulars pertaining to the aforesaid matters contained in the said memorandum alongwith other incidental and ancillary matters that shall be placed before them by the State Government or members of the public or organisation. 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 end of June, 1971;

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 for the time being at Delhi and may also visit such places as may be necessary in furtherance of the inquiry.

By order of the Governor

B. B. RATH

Secretary to Government

## ANNEXURE B

*The Hon'ble Dr. Zakir Hussain, Ph. D.,*
*Bharat Ratna, President of India, New Delhi.*

Respected Sir,

1. We, the undermentioned signatories being the representatives of the democratic socialist forces in the State of Orissa being highly aggrieved by the gross acts of corruption, misrule, nepotism, political oppression and improprieties by the leading members of the present Swatantra-Jana Congress Government of Orissa and their supporters during various periods when they have held the high office of Ministers in the Government since Independence and being highly apprehensive of increasing repetition of such of similar acts of corruption, misrule, nepotism, political oppression, and improprieties pray for a public inquiry against the said leaders of the present Government of Orissa and their supporters, including in particular, Dr. H. K. Mahtab, Shri Nabakrushna Choudhury, Shri R. N. Singh Deo, Shri Prabitra Mohan Pradhan, Shri Surendra Nath Patnaik, Shri Santanukumar Das and others under the Commission of Inquiry Act.

It is but natural that those gentlemen who were ousted from political power in 1961 and who mainly rely upon the support of the ruling families in Orissa who were gradually deprived of their autocratic powers and privileges and opportunities for feudal and totalitarian exploitation should resolve to wreck vengence against the democratic socialist forces which are ranged against them. Not being satisfied by whispering campaign of character assassination nor with the enquiries and investigation made in the past by the Central Government they are out to improperly use the machinery of the State to achieve their own end. The ulterior purpose of the appointment of a Commission of Inquiry by the present Government of Orissa against the leaders of the Congress Party in Orissa is to throw a cloud on their reputation so that they can no longer effectively oppose the Government in power on the political plain and displace it from office when occasion arises. A Commission of Inquiry in such matters as can be seen from the present examples of the

Vivian Bose and N. Rajagopala Ayyangar Commission has a tendency to take many many years. It is after the mid-term elections of 1961 that the public sector enterprises and other institutions were started and efforts made vigorously to secure social order in which social, economic and political justice was sought to be effected. The feudal and entrenched interests who have consistently opposed this and schemes of welfare for the people not only now seek to undo the work but are adopting the unethical means of character assassination and also strong arm methods against those who threatened their vested interests, namely the leaders of the Congress Party in Orissa after the mid-term election who effected these reforms.

2. The proper purpose of a Commission of Inquiry when it enquires into the conduct of political leaders who have held the high office of Ministers is to *(i)* help maintain a high standard in public life, *(ii)* take legislative or administrative action to eradicate the evil found and to implement the beneficial objects the Government may have in view, and *(iii)* prevent Government from acting against the cannons of natural justice. We submit that it is necessary *(a)* to protect and re-affirm the Constitution of India, *(b)* to protect the democracy and political institutions and organisations subscribing to democratic socialistic ideas, and (c) to ensure protection of the people against the misdeeds and gross act of corruption and misrule by the persons who are the leading Ministers of the present Government of Orissa and are in control of the entire Government machinery and power.

The present Government of Orissa has already decided for their own political ends to appoint a Commission of Inquiry in respect of the period from June, 1961. As the Lord Chancellor of England, Viscount Kilmuir, said about Tribunals of Inquiry, "It may be necessary to kill harmful rumours which are found to be unjustified. It may be necessary and this I am sure was very much in the minds of the Government who introduced this measure to restore public confidence in public conduct and administration." It is, therefore, necessary that a Commission of Inquiry be appointed by the Central Government in respect of the acts and omissions of Ministers from the year 1947, i.e., since Independence till date

3. How can public confidence be restored in public conduct and administration ? The Chief Minister of the present Swatantra-Jana Congress Coalition Government, Shri R. N. Sing Deo, by his letter, dated the 14th May, 1967, to the leaders of the opposition parties has stated. "Government has decided to establish a Commission of Inquiry to enquire into charges of corruption and improprieties alleged to have been committed in the sphere of administration by

the Ministers who were in office during the period between the 1961 election and the recent election". This declaration of the Chief Minister of Orissa is on the face of it malafide. The facts relating to the constitution of the present Government of Orissa and the constitution of Ministries since Independence are glaring, and the conclusion is inevitable that the said declaration of the Government of Orissa about appointment of a Commission of Inquiry for the period after June 1961 is malafide.

The date June, 1961 is arbitrarily chosen and for consideration extraneous to the purpose of any Commission of Inquiry. Dr. H. K. Mahtab, the leader of the Jana Congress in Orissa, was ousted from Government in February 1961 when he lost the confidence to the Congress in Orissa. Similarly, in February 1961 the leaders of the Ganatantra Parishad, predecessors of the Swatantra Party, including the present Chief Minister, Shri R. N. Singh Deo, were also thrown out of power. Dr. Mahtab was the Chief Minister and Shri R. N. Singh Deo was the Finance Minister and Deputy Leader in the Coalition Government which went out of office in February, 1961.

These gentlemen are out to wreck vengeance on the political groups which ousted them, by improperly using the machinery of State to achieve their own political ends. These facts raise a very important question for consideration as to whether a decision to appoint a Commission of Inquiry whose sole purpose appears to be vendetta against political opponents of the present Government and an attempt to politically discredit a party by extra democratic methods, would be prevented. Put in another way, the question is that every time a political party is ousted from power, the party coming to power and set up a tribunal to sit in judgment over those going out of power and to also ensure their own future election by attempting to discredit the opponents. These methods in our parliamentary system of Government, which will inevitably "snowball", must be put an end once and for all. The attempt to use the machinery of the Government of Orissa to appoint a Commission of Inquiry limited to their political opponents must therefore be discouraged. Further, in order to clear the air and to maintain the high standard of public life and to restore public confidence the Central Government may appoint such a Commission of Inquire to enquire into the conducts of Ministers in Orissa during the entries into the conducts of Ministers in Orissa during the entire period since Independence. This appears to be necessary in order to deal with the charges and the counter charges, and to kill harmful rumours.

4. That a Commission of Inquiry appointed by the Central Government to enquire into the allegations against Ministers who have

been in office during the period since Independence, is absolutely necessary will further appear from the following facts :—

(a) The Chief Minister of Orissa, Shri R. N. Singh Deo, in his said letter of the 14th May 1967, has further stated, "in response to suggestion received to widen the scope of this enquiry to periods earlier to 1961, Government has also decided that if specific allegations are brought forward relating to Ministers in any earlier period and there is a prima facie case made out against such persons, Government will also consider referring such charges for enquiry to the proposed Commission". The requirement of making out a prima facie case is contrary to the whole purpose of Commission of Inquiry and violaeds the provisions of the Commission of Inquiry Act. In fact, it is usually for the Commission to find out whether there is any prima facie case. The further statement that Government 'will also consider referring such charges' means that there is no certainty that even if a prima facie case is made out, the charges will be referred to the Commission. The satisfaction is of the Government of Orissa which has to exercise discretion in the matter. How can the same party act as a judge in respect of accusations made against it and its supportors ? This is a proposition contrary to all cannons of natural justice.

(b) That the present Government's and Shri R. N. Singh Deo's conduct is malafide and that they have carefully chosen the period after June 1961 in order that Dr. Mahtab, Shri R. N. Singh Deo, Shri Nabakrushna Choudhury, Shri Pabitra Mohan Pradhan, Shri Surendra Nath Patnaik, Shri Santanu Kumar Das and others may not be involved within the scope of the inquiry is further clear from the fact that such allegations were being made by Shri R. N. Singh Deo and others in respect of the periods for which he now wants to be satisfied of the socalled prima facie case.

(i) In the Memorial dated the 28th July 1964, presented to the President of India on the 13th August, 1964, by certain gentlemen including amongst others Shri R. N. Singh Deo, the then leaders of the Opposition in the Orissa Legislative Assembly and at present Chief Minister of Orissa, it was inter alia stated.

> "Worship of Mammon in the belief that money could sustain the party in power through control of politics and administration, the mistake belief that the end justified the means and that everything is fair in love and war, have been the root cause of all the evils from which this State continues to suffer. This

perverse political philosophy of some of the leaders of the ruling party in Orissa has vitiated and corrupted the politics and administration of the State since Independence".

"These wrong motives and policies led some of the leaders of the ruling party to set up some of their favourities in profitable business and industries with Government partronage and backing for the benefit of the individual and the party. This has been highlighted from time to time in public contraversies, statements and correspondences.....".

"The perverse approach and the resultant action led to injustice, favouritism, nepotism, partisanship and corruption in the administration of the State has vitiated the entire fabric of the democratic life in the State. The consistent exposures and criticism both inside and outside the Legislature during last 12 years was like a cry in the wilderness, all charges and criticisms being ignored and dismissed with arrogance and indifference, since they accused themselves were the judges and there was not sufficient internal party pressure, vigilance and check to mend them ....."

(ii) Shri Nabakrushna Choudhury, who was the Chief Minister of Orissa, during the period from 1950 to 1956 has publicly confessed that corruption was rampant in Orissa all along in order to raise resources for running the Government by his party. This statement was made by him at a Gandhi Tatwa Prachar Kendra meeting on the 14th July 1963, while he was commenting upon political corruptions recapitulating the state of affairs prevailing in Orissa since Independence. A copy of the English translation of the news item is hereto annexed as Annexure I. Subsequently, at a speech delivered at Belaguntha in Ganjam District as reported in the "Samaj", dated the 6th July, 1966, Shri Nabakrushna Choudhury has stated that "I am also responsible for the corruption which has crept into the Congress. I am confessing my guilt for such lapse in the Congress. I am speaking the truth as an approver."

(iii) Further, Dr. F. G. Bailey has published three books on the current and contemporary society in Orissa, the last one being on the political and social changes covering the period from 1947 to 1959. Dr. Bailey is an independent and foreign research scholar who spent several years in Orissa and his observations deserve consideration. Dr. Bailey has made most scandalous revelation in his book about politics in Orissa during 1957—1969. In the last book in the series entitled "Politics and Social Changes—Orissa 1959", Dr. F. G. Bailey

concludes, "Moral action tended to be replaced by expedient action" "The problem of politics between 1947 and 1959 was that politics still went over the heads of ordinary people, except in one vital respects; Politicians needed votes." (Pages 217 and 218). At page 146, he states "In few of these cases was the boss or the politician clearly shown to be paying money out of his own pocket. Almost always he dispenses patronage of one form or other. He finds job, he allocates contracts, relief money and licences, or, to put it correctly, people believe they are allocated on his advice. Patronage of this kind up to 1959 was very largely in the hands of the ruling party, the Congress". At page 148, Dr. F. G. Bailey states "Relief monies, development monies and contracts are not distributed on the basis of economic rationality alone but are also used to plug deficiencies in the political system." Giving an account as to how the Congress Minister of Dr. H. K. Mahtab was formed and retained in Orissa scandalously after 1957 election, Dr. Bailey has stated, "This 'instability' led to the unsavoury intrigues of April and May, 1958, of which everyone seems to have been ashamed" (page 8). These accounts given by a foreign research scholar, Dr. Bailey, must have been responsible for vitiating the political atmosphere in the State and must have undermined the reputation of the Orissa People abroad as the publication was widely circulated.

