

(1966) 02 PAT CK 0021
In the Patna High Court
Case No : Criminal Appeal No. 16 of 1963

Bihar State Religious Trust Board

APPELLANT

Vs

Mahanth Jaleshwar Gir

RESPONDENT

Date of Decision : 23-02-1966

Acts Referred:

Evidence Act, 1872 — Section 115, 15, 17, 21, 8

Citation : (1966) 02 PAT CK 0021

Hon'ble Judges : N.L. Untwalia, J;K.K. Dutta, J

Bench : Division Bench

Advocate : A.N. Sahay and Brajeshwar Mallick, for the Appellant; Pradyumna Narain Singh in Cr. A. 16, Prem Lall and Jagdish Pandey in Cr. A. 17, Mr. Sailesh Chandra Sinha in Cr. A. 32 and B.P. Samaiyar and J.P. Samaiyar in Cr. A. 66, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—These four criminal appeals filed by the complainant namely, Bihar State Religious Trust Board on grant of special leave u/s 417 (3) of the Code of Criminal Procedure have been heard together, as common questions of law and facts are involved in them. They are all being disposed of by this Judgment. The State Board of Religious Trust, Bihar, (hereinafter, for the sake of brevity, called the Board) launched prosecutions in these four cases against the trustees of some charitable and religious trusts u/s 67 of Bihar Hindu Religious Trust Act, 1950 (Bihar Act I of 1951), hereinafter called the Act, alleging that they have failed to comply, in certain cases, with the provisions of Sub-section (1) of Section 59 and in others with those of Sub-section (1) of Section 60 of the Act. Inter alia, the main plea raised in defence by the accused in all the four cases was that the trusts in question were not religious trusts within the meaning of Clause (1) of Section 2 of the Act. They are private trusts and the properties of the trustees appertaining to them are the private properties of the trustees, viz., the mahant or the shebait or the manager, whatever the case may be. The learned Munsif Magistrate has taken the view in all these cases that until and

unless there was a determination of the question as to the nature of the trust u/s 43 of the Act by the authority appointed in this behalf by the State Government, hereinafter, for the sake of brevity, called the authority, prosecution of the accused was misconceived and the criminal case against them was not maintainable. In support of the prosecution, the Board adduced evidence to prove their case, chiefly, of the kinds: (1) that in fact the trust in question in a particular case is a religious trust (for the sake of convenience hereinafter to be called the public trust) within the meaning of Clause (1) of Section 2 of the Act, and (2) that in past the trustee had submitted to the jurisdiction of the Board by filing returns u/s 59, by filing budgets u/s 60, or by payment of fees u/s 70 of the Act. That is to say, by their statements and conduct they had acquiesced in the fact that the trust was a public one, subject to the jurisdiction of the Act or had waived their right to object to its being so. The learned Munsif Magistrate has not recorded any clear finding in any of the cases in regard to the two questions of fact aforesaid, which must be stated at this stage are mixed question of fact and law.

2. Mr. A.N. Sahay, appearing for the appellant, submitted that the view of law taken by the court below with reference to the provisions of Section 43 of the Act is erroneous. It is contrary to the view taken by Ramaswami, C.J. in (1) Bihar State Board of Religious Trusts V. Laksman Kuer and another (Second Appeal No. 1287 of 1959 decided on the 26th of October, 1960). Learned counsel submitted that in terms or in substance Section 43 is not attracted for determination of a dispute as to the character of the trust itself; this has to be determined, in the first instance, by the Board and later on by any competent court where this question falls for determination. The non-determination of this dispute by the authority is no bar to the maintainability of the criminal case filed by the appellant. In reply, learned counsel, appearing for the respondents in all these appeals, submitted on the authority of the decision of Choudhary, J. in (2) Mossamat Champa Sahun V. The Bihar Religious Trust Board, Patna (Criminal Revision No. 170 of 1961 decided on the 24th of August, 1961) that the view expressed by the court below in this regard is correct.