(c) The absurdity of the said statement in the letter dated the 14th May, 1967, of Shri R. N. Singh Deo, the present Chief Minister. about considering suggesings for including charges against himself, his associates and his friends is borne out by following observation of the Supreme Court:

"It is difficult to imagine how a Commission can be set up by a Council of Ministers to inquire into the acts of its head, the Prime Minister, while he is in office. It certainly would be a most unusual thing to happen. If the rest of the Council of Ministers resolves to have any inquiry, the Prime Minister can be expected to ask for their resignation. In any case, he would himself go out."

Following the spirit of the above observations of the Supreme Court, it should be appreciated that a Chief Minister cannot venture to displease such of his Cabinet Colleagues and political supporters on whose political support his Chief Mnistership rests. It is, therefore, onthinkable to expect fairness from Shri R. N. Singh Deo, the present Chief Minister of Orissa in respect of the allegations made or to be received against himself and his Cabinet colleagues and political supporters, particularly in view of the malafide of his actions proved in the foregoing paragraphs.

The only example of a Commission working in respect of a sitting Chief Minister of a State was the Commission appointed by the Central Govt. in respect of the allegations made against the then Chief Minister of the Punjab, Shri Pratap Singh Kairon.

Further reference is carved in this connection to the well-known principles recognised in the Report of the Committee for Prevention of Corruption known as "Santhanam Committee", which has recommended that where there is a Commission of inquiry to go into the conduct of a Minister he should resign as a matter of convention and should remain out of office till the end of Commission (See Section 11 at page 103 of the said Report). Shri R. N. Singh Deo and others also made similar claims in their memorial dated the 28th July, 1964, addressed to the President.

The only course now open is for Shri R. N. Singh Deo and others who are charged of corruption, improprieties, etc. to resign from office or to move for a comprehensive Commission of Inquiry to be appointed by the Central Govt.

According to Justice S. R. Das, a Commission of Inquiry is appointed by an appropriate Government to report to it; it is a machinery set up by the appropriate Government to enquire and make a report to the appropriate Government so as to inform the mind of the appropriate Government to enable it to take such action as the Government may in the circumstances think fit. The Supreme Court has held that it is a discretionary power which is conferred on the Government to appoint a Commission of Inquiry or note. Such discretionary power may be misused or abused or turned into an engine of oppression. The Government of Orissa cannot in any view of the matter be expected to or be permitted to exercise this discretion and its executive power in matters in which its Chief Minister and others forming a party of the Government are accused. This is apart from any question of malafide of which, as has already been stated, there is overwhelming evidence.

(d) There is further no certainty that any report which may be made by a Commission of Inquiry to the present Orissa Government will be published to the public or be available to the Central Government or that even any action will be taken on the report, if the findings are not politically beneficial to the present Government of Orissa.

If rules of obligations and standard of conduct of Ministers are to be laid down, this can only be done by a comprehensive Central Commission of Inqiury.

Through it is clearly impossible to enumerate here all the allegations of corruption, political misconduct, oppression, misrule, favouritism, nepotism, administrative impropriety, etc., against the Chief Ministers and Ministers of Orissa ever since Independence, including those in Office, we are at present citing a few instances below for immediate action and for inclusion of the items for probe by the Commission of Inquiry.

6. It is further necessary that a Commission of Inquiry should invite complaints from the members of the public which are to be sent to the Commission of Inquiry itself and not to the Government of Orissa for "processing" as desired by the present Chief Minister of Orissa in his said letter of the 14th May 1967.

7. The instances of corruption, improprieties, etc., referred to in para. 5 above are furnished below:

(1) Out of the 20 years of Post Independence period Dr. H. K Mahtab was either the Chief Minister of Orissa or was wielding powers of a super Chief Minister for about 12 years. He was the Chief Minister from 1946 to 1950 and from 1956 to 1961. He was the Union Minister for Industry & Commerce from 1950 to 1952 when he exercised superior political power and influence over the Orissa administration. In fact, when Dr. Mahtab had to vacate the Chief Ministership because of his assignment in the Union Cabinet, Shri Nabakrushna Choudhury was installed as the Chief Minister at his instance. In their Memorial to the President dated July 28, 1964, the memorialists including the then Leader of the Opposition and the present Chief Minister alleged "In fact, this Kendu Leaves Monopoly has been the biggest factor in corrupting the whole political life in the State since Independence. Shri Nabakrushna Choudhury confessed in the aforesaid statement that "the top experienced leaders of the party indicate the manner in which the big businessman are to be compensated by making profit by other ways in return of the big amounts they pay". He further said, "Huge amounts are raised at the time of election from big mine owners and other big businessman for which no detailed accounts are kept". It is, therefore, desirable that Shri Choudhury's confession should be included in the scope of

Privileged position of Dr. H. K. Mahtab as Chief Minister and Super Chief Minister.

Shri Nabakrushna Choudhury,—an important witness not to be missed.

enquiry for obtaining specific information from him who should be called upon to depose before the Commission and reply to the supplementaries by others interested in eliciting information vital to the survival of democratic order and honesty in public life.

Shri Singh Deo's own allegations against Dr. Mahtab and Shri Nabakrushna Choudhury.

In this context the following allegations reproduced from the Memorial of Shri R. N. Singh Deo and others to the President of India are very significant. It was stated in the said Memorial "These perverse political philosophy of some of the leaders of the ruling party in Orissa has vitiated and corrupted the politics and administration of the State since Independence. These wrong notions and policies led some of the leaders of the ruling party to set up some of their favourites in profitable business and industries with the Government patronage and backing for the benefit of the individuals and the party. * * * The consistent exposures and criticisms both inside and outside the Legislature during the last twelve years was like a cry in the wilderness. all the charges and criticisms being ignored and dismissed with arrogance and indifference, since the accused themselves were the judges and there was not sufficient internal party pressure, vigilance and check to mend them." As has already been mentioned, Dr. Mahtab and Shri Nabakrushna Choudhury were the Chief Ministers during this period. Most relevant to the above allegations is the need to determine in the public interest and in the larger interest of parliamentary democracy as to who were responsible and in what manner for vitiating and corrupting the politics and administration in Orissa as was alleged in the said Memorial.

Abuse of power by Dr. Mahtab and Shri Nabakrushna Choudhury.

Also most relevant to the above allegation is to ascertain by a Commission if Dr. H. K. Mahtab and Shri Nabakrushna Choudhury, by abusing the official position held by them, obtained pecuniary and other benefits for themselves, for members of their families, for their other relatives and for some other persons in whom they were interested and allowed them to obtain or connive at their obtaining pecuniary and other benefits by exploiting the official positions held by them.

Probe into Dr. Mahtab's assets essential.

It is also relevant in this connection to probe into the nature and extent of the assets of and the pecuniary resources of Dr. H. K. Mahtab and members of his family and dependants, held directly or in benami in 1946 before Dr. Mahtab became the Chief Minister of Orissa and in 1961 when he was made to vacate the Chief Ministership.

(2) In the year 1959 during the period of the Coalition Government the Chief Minister, Dr. Mahtab, in collusion with Shri R. N. Singh Deo, the then Finance Minister, had shown special considerations and undue favours to the Kendu leaf traders under most suspicious and scandalous circumstances. Not only the Orissa Kendu Leaves Control was modified stealthily for personal and political gains in connivance with the traders, the Kendu leaf contractors were also granted an outright exemption of about Rs. 20 lakhs from the dues payable to the Government on their subsisting contracts with the Government. Open allegations had been made in the press and in the floor of the State Legislature that undue favours were shown to the Kendu leaf traders at huge financial loss to the State Exchaquer and both the Chief Minister and the Finance Minister were accused of corruption, gross impropriety and abuse of authority for personal and political gains. The dubious and questionable methods that were employed by the contractors to get these concessions from the Government were matters of severe criticism in the Orissa Assembly. A thorough probe into these affairs will unearth many interesting things, expose to the public all the ulterior motives behind this deal in furtherance of their personal and political ends in utter disregard of propriety in the administration of public finance. As a result of the modification of the Kendu Leaf Control Order and exemption of Government dues there was a huge drop of about Rs. 78 lakhs in the revenue of the State. Not only the State Legislature expressed concern over this, even the Orissa Taxation Enquiry Committee of Dr. P. S. Lokanathan, while commenting upon this loss of revenue due to party interests, made some allusions to undesirable considerations.

Rupees twenty lakhs outright exemption to Kendu leaf Contractors by Dr. H. K. Mahtab and Shri R. N. Singh Deo.

Over Rs. 78 lakhs loss to the State Exchequer for ensuring personal gains..

(3) The scandalous order of Dr. H. K. Mahtab as the Chief Minister regarding the grant of the mining lease of the Chromite Mine of Sukrangi to Md. Serajuddin is well-known. Md. Serajuddin was not entitled to get the lease according to the rules and according to the Industrial Policy Resolution of the Government of India. To get over this difficulty, Md. Serajuddin played a dodge by promising to put up a ferro-chrome plant to save foreign exchange and so the area might not be reserved for exploitation by the Government itself. The Minister in charge of the department in order to test the sincerity of the party ordered that prospecting licence could be granted on the condition that Md. Serajuddin put up a ferro-chrome plant and unless he furnished ample proof of his seriousness to put up the plant within a specified period which would save foreign exchange

Rules sidetracked. Minister bypassed and State's interest sacrificed by Dr. Mahtab in granting Chromite Mine lease to Md. Serajuddin.

the mining lease should not be granted and the prospecting licence should be withdrawn. Further, the Minister made it a condition that Md. Serajuddin could not sell raw chromite ore even during the licence period. But, Dr. Mahtab, the then Chief Minister, without the knowledge of the Minister-in-charge, sent for the file and ordered to lease out the area to Md. Serajuddin without any safeguard against his selling the raw ore to foreign countries. The undue haste with which the lease was granted to Md. Serajuddin created a flutter in the public.

It should be recalled that there was an enquiry by Justice S. K. Das regarding the part played by Shri K. D. Malaviya, the then Central Minister of Mines, in this deal and it was widely rumoured in Delhi that Justice S. K. Das made some adverse comments on the conduct of Dr. Mahtab in his report which he furnished to Pandit Jawaharlal Nehru, the then Prime Minister. As the report of Justice S. K. Das has not been made public, the part played by Dr. Mahtab and the adverse criticism of Justice Das did not see the light of the day. A mere perusal of the file regarding the grant of this lease in favour of Md. Serajuddin will convince anybody that the order of Dr. H. K. Mahtab, the then Chief Minister, was procured by influencing him by payment of some illegal gratification, in open violence of the Government policy and the rules.

Undue favour to mine-owner M. G. Rungta. Loss of Rs. 6 lakhs to State Exchequer.

(4) The scandalous dealing of Dr. H. K. Mahtab, the then Chief Minister, with one mine-owner Rai Bahadur M. G. Rungta relating the commutation of arrear royalty with regard to Kalimati and Siljore Mines were subject matter of public criticisms. Government dues on this account amounting to over Rs. 7 lakhs were outstanding against this mine-owner. Although the mine-owner was playing various tricks, the department was very firm and there was Government Order to settle the matter only if he paid this amount of Rs. 7 lakhs. But, suddenly after the assumption of office by Dr. H. K. Mahtab in October 1956 as Chief Minister of the State, the tone of the department was changed with regard to the dues against this mine-owner. If one goes through the notings in the file, it will not be difficult to notice the change of the approach. Pressure was put upon the department to settle the matter with the mine-owner at a lower amount. Ultimately, the State dues of Rs. 7 lakhs was commuted to Rs. 1 lakh and 17 thousand only. The Chief Minister utilised the Minister in charge of the department to get this favour done to Rai Bahadur Rungta for his personal gains at the cost of the State Exchequer. Some other concessions were also given to Rai Bahadur Rungta at the cost of the State Exchequer. There was public scandal about undue interests of Dr. Mahtab in the dealings of this mine-owner. A thorough probe will reveal many acts of corruption and improprieties.

(5) When the total outlay of the Orissa Cement Ltd. was of the order of Rs 2 crores only, the Government of Orissa thought it proper to contribute to the Dalmias for this project to the tune of Rs. 1·20 crores besides the assistance given to them in providing the land and other facilities. When Dr. H. K. Mahtab and Shri Nabakrushna Choudhury were Chief Ministers of the State, a sum of Rs. 80 lakhs was given as interest-free loan and a sum of Rs. 40 lakhs was invested in redeemable preference shares carrying only 4·5 per cent dividend. The entire block of preference shares was bought by the Orissa Government at this 4·5 per cent dividend rates when the prevailing market rate of dividend was 6 per cent. Thus the State was made to suffer a heavy recurring loss on account of the reduced rate of dividend on the Rs. 40 lakhs worth of redeemable preference shares.

Dalmias enriched at State's cost. Interest-Free Loan and huge financial assistance given.

Judged in the context of the State's interest, had the State Government then invested Rs. 80 lakhs more they could themselves have started the industry which could have given them all the returns that it has been giving to the Dalmias. Alternatively, the State Government could have invested the Rs. 80 lakhs in shares by offering such terms to the promoters of the Cement Factory instead of giving this huge amount from the poor State Exchequer as interest-free loan. In that case, the State Government could have held a controlling share in the company. If the plea that there was a special urgency to start a Cement Factory for facilitating construction of the Hirakud Dam, was correct, then, the State Government could have done well by inviting offers from all intending parties in a competitive manner. The facts were that the then Chief Ministers took special interest in the Dalmias to make this unprofitable investment on the plan of promoting an industry only for their personal gains. Incidentally, the probe into the account of the Prajatantra Prachar Samiti of which Dr. H. K. Mahtab is the life-time Chairman and Shri Nabakrushna Choudhury was a member of the Board of Directors, will reveal how this Samiti's wealth could multiply rapidly with receipts from unexplained sources.

(6) Although Dr. H. K. Mahtab had a debit balance of Rs. 11,687 in his bank account in the United Commercial Bank Ltd., Cuttack, when he assumed office as Chief Minister of Orissa in October 1956, the said Dr. H. K. Mahtab during his tenure of office as Chief Minister up to 1961 made vast acquisitions of wealth and properties in his own name and in the names of his family members including his wife, brother, niece and nephews, some of

Rapid acquisitions of vast wealth by Dr. Mahtab in less than five years between October 1956 and 1960.

which are mentioned below. Incidentally, Mrs. Mahtab, Dr. Mahtab's brother, Shri Gopinath Das and the latter's children were for all practical purposes fully dependent on Dr. Mahtab.

(*i*) Dr. Mahtab's own residential house known as "EKAMRA NIVAS" in Bhubaneswar is an instance of his acquisition of valuable immovable property. The land measuring over an acre already with an old building standing over the said land was purchased by him. The building was reconstructed and made a new with enormous new additions. It is a building of modern style with modern fittings. One outhouse with modern fittings was also constructed within the compound. All these were done at a cost of over Rs. 2 lakhs. In these constructions he misused his official position and utilised the services of Government Engineers and Government contractors.

(*ii*) Another two-storied building was constructed by Dr. Mahtab near the Bhubaneswar railway overbridge facing the Raj Path at a cost of over Rs. 1 lakh. His official position was utilised for acquisition of this plot of land situated at the very entrance of the New Capital close to the old Circuit House.

(*iii*) Dr. H. K. Mahtab had caused the construction of another building near the Bhubaneswar Railway Station in the name of his niece. The cost of this building along with the land would be over Rs. 50,000. This is a "Benami" acquisition of property in order to possess more plots of land and buildings in the State Capital.

(*iv*) Dr. H. K. Mahtab's old house at Bhadrak has been remodelled with new additions and alternations. The re-modelling and additions must have been done at a cost of Rs. 25,000. A portion of this building has been rented out to the Posts & Telegraphs Department.

(*v*) Dr. H. K. Mahtab's old-fashioned house at his village Agarpara was re-modelled with sanitary fittings and water-pipe connections. A new Guest House with modern fittings was constructed. He has also caused the construction of some shop rooms in the main road leading to his house. All these have been done at a cost of about Rs. 1 lakh.

(*vi*) Dr. H. K. Mahtab has purchased 15 years' Annuity Certificates worth Rs. 56,000, vide Account No. B. C. A. 00053/54.

(*vii*) Dr. Mahtab's brother, Shri Gopinath Das is drawing Rs. 400 every month from Bhadrak Sub-Treasury out of a deposit of Rs. 56,000 made by Dr. Mahtab in some form in some bank in Calcutta. The details can be had from Bhadrak Sub-Treasury.

(*viii*) Dr. Mahtab had caused the purchase of various Savings Certificates under various postal savings devices worth Rs. 1 lakh and 23 thousand from the Post Master, G. P. O., Cuttack, in the names of his family members including his brother's children. This amount of Rs. 1 lakh and 23 thousand was paid to the Post Master, G. P. O., Cuttack on the 28th June 1957.

(*ix*) Dr. Mahtab holds along with his wife in the form of Treasury Savings Deposits of a sum of Rs. 50,000, vide Account No. C.A. 00500·00.

(*x*) An enquiry at the Bhubaneswar Sub-Treasury will also reveal Dr. Mahtab's other deposits.

(7) Shri Harekrushna Mahtab had a debit balance of Rs. 11,687·4 in the United Commercial Bank Ltd., when he returned to Orissa and assumed office as Chief Minister on 19-10-1956. He deposited in the United Commercial Bank Ltd., Cuttack, a sum of Rs. 3,00,315 as under while he was Chief Minister :—

One glimpse of Dr. Mahtab's unknown assets since discovered huge cash deposits—Rs. 3 lakhs in six months—sources unexplained.

| | | Rs. |
|---|---|---|
| 26-10-1956 | ... | 7,500 |
| 1-1-1957 | ... | 10,000 |
| 18-1-1957 | ... | 2,000 |
| 28-2-1957 | ... | 17,000 |
| 15-4-1957 | ... | 11,000 |
| 8-6-1957 | ... | 15,000 |
| 25-6-1957 | ... | 1,80,000 |
| 27-6-1957 | ... | 56,000 |
| 27-2-1958 | ... | 1,815 |
| | | 3,00,315 |

These sums have been received by him from unexplained sources and are no part of his legitimate income and as such constitute an act of corruption. Photostat copies of some of Dr. Mahtab's bank accounts relating to this bank were placed in the Orissa Legislative Assembly demanding a comprehensive probe into the allegations.

Prajatantra Prachar Samiti—"A Thief's Nest"—For amassing wealth—Cornerstone of the corruption, Galore.

(8) Dr. H. K. Mahtab had continuously abused his official position and influence as Chief Minister of the State for acquisition of wealth and property in favour of the Prajatantra Prachar Samiti, of which Dr. Mahtab is the Chairman. This Samiti is engaged in newspaper industries and publications, and published two daily newspapers one Oriya Daily, the Prajatantra, and another English Daily "The Eastern Times" (now discontinued) besides a monthly magazine. Although this organisation is styled as a Samiti, for all practical purposes this is more or less a family business of Dr. H. K. Mahtab.

Apart from the huge amounts which may come to well over Rs. 15 lakhs, which have been dumped to sustain the newspapers since their inception, the present assets of both movable and immovable properties would be more than Rs. 15 lakhs. These include about 4 acres of land in the heart of Cuttack City Dr. Mahtab's well-furnished residential house and a number of other buildings and costly machines of the press.

All these wealth have been acquired by Dr. Mahtab by misusing his power as Chief Minister of the State. By the use of his official position he had collected about Rs. 30 lakhs from businessmen, traders mine-owners and contractors and thus had enabled the Samiti in acquiring these vast properties, both movable and immovable, in spite of the fact that the newspapers owned by the Samiti are running at a loss.

It is commonly said that the cornerstone of corruption, favourtism and nepotism in Orissa is Dr. Mahtab and his Prajatantra Prachar Samiti. A thorough probe into the affairs and accounts of this Samiti will unearth many interesting and intriguing collections of funds from unexplained sources and will expose the acts of corruption, improprieties and misuse of official influence committed by Dr. H. K. Mahtab for personal gains and for his own political ends.

Though styled as a Society registered under the Registration of the Societies Act of 1860, its annual audited accounts have never been made public. As a result of misuse of the properties acquired through this institution, the newspapers, its employees and the public were made to suffer. The trade union organisation of the Working Journalists of Orissa, the Utkal Journalists Association, demanded a probe into the state of affairs of this society when the publication of Eastern Times was discontinued causing serious hardship to the employees. The loans taken from the Government for construction of houses for the employees were mis-spent. Deductions made from the employees' salaries towards their provident fund accounts and Employees' State Insurance Scheme were not credited to the Government. Misuse of newsprint by showing fabricated accounts were often alleged. A copy of a Memorial submitted some time ago by some distinguished citizens is enclosed at Annexure II, which gives a detailed picture about the misuse of this Society for the personal and political gains of Dr. H. K. Mahtab. It was alleged in the Lok Sabha by a Member that the dealings of the Mahtab Government vis-a-vis the Prajatantra institution gave the picture of a "thief's nest" (Proceedings of the Debate on Orissa's Supplmentary Budget (1960-1961).

A thorough probe into these allegations is imperative in the public interest.

Dr. Mahtab orders—Withdrawal of cases against iron dealers.

(9) Dr. Harekrushna Mahtab was responsible for withdrawal of cases instituted against eleven iron dealers of Cuttack when he was the Chief Minister of the Coalition Government of 1959—61. There have been motivated attempts to shift the blame to others. A mere perusal of the file by one having clear idea about how Cabinet Government works under the guidance of the Chief Minister, will prove that these cases were withdrawn at the instance of the Chief Minister. The Chief Minister passed the following order on the body of the representation received from the President of the Orissa Chamber of Commerce and Industry on behalf of these dealers; "Minister (Supply), please examine this. If nothing is likely to come out of the cases, they may be withdrawn. H. Mahtab 30-4-1960". Persons having good knowledge about the working and practice of a cabinet system of Government will see from this order of the Chief Minister that the Minister concerned was thereafter free to use his discretion to withdraw the cases if he felt satisfied that nothing fruitful would come out by pursuing the cases. However, the then Supply Minister did not use his discretion and obtain further advice of the Chief Minister since the case had been initiated by the former's predecessor. After the representation was examined in the administrative Department and in the Law Department, the Chief

Minister, Dr. Mahtab, passed the following final orders; "Minister (Supply) will please see. In view of what Secretary (Law) says the case may be withdrawn and to satisfy the court other points raised by Secretary (Law) may be looked into". Thus, the Chief Minister's final orders were to "withdraw the cases". The advice to look into the "other points" was only to take such action as would" "satisfy the Court" to permit withdrawal of the cases. In the matter of withdrawal of such cases, the Government's decision to do so is not binding on the Court. Government has to satisfy the Court with valid grounds for withdrawal. In respect of these cases the Chief Minister's order was to take necessary steps "to satisfy the Court" so that "the cases may be withdrawn". Therefore, if there were any doubts for any personal gains accruing to anybody, then, he must be the then Chief Minister, Dr. H. K. Mahtab.

Dr. Mahtab rebukes Department for prosecuting Contractor, Shri N. N. Soor—Orders withdrawal of case.

(10) Prior to the withdrawal of the above cases against eleven iron dealers of Cuttack, Dr. H. K. Mahtab, the then Chief Minister, took undue interest for withdrawing a case against a Contractor, Shri M. N. Soor, for violation of Control Order. Dr. Mahtab demonstrated such extraordinary zeal in favour of this contractor that he expressed anger against the department and censured the department in his minutes recorded in the file for having instituted the case. He showed such extraordinary zeal in favour of this contractor that passed the following orders on the body of his representation; "M (S)/ , will look into this. All the points should be examined before the prosecution is launched, H. Mahtab 21-12-1959". Interestingly, though Dr. Mahtab's order was dated 21-12-1959, the representation of Shri Soor was dated 22-12-1959. Obviously, Dr. Mahtab was looking after this case in undue haste and with personal anxiety. The prosecution had already been filed on the 14th December 1959. Though Dr. Mahtab passed final orders on 1-2-1960 for withdrawal of the case, he has already indicated his mind in the file when the file was sent to the Law Department by recording his doubts in advance about the merit of pursuing the case in the law court. Because of his undue indentiflcation with contractor Shri Soor's case the matter became a subject of public criticism and corruption and graft were alleged. A thorough probe into the matter and reference to the official records will reveal interesting facts about Dr. Mahtab's personal interest in this case.

Blacklisted firm shown special favour by Dr. H. K. Mahtab.

(11) Acts of corruption was also alleged against the then Chief Minister, Dr. H. K. Mahtab for some of his undue interest in the cases of the Orissa Steel Corporation (Soro in Balasore District). The Orissa Steel Corporation was

punished for malpractices and the firm had been blacklisted before Dr. Mahtab took over as Chief Minister in 1956. Dr. H. K. Mahtab showed undue favour to this firm and passed orders for cancellation of the earlier orders of the Government blacklisting the said firm and for not pursuing the case against the firm in the Court of Law. There are acts of improprieties which were done because of some underhand dealings and for personal gains.

Irregular appointment to Government post for managing Dr. H. K. Mahtab's private business.

(12) It is on the official records of the State Government and on record of the Lok Sabha proceedings that the Orissa Government funds were misused by Dr. H. K. Mahtab during his Chief Ministership for promoting the financial interest of his newspapers. He misused his power to appoint the advertisement agent of the Eastern Times and the Prajatantra in Calcutta, Shri Dina Nath Verma, as a high salaried Press Liaison Officer of the Government to work in Calcutta while Shri Verma still continue as his Advertisement Agent there. Applications were not invited for filling up this specially created post and special facilities like accommodation, office staff, orderly peons, etc. were given to him. The allegations were made that public funds were improperly used for personal gains of Dr. H. K. Mahtab and his newspapers by facilitating collection of advertisements from the Calcutta market by misappropriating public funds and misuse of official position.

Dr. H. K. Mahtab's figures in Md. Serajuddin's accounts book.

(13) Some photostat copies of extracts from the accounts of Md. Serajuddin were placed in the Orissa Legislature. These documents contained entries showing receipts of money by Dr. H. K. Mahtab. These entries are only a few portions from Md. Serajuddin's accounts. Judged in the context of the foregoing charges of special favour shown by Dr. H. K. Mahtab as the Chief Minister of Orissa to Md. Serajuddin in leasing out the chromite mine area, these entries bear special importance. The Commission of Inquiry should collect complete evidence so that the real truth can be revealed.

Dishonesty shielded by Dr. H. K. Mahtab and Shri R. N. Singh Deo. Cabinet Ministership for person declared untrustworthy.

(14) The public funds utilisation Enquiry Committee of the Government of Orissa, of which Shri R. N. Singh Deo, the then Leader of the Opposition and now the Chief Minister was a member, have found Shri Surendra Nath Patnaik guilty of misappropriation of public funds, of fradulent action, of conspiracy, of cheating the public and the Government and of gross dishonestly. The Committee in their report have not only found

Shri Surendra Nath Patnaik, personally guilty of misappropriation of Government money but have also found out that Shri Patnaik in collusion with a number of persons had defrauded the Government and the public by way of misappropriation and misutilisation of funds to the tune of several thousands of rupees meant for test relief works, for giving relief to the institutions, for providing work to the people affected by flood and drought. The Committee have dealt with all these affairs at length in their report on Cuttack district. (Pages 5 to 25). While expressing the view that Shri Surendra Nath Patnaik should not be entrusted with public funds, the Committee in their Report at page 18 had recommended to the Government "that Shri Patnaik should be blacklisted for future development works."

Immediately after the submission of the Report of the Public Funds Utilisation Enquiry Committee to the Government, the Coalition Government of 1959 was formed with Dr. Mahtab as Leader and Shri R. N. Singh Deo as Deputy Leader of the Coalition Party, but no action was taken against Shri Surendra Nath Patnaik.

Apart from this, there were also other grave charges of corruption against this Shri S. N. Patnaik of misappropriation of rice taken by him from Government for distribution among the persons affected by flood.

On the face of these serious charges Shri S. N. Patnaik has not only been included in the present Coalition Cabinet as a Minister but he is also kept in charge of departments of Government dealing with huge amount of public funds, relief works and big construction contracts. A local newspaper has very much adversely commented on this and regreted his inclusion in the Cabinet. (Translation of extracts from the editorial comments is enclosed as Annexure III).

The present Chief Minister, Shri R. N. Singh Deo, who in his Memorial addressed to the President of India in 1964 as Leader of the Opposition against the Congress Ministers had laid emphasis on the "moral and ethical" aspects of the allegations for the proper functioning of democracy and who speaks so much about clean administration, is now guilty of shielding a person whom he himself had characterised as an undesirable and fraudulent person, unworthy of being entrusted with public funds. Therefore, it is in the public interest that not only a Commission probe should be held against Shri S. N. Patnaik's aforesaid dealings and into the propriety of including such a person in the Cabinet but Shri Patnaik should step down from the Cabinet during the pendency of such enquiry.

Irregularities committed by Shri Santanu Kumar Das as Depressed Classes League President.

(15) Shri Santanu Kumar Das is now a Minister in the present Coalition Cabinet. Prior to 1961 he was a Deputy Minister and simulatane-ously he was also the President of the Depressed Classes League in Orissa. In the years 1959 and 1960 when he was President of the Depressed Classes League, grave charges of corruption, misuse and mis-appropriation of funds, mismanagement and gross improprieties were levelled against him. Continuous audit objections of misappropriation and gross irregularities were pointed out by the audit party in their report. His conduct as the President of the Depressed Classes League became a subject matter of public scandal. Because Shri Santanu Kumar Das was Deputy Minister, all these allegations as well as the audit objections were shelved by Dr. Mahtab. Government records in the Tribal & Rural Welfare Department will prove all these allegations. The departmental authorities brought these corrupt behaviour and misdeeds of Shri Santanu Kumar Das to the notice of the then Chief Minister, Dr. Mahtab, and had discussions with him on several occasions but he connived at such conduct and did not take steps against Shri S. K. Das. If a thorough enquiry is made into the affairs of this Depressed Classes League and into its accounts, many acts of the corrupt and fraudulent things involving him will be revealed.

Costly Government land amassed free of cost for political gains by Shri R. N. Singh Deo.

(16) When Shri R. N. Singh Deo was the Finance Minister in the Coalition Government of 1959 to 1961, a costly plot of Government land in the heart of Cuttack City was transferred free of cost to a newspaper concern serving the interest of Shri Singh Deo. It is well known that the Ganaprakashini Trust which published the newspaper, Ganatantra, was a creation of Maharaja R. N. Singh Deo and he was himself the Chairman of this Organisation. The origin and purpose of this newspaper organisation was political. The allotment of this good land free of cost was politically motivated and designed to further the political interest of the Finance Minister. The approximate value of this land will be over a lakh of rupees. Incidentally although the Trust is already liquidated and the Ganatantra has ceased its publication, Shri R. N. Singh Deo has not considered it desirable to return this costly land to the State Government.

Maharaja finances Md. Serajuddin's business.

(7) Shri R. N. Singh Deo has been a financier for the much publicised dealings of Md. Serajuddin and his firms for a long period. Although Shri R. N. Singh Deo's accounts show that he has lent large sums to the said Md. Serajuddin and his firms at

an abnormally low rate of interest, in real fact, these so-called loans were the unaccounted money belonging to Serajuddin and Company. In this manner Shri R. N. Singh Deo connived and collaborated with Md. Serajuddin and his associates to evade income-tax on the one hand, as well as earn for himself unaccounted money as his quid pro quo. Subsequently when Shri R. N. Singh Deo assumed the high office of the Finance and Industries Minister of the Orissa Government in 1959, he continued to give many undue benefits to Md. Serajuddin and his firms at the cost of the exchequer and large dues to the State Government from Messrs. Serajuddin & Co. were not recovered at his instance. A little probe into this affair will expose the highly undersirable relationship between these two.

Best mines for Maharajas and relatives.

(18) Shri R. N. Singh Deo also gave undue patronage to his relatives as well as the relatives of his co-partner in their political party. Shri P. K. Deo, by the State Government granting the best mining areas to them even though these were reserved for the State owned mining Corporation. This Shri P. K. Deo now a Member of Parliament, has also been a benamdar financier of Md. Serajuddin and his firms. During the short period of Mahtab-Maharaja Coalition rule in Orissa as many as about 250 parties received mining leases and prospecting licences. The rulers and their relatives who were co-partners of the political leadership then ruling in Orissa, received rich mining leases, apart from the undue favours shown to many others for party and personal gains.

Nepotism—Son shines when Maharaja Rules.

(19) During the term of office of Shri R. N. Singh Deo, his son suddenly became an 'A' Class contractor without ever having done any contract work previously. It is a well-known fact that under the P. W. D. Code, a contractor has to perform many contracts before he is promoted to an 'A' Class contractor. This was a case of gross impropriety on the part of Shri R. N. Singh Deo.

Shri Pabitra Mohan Pradhan receives money from Md. Serajuddin.

(20) Shri Pabitra Mohan Pradhan is now the Deputy Chief Minister in the Coalition Government. He was executive Councillor from 1948 to 1950. For the periods from 1950 to 1952, 1957 to 1959 and 1961 to 1963 he was a Minister in the various Ministries. It has been alleged in the Press and also in the floor of the Orissa Legislative Assembly that Shri Pradhan had received money from Md. Serajuddin on several occasions. Photostat copies of the extracts of Md. Serajuddin accounts were published in the Press and were also placed in the Orissa Legislature. These photostat copies are from the records of

Md. Serajuddin in the possession of Government of India and they were supplied to the Government of Orissa in 1963 when Shri Pradhan was a Minister and they were shown to him. These photostat copies will be available with the Chief Minister and the Government of India. A true copy of the list of several entries found in the account books of Md. Serajuddin showing payments to Shri Pabitra Mohan Pradhan as furnished to the State Government by the Government of India is reproduced below:—

LIST OF ENTRIES FOUND IN THE BOOK OF ACCOUNTS OF MD. SERAJUDDIN SHOWING PAYMENTS IN CASH OR IN KIND TO SHRI PABITRA MOHAN PRADHAN

| Date of payment | Amount | Particulars | Reference to entries |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| | Rs. | | |
| 13-3-1953 | 10,000 | Cash | Vide entry at page 6, item No. 16, of seizure list, dated 9-12 1953 showing expenses (Kharcha) at Cuttack. Corroborated in a corresponding entry at page 22 of item 11 which shows payment of the amount to Pabitra Mohan on 13-4-1953. |
| 11-12-1953 | 5,000 | Cash | Vide entry at back of page 6 of item 16, showing expenses referred to above. |
| 5-8-1954 | 5,000 | Cash | Vide entry at page 4 of item 15, showing expenses from 29-7-1953 to 1-10-1954. |
| 5-8 1954 | 5,000 | Cash | Vide entry on back of page 6 in item 16, showing expenses at Cuttack. |
| Total .. | 25,000 | | |

If similar entries in the Accounts Book of Md. Serajuddin against others be taken as gospel truth by many interested persons, why then the same standard will not apply in the case of Shri Pabitra Mohan Pradhan ? A mere denial of these entries as false and motivated will not satisfy the public. In order to unearth the truth or otherwise of the allegation, a thorough probe is necessary into the entries of payments made to Shri Pabitra Mohan Pradhan.

Political Vendetta and Nepotism in grant of allowances to the Rulers' relatives.

(21) When the Orissa Government was facing severe financial difficulties and even low-paid employees like peons and clerks had to be retrenched, huge sums were granted as allowances to the relations of the rulers after Shri R. N. Singh Deo joined the Coalition Government in 1959 which was led by Dr. H. K. Mahtab. The original budget proposal of Rs. 1,40,829 was augmented by Rs. 1,09,088 in utter disregard of the same Chief Minister's following policy declaration made in 1957 ; "Government have decided that on principle and grounds of expediency all allowances to the relatives of rulers should be annulled with effect from 1st July, 1967". A member alleged in the State Legislature on December 14, 1959 ; "The Chief Minister had said on the last occasion that none would be paid more than five hundred rupees and in case there were very special reasons then such cases can be considered on receipt of specific appeals. The Chief Minister now stated during the question hour that a letter had been received from the Central Government in connection with these allowances. I asked a supplementary question if the Central Government had given such direction or only the Orissa Government was saying so. The Chief Minister gave such a reply that everything was exposed from that. What I mean to say is that there is a political motive behind this. There is no administrative stability in this State and the coming together of these two parties (Congress and Ganatantra Parishad) has clearly proved the conspiracy hatched individually and collectively for promoting prostitution in administration. The help and co-operation of Ganatantra Parishad were required so that it could be possible to cling to power by any means and for pleasing them (the Ganatantra Parishad leaders) again such allowances have to be given. This measure is being taken for killing the purpose and principles of socialism. These grave charges against Dr. Mahtab and Shri R. N. Singh Deo that they abused their official power and position to promote their personal interests in politics as a weapon to weaken the forces of socialism by mis-spending public funds and to hold office by undemocratic and foul means must be fully examined by a Commission of Inquiry. Another aspect of this development is the allegation that Dr. H. K. Mahtab misused his official position in 1957 to oppress and coerce his political opponents by annulling the allowances of the ex-rulers' relatives. This aspect should also be examined in order to unearth the truth.

Dr. Mahtab connives with Shri Banamali Patnaik in Fertiliser Scandal.

(22) Shri Banamali Patnaik, M. L. A. (Jana Congress) is a prominent member and promoter of the present Coalition Ministry in Orissa. He was once the President of the Utkal Pradesh Congress Committee and a trusted supporter and lieutenant of the then Chief Minister, Dr. Mahtab. He

had also since then continued to be either the Secretary or a prominent Director of the Prajatantra Prachar Samiti of which Dr. Mahtab is the life-time President. Grave changes of corruption, blackmarketing and smuggling of fertiliser and some other scarce commodities were levelled against Shri Patnaik when he was the Chairman of the State Co-operative Marketing Society in 1959. These matters agitated the Press and the State Legislatures. But Dr. Mahtab went out of the way to shield his corruption. The Minister in charge was extremely unhappy over the way in which these alegations were handled. Dr. Mahtab caused appointment of a probe committee with the principal accused Shri Patnaik as its Chairman, which action caused great amazement to the Press and the public. Though it was being openly mentioned that in spite of the Chairmanship of Shri Patnaik the Committee came to at least some clear conclusions about smuggling and blackmarketing. Dr. Mahtab shelved the report and prevented any follow-up actions to fix responsibility and punish the culprit. In shielding this scandal, it was publicly alleged substantial private gains had accrued to Dr. Mahtab and his political associate Shri Banamali Patnaik.

Relief monies misused by Dr Mahtab for near and dear ones.

(23) Dr. H. K. Mahatab as the Chief Minister was all along dispensing favour to a large number of persons by giving financial assistance from the huge amounts placed at his disposal as discretionary grants and Chief Minister's relief fund. People used to resent the manner in which money was being given by him from these funds to his political favourities' personal employees, of his newspaper or their relatives. In this connection the foregoing remarks of Shri F. G. Bailey that "Relief monies were also used to plug deficiencies in the political system" is very relevent. There were instances of large-scale misuse of these funds by Dr. Mahtab when he was placed in a compeling and uncomfortable position to vacate the Chief Ministership of the Coalition Government of 1959—61. His personal employees, his newspaper employees, personal staff, political supporters and their relatives were indiscriminately given grants from these funds in hot haste particularly during this period, grounds for such grants were hastily fabricated and got up records were alleged to have been maintained. It is absolutely imperative in the public interest to get all these records examined before a Commission of Inquiry with particular stress on the disbursements made during the Coalition Ministry of 1959—61.

Freedom of press denied and press correspondents tortured.

(24) Dr. H. K. Mahtab while triving to cling to the Ministership used coercive methods to forcibly secure the support of the Press for his personal prosperity in politics. The most undemocratic and vindictive measures were taken by him since

1957 when he, as the Leader of the Orissa Congress, attempted to continue in power by adopting unethical and corrupt means and tactics without a clear majority in the State Legislature. The newspapers and Press who did not conceal his misdeeds and injustices were victimised. The correspondent of the Statesman was threatened to be discredited in an official letter issued by the Home Department under the instructions of Dr. Mahtab. He was also arbitrarily threatened to be evicted from his residence at the State Capital as his reports were unpalatable to Dr. Mahtab. Dr. Mahtab also made a false statement in the Orissa Legislative Assembly that he had talks with the Editor of the Statesman in Calcutta regarding the newspaper's Bhubaneswar Correspondent. But when the lie was discovered, he pretended to have seen some other white-skinned journalist whom he could not correctly identify. Thus, Dr. Mahtab also attempted to mislead the public through a statement made in the House.

Newspaper victimised

A local daily newspaper unattached to any political party or group was denied fair deal by the Government in the matter of releasing State Government advertisements, at the instance of Dr. H. K. Mahtab, the then Chief Minister. There was an attempt to financially cripple this newspaper for being the line of Dr. Mahtab. When the matter was raised in the Orissa Legislative Assembly Dr. Mahtab made an absolutely misleading and absurd statement that the principle to govern the issue of Government Advertisements would be referred to the newly formed Press Accreditation Committee. It was never the function of the Accreditation Committee to deal with advertisement matters nor was the matter ever referred to any such Committee by Dr. Mahtab. Another misleading statement was also made in the House at the instance of Dr. H. K. Mahtab justifying his Government's denial of legitimate advertisement share to the Matrubhumi. The Government grossly misquoted the Press Commission to the utter amusement of all. Even when the truth of the contention of the Government was openly challenged by the newspaper, the Government did not care to rectify its mistake. The newspaper made serious charges against the oppressive and coercive steps taken by the Government in its petition to the All-India Newspaper Editors' Conference and later furnished a copy to the Small Newspapers' Enquiry Committee appointed by the Government of India. If copies of the notices served on the Statesman correspondent and the petition of the Matrubhumi to the A. I. N. E. C. and the Small Newspapers' Enquiry Committee are called for by the Commission and a probe is made into the official records having relevance to these complaints, the truth about misuse and abuse of official power and position to crush democratic freedom will be fully established.

The background of Dr. Mahatab's attempt to financially cripple the Matrubhumi can be traced in the defamation suit which was filed by Dr. Mahtab against the Matrubhumi, for its series of publications in 1952-53 alleging serious and scandalous acts of corruption against him. But when Dr. Mahtab was appointed Governor of Bombay, he got the suit withdrawn after effecting a compromise with the newspaper. Thereafter, when Dr. Mahtab assumed the Chief Ministership of the State in 1956-57, virulently he wanted to feed fat the ancient grudge and hence he made several attempts to victimise the Matrubhumi in various ways both financially and otherwise. If a probe is made into the case records connected with the aforesaid defamation suit not only the improprieties and abuse of official position against the Press in this matter will be established but also many instances of improprieties committed by Dr. Mahtab while holding official positions will be revealed.

Union Home Minister warned Dr. H. K. Mahtab.

The oppresive measures of Dr. Mahtab applied against the Press not toeing his line was strongly denounced by the Union Home Ministry. Shri G. B. Pant wrote to Dr. Mahtab cautioning him and disapproving his tactics. What was the nature of the oppressive tactics adopted by the then Chief Minister against the Press can be disclosed and the findings of a Commission on them will serve the larger interests of democracy and the freedom of the newspapers and the working journalists in India, particularly when the Administrative Reforms Commission and the Government of India are paying serious attention to the problems of establishing ideal relations between the Press and the Administration.

Nepotism in appointment

(25) Immediately before Dr. H. K. Mahtab was made to vacate the Chief Ministership in 1961, he passed arbitrary orders appointing two of his personal employees to regular Government posts. One was made an officer in the Orissa Administrative Service and the other was given a Grade I post in the Orissa Secretariat Assistants Cadre. Both of them lacked requisite basic qualifications for the posts given to them. These were clear instance of nepotism committed by utter disregard of the recruitment rules and the claims of other suitable Government servants eligible for holding such posts of promotion.

Judicial appointment of Defeated Candidate as Advocate-General.

(26) Appointment to the post of Advocate-General should not only be fair but should also appear to be so. The Swatantra-Jana Congress Coalition Government has shown little regard for such administrative propriety. A person who, in the last General Election, was pitted against an important Congress Leader in a straight contest and for a prestige seat as the unanimous

candidate of the Swatantra and Jana Congress parties has been rehabilitated as the Advocate-General of the State immediately after his defeat. The term of his predesessor, an eminent lawyer, a retired judge of the Patna High Court and a widely respected gentleman without any party or political affiliations, was prematurely terminated to rehabilitate this anti-Congress political leader after his election defeat. It was being openly claimed by him that his appointment to the post of Advocate-General was being considered so that he could work against the political opponents with personal interest and zeal for appointment of a Commission of Enquiry. Serious improprieties have been committed by rehabilitating one of their defeated political friends and trying to use him as an instrument against the political opponents. All these charges have to be looked into by a Commission of Inquiry to establish if nepotism, impropriety and irregularity have not been committed.

In the circumstances, we most respectfully submit that the Hon'ble President be pleased to direct compliance of the following demands :—

(*a*) A Commission of Inquiry should be appointed by the Central Government as early as possible to probe into the charges hereinbefore referred to as also all other charges and allegations which may be brought before the Commission by any member of the public regarding acts of mis-rule, corruption, nepotism, favourtism, abuse of power, political oppression, improprieties, etc., against the gentlemen, hereinbefore mentioned, viz., Dr. Hare Krushna Mahtab, Shri Naba Krushna Choudhury, Shri R. N. Singh Deo, Shri Pabitra Mohan Pradhan, Shri Santanu Kumar Das and Shri Surendra Nath Patnaik and also against such other political leaders belonging to any party as are considered fit and proper.

(*b*) The Commission of Inquiry will have full power to call for and take charge of all relevant Government records, make investigation by its own officers or by any Organisation of the Central Government and also to fix the responsibility.

(*c*) Any member of the existing Ministry who has to face charge of corruption, mis-rule, nepotism, improprieties, etc., before the Commission should be requested to step down and remain out of office till the end of the Commission.

(*d*) The Commission should also give a finding on the moral and ethical aspects of the lapses committed by political leaders in Orissa, in particular, the gentlemen named above ever since 1946 which are important for the proper functioning and survival of democracy.

Your memorialists further pray that they may be heard by themselves or by their agents and may be given liberty to give evidence in suport of the statements contained in this Memorial.

For this act of kindness your memorialists as in duty bound shall ever pray.

With these submissions and kindest regards,

We remain

Yours faithfully

Sd. Gangadhar Mohapatra, M. L. A.

Sd. Dibakar Patnaik, M. L. A.

Sd. Dibakarnath Sharma, M. L. A.

Sd. Bhagirath Gamango, M. L. A.

Sd. Binayak Acharya, M. L. A.

Sd. Kadiayanath Min, M. L. A.

Sd. Brajamohan Mohanty, M. L. A.

Sd. Santosh Kumar Sahu, M. L. A.

Sd. Chintamani Jena, M. L. A.

Sd. Tarini Sardar, M. L. A.

Sd. Onkar Singh, M. L. A.

Sd. Anupa Singh Deo, M. L. A.

Sd. Arujuna Singh, M. L. A.

Sd. Mohan Nayak, M. L. A.

Sd. Raghunath Mishra, M. L. A.

Sd. K. Kurumaikalu, M. L. A.

Sd. Dinabandhu Behera, M. L. A.

Sd. Gangadhar Modi, M. L. A.

Sd. R. Majhi, M. L. A.

Sd. Malu Santa, M. L. A.

Sd. S. N. Majhi, M. L. A.

Sd. Mohan Nag, M. L. A.

Sd. A. R. Majhi, M. L. A.

Sd. Bharat Chandra Hota, M. L. A.

Bhubaneswar
*The 26th June 1967*

Sd. SADASIBA TRIPATHY

*Leader, Congress Assembly Party and*
*Leader of the Opposition*

# ANNEXURE I

Translation of speech of former Chief Minister of Orissa, Shri Nabakrushna Choudhury at Balasore on 14-7-1963 as reported in 'Samaj' dated 22-7-1963.

Money deals between Congress Leaders and Businessmen. No account kept of election funds raised from Kendu Leaf Traders and mine-owners.

Chief Guest Shri Nabakrushna Choudhury's exposure at inaugural function of Gandhi Tattwa Prachar Kendra at Balasore.

(Received late)

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BALASORE—Shri N. K. Choudhury, ex-President of Sarva Seva angha and former Chief Minister of Orissa spoke for one hour at he inaugural function of Tattwa Prachar Kendra under the auspices f Gandhi Smarak Nidhi (Utkal Sabha) on Sunday last. In the course f his speech Shri Choudhury said that many news items and tatements are to be seen in nearly every newspaper and a lot of xcitement and heat has been created as to the source and name of erson or institution from whom contributions have been received for he State Congress by different Congressmen in Orissa. He said that ie was the Chief Minister of Orissa from 1950 to 1956 and being ntimately connected with the State Congress, he knows all the acts of that time.

Shri Choudhury said that in May 1955 at the A.I.C.C. Session at Berhampur he has told Prime Minister Nehru that according to the Election Law, a candidate is not allowed to spent more than Rs. 7,500 in each constituency, but if a Congress candidate is opposed by a rich or influential person, the Congress candidate has to spend much more money. Wherefrom would so much money come? At such times much more amount has to be spent in the election contest and the actual expenditure is noted in a separate account book while the

account within the limit of Rs. 7,500 allowed by the Election Law is kept in another account book. Hence he had suggested to the Prime Minister in 1955 and requested him either to change the process of elections and the Election Law at an early date or to arrange for the raising of special funds for the purpose. Late Bidhan Chandra Roy, Shri Morarji Desai and other all India Leaders present there including the Prime Minister himself, considered Shri Choudhury's suggestion as 'childish opinion like a school boy'. But Shri Choudhury remained firm in his opinion. Shri Choudhury said now the elections are a fight of money and it is necessary that all should think seriously over the matter.

Shri Choudhury went on to say that they have all worked together in the Congress since 1921, and all of them know more or less, where what happened, from whom money had come for the State Congress and how the money had been spent in the different elections. And besides the State Congress leaders being concerned in the Matter, there have also been other connected and lot of things have happened.

Huge amounts are raised at the time of elections from big mine-owners and other rich businessmen for which no detailed accounts are kept. These persons who raise such contributions on behalf of the party, distribute amounts to different candidates and kept a portion of the funds raised for their own institutions or their own factions and also appropriate a portion for their ownselves. Thus, a separate fund is created and except some party leaders, no one ever asks for detailed accounts of such funds. As the businessmen have to pay taxes, they do not show these amounts in the actual account book which they have to show to the Income-tax Department. They keep note of these amounts in their personal note books. The whole thing is done on trust like the affairs of big Mutha. Even the late Rafi Ahmed Kidwai, the trusted Lieutenant of Prime Minister Nehru, used to raise such funds for elections. Shri Choudhury said that this pattern is followed in every State in India.

The top experienced leaders of the party indicate the manner in which the big businessmen are to be compensated by making profits in other ways in return for the big amounts they pay as contributions for Congress Election Funds and other party expenses. The very trusted men of the leaders bring contributions for businessmen and distribute the amounts for which no regular amounts are kept.

Shri Choudhury went on to say that when there were complaints regarding these matters in the A. I. C. C., a Sub-Committee was appointed in 1953 to enquire into the matter and suggested methods for prevention of such things happening in future. Shri Choudhury had been included as a member of that Sub-Committee but it was regretted that this Sub-Committee has not met till now.

Shri Choudhury said that formerly Congressmen were selling Gandhi's name, but now they were doing all sorts of things by selling Nehru's name. Gandhiji used to keep an eye over details in every matter. But the top leaders of today are not doing that. Shri Choudhury further said that at present India's as well as Nehru's fate is hanging on a thin thread, and any time, one day, it might snap.

Shri Choudhury said that he knows many facts relating to the internal affairs of the Congress not only during the period between 1952 and 1957 but even subsequent to that. The P. S. P. Leader, Shri Dwivedi, had written to Prime Minister Nehru for taking evidence of Shri Choudhury. But Shri Choudhury said that top leaders are all involved in this matter but only the lower ranks are being summoned and interrogated. The real culprits will not be able to slip away, only if people are alert and remain on their guard.

Speaking on the Kendu leaf business in Orissa, Shri Choudhury said that Kendu leaf traders contributed 12 to 13 lakhs of rupees as donation to the ruling party every year. The Kendu leaf business has played an important part in Orissa Politics. At the time when Shri Choudhury was Chief Minister, the Kendu leaf traders were annually paying Rs. 30 lakhs to the State but because he (Shri Choudhury) changed the system and put the forests to auction, Congressmen opposed him, but still by introducing the system of auction, their revenue increased to Rs. 90 lakhs annually. Shri Choudhury said that by doing this he had lost the support of the Congressmen of the State.

## ANNEXURE II

The Registrar of Companies
Government of India, Ministry of Finance
Cantonment Road, Cuttack-1.

The Secretary to Government of India
Ministry of Finance, New Delhi.

The Registrar of Newspapers
Ministry of Information & Broadcasting, New Delhi

The Regional Provident Fund Commissioner,
Bhubaneswar.

The Labour Commissioner, Orissa
Bhubaneswar.

The Controller of Imports & Exports
Government of India, Ministry of Commerce
New Delhi.

The Governor of Orissa, Raj Bhawan
Bhubaneswar.

Sir,

We, the undersigned, take this opportunity to draw your most urgent attention to the following facts concerning the Prajatantra Prachar Samiti of Cuttack, seeking immediate and thorough investigation into the affairs of this institution founded and managed by public funds raised under the previleges and provisions of the Registration of Societies Act. We are constrained to make this petition to you for immediate intervention by the appropriate authorities to save a public institution from reported mismanagement and exploitation and consequent sufferings of its workers and loss to the public, as nothing is yet known to have been done by the concerned authorities about all the grave developments reported even by competent official agencies and a responsible organisation like The Utkal Journalists 'Union'. A few of such instances are furnished below :—

1. The Prajatantra Prachar Committee was constituted and promoted with a view to serving the public, for which huge amounts were collected from the public. The registration of this body under

the Registration of Societies Act facilitated collection of public funds with special privileges like exemption from Income-tax etc. in respect of such collections.

2. The properties of the Prajatantra Prachar Samiti multiplied rapidly as a result of such collections from the public and also special loans amounting to several lakhs of rupees were advanced by the Government agencies for better equipping the institution with printing machinery and other requirements.

3. Subsequent developments recently resulting in the closure of one of the publications of this institution, the EASTERN TIMES have led to the genuine grievances of the public that the public institution is being badly managed resulting in misuse of the public funds invested in the Society.

4. The Utkal Journalists' Association—The Orissa Unit of the Indian Federation of Working Journalists—has, in a resolution openly demanded enquiry into the affairs of the institution leading to the closure of this paper. A copy of the press publication of the Resolution is enclosed for ready reference.

5. The Registrar for Newspapers of India, the highest independent agency functioning under the Press and Registration of Books Act, has, in its report for the year 1965-66, laid in the Parliament, described the circulation claim of 'the PRAJATANTRA' as unverified. The facts are that the authorities of the Society refused to show their documents of accounts to the authorised officers of the Registrar of Newspapers of India specially deputed for the purpose to Cuttack, obviously to hide the facts from such competent authorities who arrived for a surprise check of the accounts.

6. The Audit Bureau of Circulation, which is an unofficial audit organisation of the newspapers and constituted by the member newspapers refused to give circulation certificates to the Prajatantra Prachar Samiti in respect of the PRAJATANTRA for repeated audit periods, and yet the Government or any other competent agencies of the Government of India or of Government of Orissa did not take notice of these developments.

7. It is, therefore, commonly believed that the Controller of Imports and Exports has been issuing newsprint quota and the Government of Orissa has issued advertisements and extended loan facilities to the PRAJATANTRA PRACHAR SAMITI which has encouraged misuse of newsprint and public money. It is also common knowledge that

shortage of newsprint in the country has caused serious handicaps for genuine claimants and huge quantities of newsprint are being drained into the black market from those publishers who manipulate their accounts. Such factors borne out by the annual reports of the Registrar of Newspapers also.

8. By not taking serious and definite steps to safeguard the interests of the public in respect of this institution the competent authorities of the Union and State Government have facilitated and encouraged manipulation of accounts and shielded the respected misuse of public money and unlawful practices.

9. It is commonly believed that political ownership of this Samiti has been responsible for creating fear and exerting undue influence leading to inaction by competent authorities.

10. Huge amounts deducted from the salaries of the employees towards Provident Fund have not been credited to such official accounts during different periods nor have the employer's share been behaved as abators by not taking strong action against such repeated and havitual offences committed under the laws of the land passed to safeguard the employees' interest.

11. Huge amounts of loans taken under the Industrial Housing Scheme have apparently been misued and no buildings have yet been completed. For several years, these loans are remaining unutilised for the purpose for which they were granted under the rules.

12. There have been modifications in the rules and constitutions of the Board of Directors of this Society giving 'lifetime' chairmanship to politician, Shri Harekrushna Mahtab and his brother Shri Gopinath Das, has been smuggled into this Board. These are significant developments.

13. There is public apprehension that there is an attempt to turn this public property cleverly into virtual private ownership. which must be prevented by prompt and firm action.

14. There is public suspicion that misuse of public funds for personal benefits and personal poltical gains has led to the closure of one of the newspapers and overnight sale of costly machinery to the Amrita Bazar Patrika. Any delay in exercising effective control and supervision over this Society will only encourage such trends.

15. It is significant that while the Chairman of the PRAJ/ TANTRA PRACHAR SAMITTEE, Shri Harekrushna Mahtab personal incited and led an agitation against the publication of the Amri Bazar Patrika from Cuttack allegedly for safeguarding the newspap interests of Orissa, he secretly came to an understanding with the publ shers of the AMRITA BAZAR PATRIKA to purchase the costly mach nery of the AMRITA BAZAR PATRIKA to purchase the costly mach nery of the Prajatantra Prachar Samiti.

16. It may be recalled that in respect of M/s. Benett Coleman & Cc publishers of the "Times of India" and other newspapers, Governmer have taken suitable actions with the honest intention of safeguardin and promoting the interests of a public concern. It is, therefore, mo: imperative and it is in the public interest that the competent author ties should at once act and save this public institution built up wit public funds from further deterioration. It may be considered if a law fully appointed official agent or receiver should not be placed in contr and management of the assets and business of the PRAJATANTR PRACHAR SAMITI with immediate effect.

It is requested that this representation be given the most imme diate attention for taking very quick concrete and firm actions to saf guard the interests of this public institution and public funds.

Yours faithfully,

Sd. R. N. Mohapatra
Sd. Amalakanta Parki
Sd. Satyanarayan Das
Sd. A. Nanda
Sd. B. S. Mohapatra
Sd. N. C. Kamila
Sd. M. R. Pani
Sd. S. K. Bhanja
Sd. B. K. Chand
Sd. H. C. Panda
Sd. Biswamohan Das
Sd. M. K. Panigrahi
Sd. R. N. Misra
Sd. P. K. Chand
Sd. Syed A. Jabvar
Sd. S. K. Ghosh

Balasore, the 8th January 1967

## ANNEXURE C

R. N. Singh Deo
Chief Minister

No. 802-CM.
Bhubaneswar, the 3rd May, 1968

ORISSA STATE

To

Hon'ble Shri J. R. Mudholkar
Retired Justice,
Supreme Court of India

Sir,

Shri Sadasiv Tripathy, who was the Chief Minister, Orissa, from the 21st February, 1965 to the 7th March, 1967, and the 26th February 1952 to the 22nd September 1956 and the 23rd June, 1961 to the 2nd October. 1965, along with 24 other Members of the Orissa Legislative Assembly submitted a Memorial to the President of India on the 26th June, 1967, alleging certain administrative improprieties and corruption as against several persons including some ex-Chief Ministers and ex-Ministers of Orissa who held such offices some time or other between 1947—1971. The copy of the said memorial in original which was sent to Shri R. N. Singh Deo, the present Chief Minister of Orissa, is enclosed.

Shri Y. B. Chavan, Home Minister, Government of India, New Delhi, forwarded the copy of the memorial to the President of India to the Present Chief Minister. On receipt of the said memorial from the Home Minister, Government of India, Shri R. N. Singh Deo, Chief Minister, Orissa, wrote back to the Home Minister saying that on examination, he found that there was no prima facie case in any of the allegations made therein as against persons who held office as Chief Ministers or Ministers during the aforesaid periods. Shri Singh Deo, however, mentioned in the letter that in the interest of integrity in public life there should be no scope for any doubt. He also wrote that the matter may be examined by a person of the standing of a Judge of the Supreme Court or of a High Court to see if there is any prima facie case in any of the allegations made against any person who held an office as a Chief Minister or a Minister in the past so as to necessitate a Commission of Inquiry. Shri Y. B. Chavan, Home Minister, Government of India, however, wrote to the Chief Minister, Shri R. N. Singh

Deo, saying that Shri Singh Deo himself should take the responsibility of entrusting the task of preliminary verification into the allegations to see whether there is any prima facie case to any retired Judge of the Supreme Court or a High Court. It may be mentioned here that though Shri Sadasiv Tripathy and some of the signatories to the Memorial held office as Chief Minister and Ministers during the period 1961 to 1967 and also prior to 1961, i.e. long subsequent to the period during which the commissions and omissions are alleged to have been committed, they did not choose to do anything in the matter during their regime. But it may still be said that they might be in possession of facts to support the allegations they have made.

Under such circumstances, I refer the memorial to you for a preliminary verification into any definite allegation contained therein as against any person who held office as a Chief Minister or a Minister some time or other during the period 1947 to 1961. The preliminary verification should pertain to the discharge of the official duties of such persons who held office of a Chief Minister or a Minister and that too for and during the period they held such offices. In the chart annexed to this letter, the periods for which the persons against whom the allegations are made, held office as Chief Ministers or Ministers are specified in order to facilitate specific enquiry with respect to the specific periods.

On preliminary verification you are requested to report as to whether any prima facie case against any such person as aforesaid exists and in case any prima facie is found with respect to any of the allegation you are also requested to report as to whether in public interest as at present a Commission of Inquiry should be established in order to have a full and complete enquiry into the said matters.

The preliminary enquiry may be conducted by you in accordance with such procedure, as you deem fit and proper. However, the enquiry for all purposes shall be a confidential enquiry and shall not be open to the public or press.

In case after the memorialists lay all facts, you feel that any explanation is necessary from any person concerned, you may confidentially call for such explanations. Your headquarters for the purpose shall be Delhi, but if you need looking into any official records of the State of Orissa you may for the purpose come to Bhubaneswar. You may also come to Bhubaneswar for the purpose of the enquiry as and when you deem it proper.

The Advocate-General, Orissa, has been authorised to assist you in the enquiry on behalf of the State Government.

Yours faithfully,

R. N. Singh Deo

## ANNEXURE D

Copy of the Order passed by the Commission of Inquiry on 26-2-1972.

Shri Sanyasi Rao and Shri Sovesh Roy, Advocates for the State and Shri Jagannath Das, Advocate for Shri Mahtab, present.

Shri Mahtab and other two formal witnesses were summoned for their examination today. Shri Jagannath Das, on behalf of Shri Mahtab, who was also personally present, represented that as Shri Gobind Das, the Senior Counsel of Shri Mahtab, had intimated from Calcutta that he could not get a seat in the plane in time to be here, the examination of Shri Mahtab should be postponed until after the examination of the other witnesses. The Commission agreed to the proposal and suggested that the examination of Shri Mahtab might be taken up some time after the luncheon recess so as to give sufficient time for the Senior Advocate of Shri Mahtab to appear before the Commission.

In the mean while, the Commission examined Shri L. P. Mukherjee, Assistant Surveyor of Works, C. P. W. D., Calcutta, who proved the valuation reports and the plans of the two houses which were marked as Exs-92 to 94. Shri Mukherjee was examined at length by Shri Jagannath Das on behalf of Shri Mahtab and the examination of this witness was concluded by about 12-45 P.M.

Under my Order dated 29-12-1971, I had directed the Commissioner of Income-tax to produce the letter written by Shri Mahtab to the Income-tax Officer dated 22nd December, 1962 and the D. O. letter sent by the Income-tax Officer to the Inspecting Assistant Commissioner dated 24th December, 1962. In respect of the first letter, it may be observed that it is already in the "secret" file as stated by the Counsel of the department this morning and the file has been received by my office containing the letter in question. In regard to the second letter, which has been produced today, the department has claimed privilege under Section 124 of the Indian Evidence Act. Since an official copy of this letter had already been produced before Shri Justice Mudholkar on an earlier occasion by Shri Mahtab himself, it is obvious that

Shri Mahtab has waived privilege in regard to the secrecy of this document. Under the circumstances, I am unable to sustain the claim of privilege put up on behalf of the department. The documents may, therefore, be taken on record as Exs-95 and 96 in the case.

When the Commission resumed its sitting at 2-30 P.M. and Shri Mahtab was present in the witness box, Shri Gobind Das, the Senior Counsel, who had arrived by the time handed over a petition to the Commission. He did not address any arguments in support of the petition but merely begged for leave to withdraw from the case on the grounds stated in the said petition. The Commission has very carefully perused the petition and he regrets to observe that it is full of erroneous and distorted allegations imputing even prejudice and bias to the Commission. It would be appropriate to take up the allegations in their order to show how far they could be justified.

In paragraph 2 (a) it is stated that vital answers in favour of Shri Mahtab had been refused to be recorded (in the case of Miss Kelly) and protection was refused to her against some slanderous and irrelevant questions. My order dated 20-11-1971 sets out the reasons for not recording some of the irrelevant and rigmarale answers which were given by Miss Kelly to questions put by the Counsel for the State. Nothing was specified in the petition filed by Shri Mahtab's Counsel on that day as to what "Vital Answers", if any, were refused to be recorded, nor has any reference been made to any specific answer of Miss Kelly even in the present petition which did not find a place in the record. Miss Kelly herself when signing her evidence did not complain of any such vital omission in her deposition. In the cross-examination of witnesses, Counsel have to be allowed a certain amount of latitude. In fact, more such latitude has been enjoyed by the Counsel foi Shri Mahtab as the record bears out. Having read the evidence of Miss Kelly again, it does not appear to the Commission that any such question as slanderous or irrelevant. The questions put to her in cross-examination by the State Counsel were all in support of their case and did not exceed the bounds of propriety.

It is true that after the close of the examination of Shri Patel by the State Counsel or the Counsel for Shri Mahtab, the Commission put certain questions to the witness for elucidation off facts and clarification of some statements made by him. This is a right which is inherent in every Court or Tribunal performing Judicial functions. Thereafter the Commission would have been perfectly justified in stopping any further examination of the witness by any party. The Commission, however, acceded to the prayer of the learned Counsel for Shri Mahtab to put some more questions to the witness, little suspecting that the learned Counsel would indulge in a further lengthy

and almost fruitless cross-examination in abuse of the privilege given to him. The Commission naturally feels surprised that instead of being grateful for the privilege granted to him, the learned Counsel should now make it a matter of grievance.

It is also completely wrong to suggest that the cross-examination of Shri Radhanath Rath had to be completed before due time since the Commission expressed its displeasure. Shri Radhanath Rath, in spite of his serious throat trouble because of chronic laryngates was examined continually for full two days, lasting till late hours and his examination was closed on the next day by about 5-00 P.M. after the Counsel for Shri Mahtab had fully cross-examined him. This is borned out by a perusal of the evidence of that witness.

The suggestion that Shri Tapulal and the Manager of the Guest House were summoned only to discredit the evidence of Shri Sodha is equally untenable. In due course, the Manager had to be examined to prove certain entries in the Guest House Register and the evidence of Shri Tapulal was considered by the Commission to be material because of certain other materials brought on the record. The Commission is concerned with investigation of facts, irrespective of any consideration whether the evidence of these witnesses corroborated or contradicted the evidence of Miss Kelly or Sodha. In fact, the Counsel for Shri Mahtab never considered it necessary to examine Shri Tapulal in support of his case, as he now tries to make out that the non-examination of the witness might prejudice the cause of Shri Mahtab. Whether the evidence of Shri Tapulal would or would not support Shri Mahtab is still a matter of conjecture at this stage.

It would appear from my order dated 21-11-1971 that during the cross-examination of Shri Malaviya Shri Bhandare wanted some file to be requisitioned from the Central Government pertaining to the department concerned with mining; and I directed that he should file a regular petition specifying the particulars of the documents which he wanted; but no such petition was ever filed. It is significant that the Counsel knew that Shri Malaviya had to be examined and if any such document was necessary for this purpose, he could have applied for requisitioning the documents much earlier. The cross-examination of Shri Malaviya was nonetheless continued by the learned Counsel and concluded on 1-11-1971. It is, therefore, wrong to suggest that Shri Bhandre was in any manner prejudiced in completing the cross-examination of Shri Malaviya.

Again paragraph 2(b) of the petition contains very unfounded insinuations against the Commission. The examination of Shri R. N. Singh Deo and Shri Radhanath Rath who were material witnesses had to be adjourned on earlier occasions for very adequate reasons, as shown by the relevent orders, dated 27-9-1971 and 29-12-1971. These orders explain for themselves. The insinuation that the venue was changed to Delhi and that the Commission even waited for six months for them, are wholly unjustified and against the record. The very fact that initially Shri Singh Deo, Shri Radhanath Rath and Shri Babubhai Patel were summoned to be examined at Bhubaneswar shows that there could be no intention of changing the venue. It is only when the Commission had to go back to Delhi that these witnesses had to be examined there. Shri Babubhai Patel had to be summoned by a warrant to appear before the Commission and he did consequently appear on the 15th of January 1972, at Delhi, where the Commission had its sitting. I am also unable to understand what is meant by the observation that "a reasonable prayer" on behalf of Shri Mahtab was not acceded to.

The allegation in paragraph 2(c) is quite baseless. There is nothing in the evidence of Shri Babubhai Patel to show that the Commission had made any casual remark favouring the witness; but in the case of Shri Radhanath Rath, it is true that the Commission orally observed that he appeared to be a material and straight forward witness. The Commission is unable to understand why it should be presumed that it will not give equally due weight to the considertion of the evidence of Shri Mahtab. The casual remark that Shri Radhanath Rath was a material and straightforward witness does not mean that the Commission had made up its mind either for or against Shri Mahtab. It goes without saying that the value of the evidence of the witnesses will have to be assessed in the framework of the totality of the materials placed before the Commission in arriving at its findings.

Paragraph 2 (d) of the petition is no less misleading. It has been earlier observed that Shri Tapulal had never been summoned for examination by the Counsel for Shri Mahtab at any stage. Shri Tapulal is one of those witnesses about whom the Commission is satisfied that he is trying to avoid the various processes issued by the Commission. In fact, warrants were twice issued against him for appearance and evidently the Commission had to direct issue of proclamation for attachment of his movable properties in order to compel his appearance before the Commission. Therefore, the examination of Shri Mahtab and his brother could not be held up indefinitely merely because of the non-appearance of this particular witness. The Principal of the School is merely a formal witness and all that

he is required to do is to prove an entry in the school register about the date of birth of the adopted son of Shri Mahtab. In fact, at one stage, as it would appear from my order dated 1-1-1972, the Counsel of Shri Mahtab was prepared to examine him even before the examination of some of the material witnesses. The excuse therefore now offered is wholly frivolous and unfounded. In order to safeguard the interest of Shri Mahtab, I even recorded in my order dated 20th February, that if Shri Tapulal appeared earlier, he could be examined before Shri Mahtab or his brother; otherwise, if his examination took place at a later stage, which is still problematic, and something came out in his evidence which required an explanation from Shri Mahtab's point of view, Shri Mahtab would have an opportunity of doing so. Counsel for Shri Mahtab seem to emphasise repeatedly as if Sunday had never been a working day for the Commission. It appears from several orders on record that examination of witnesses were taken up on holidays and Sundays and both the State Counsel as well as the Counsel for Shri Mahtab fully participated in the proceedings of the Commission without any murmur on those occasions. Indeed, many of these dates, whether at Bhubaneswar or at Delhi, were fixed at the request of and in consultation with the parties concerned, including the Counsel for Shri Mahtab also. It is well known that the Commission has its own working time-table based on the convenience of the parties and the Commission. There was no justification for the learned Counsel for Shri Mahtab not to appear at all on the morning of the 26th February 1972, when they were already informed on the 19th that they should file a regular application early on that date; but admittedly they filed the petition long after at about 4-45 P. M. when the Commission had already passed its order at its office after giving counsel ample time to appear.

About the report of the architect, as stated in paragraph 2(e) of the petition, it would appear that there is no genuine grievance or the part of Shri Mahtab's Counsel, because Shri Jagannath Das examined Shri Mukherjee in detail on the basis of those reports and made no further prayer to the Commission that he wanted to examine any other value in rebuttal of those.

In paragraph 2(f) of the petition again, insinuations have been made that only few witnesses were examined every month and particularly on holidays, though the proceedings should have been concluded earlier in one or two sittings. It clearly shows either deliberate ignorance of the procedure so far followed by the Commission or of the inevitable delays that are incidental to such Commissions of Inquiry. Instances are not known where although the authorities constituting the Commission are of the view that the inquiry would

be completed within a specified time, in the very nature of things, the inquiries could not be completed until long after the expiry of those periods. A Commission of Inquiry is not merely a judicial body where it can dispense with the examination of witnesses wherein a party is in default or on account of the non-appearance of a witness; but it is also a fact finding body which cannot dispense with the examination of all the witnesses whom it considers material and important. In this case, barring a few witnesses, several of them had to apply for repeated adjournments due to various reasons and one of them was even compelled to attend after the issue of warrants; whereas another person whose evidence may be considered material is evading the processes of the Commission as mentioed earlier. This Commission undertook the Inquiry on the express understanding that it would be subject to his other engagements. If there has been any delay, Counsel for Shri Mahtab are no less responsible. I do not see how the reputation of Shri Mahtab has suffered on account of delay, if any, in the proceedings; if it had not suffered already on account of the probe by Shri Justice Mudholkar.

As to paragraph 2(g), it is enough to refer to my order dated 20-2-1972 which affords ample protection to Shri Mahtab. The only witness who now remain to be examined are Shri Tapulal and another witness to prove the entry in the school register. I find, therefore, that this petition which has been presented at this stage is quite unfounded and contains supposed or imaginary grievances. The Commission cannot abdicate its functions merely because of the filing of such a petition, nor can it relieve Shri Gobind Das of his professional responsibility of conducting the proceedings. If he withdraws, he may do so at his own risk. Shri Gobind Das as a responsible Counsel realises the consequences of leaving his client in mid-stream and making him swim or sink for himself.

I would have proceeded to examine Shri Mahtab even in the absence of the Counsel, but for the fact that at the suggestion of the Counsel for the State, Shri Gobind Das has also agreed to have time to re-consider his position. I accordingly adjourn the examination of Shri Mahtab for tomorrow.

SARJOO PRASAD

Sarjoo Prasad
25-5-1972

OGP—MP-X (Home) C1—2,000—3-6-1972