3. In (3) Mahanth Ramswaroopdas Ji V. The Bihar State Board of Religious Trusts (1955 B.L.J.R. 88), a view was expressed by a bench of this Court that the language of Section 2 (1) of the Act was wide enough to cover within its ambit the (Sic) private and public Trusts, except such endowments as are created for the worship of a family idol in which the public are not interested and Trust created according to Sikh religion or purely for the benefit of the sikh community. But this decision was reversed by the Supreme Court in (4) Ram Saroop Dasji Vs. S.P. Sahi, Special Officer-in-charge of The Hindu Religious Trusts and Others, , and it was held that the Act and its provisions do not apply to private religious trusts. In this background, the definition of the words "trustee" and "trust property" as given Clauses (n) and (p) of Section 2 has got to be understood. "Trustee" would necessarily mean any person, by whatever designation known appointed to administer a public trust within the meaning of

the Act and "trust property" means the property appertaining to such trusts throughout the Act, therefore, the word "trustee" or the expression "trust property" must necessarily mean trustee or trust property in relation to the public trust as defined in Clause (1) of Section 2. In this background the general powers and duties of the Board, as defined in Section 28 of the Act, have got to be understood. They must necessarily refer to and apply in a case of public trust and not to a private one, which is outside the ambit of the Act. It is no doubt true, as held by Das, C.J., sitting with Kanhaiya Singh, J., in (5) Mahanth Ramdhan Puri V. President, State Board Religious Trusts, Patna and others (M.J.C. 541 of 1953 decided on the 31st of August, 1955) that the Board has to be prima facie satisfied that the Trust in respect of which it is acting is a public trust and that the property is trust property within the meaning of the Act. The mere fact that a dispute is raised before the Board in regard to the character of the Trust will not operate as a bar in the way of the Board in coming to their own conclusion, as they think fit, that the trust in relation to which they want to take action is a public trust. But it is obvious that their view or decision in the matter can never be final. It is open to the person thought to be a trustee of the public trust to challenge their view in an appropriate proceeding or suit. The question arises as to whether such a dispute if and when raised falls within the purview of Section 43 of the Act for determination by the authority, either of its own motion or on application. Section 43 (1) states:

All disputes as to whether any immovable property is or is not a trust property shall be inquired into, either on its own motion or on application, by the authority appointed in this behalf by the State Government, by notification, in all official Gazettes.

It is to be noticed that disputes as to whether a particular property, and that too only when it is immovable, is or is not a property appertaining to a public trust can be inquired into by the authority. That is to say, if the dispute relates to any particular immovable property or properties forming part of or appertaining to a public trust, such a dispute shall be inquired into by the authority either of its own motion or on application of any person. In terms, if a dispute is in regard to the nature of the trust itself, Section 43 is not attracted. In my opinion, nobody can approach the authority, either the Board or the trustee or any person, for a declaration that a particular endowment or trust or institution is not a public trust but a private one, nor can anybody file an application before the authority for a mere declaration that it is a public trust. It may well be that when a question is raised before the authority in regard to a particular immovable property that it appertains to a public trust, by way of answer to such a claim, the person or the trustee may raise a dispute to that even though the particular property appertains to the trust, the trust is not a public one, and therefore, the property should be held as not appertaining to a public trust. Incidentally and indirectly in such a case the question may arise for the determination of the authority and, on determination of this question the ultimate declaration which the authority would be competent to give under Sub-section (3) of Section 43 will be that the

property is or is not trust property. But unless the determination of the character of the trust is involved incidentally and indirectly, the authority, either within the terms of Sub-section (1) or as made expressly clearly by the terms of Sub-section (3), has got no jurisdiction to adjudicate purely in regard to the nature of the trust and to give a declaration as to whether it is a public trust or a private trust. Sub-section (3) of Section 43 provides:

Such authority shall after taking into consideration the claims, if any, filed under Sub-section (2) and after hearing the parties and taking such evidence as may be adduced before him, declare whether the property is a trust property and, if it is so the trust to which it belongs and shall make an order accordingly.

And this declaration in accordance with Sub-section (3), is subject to the institution of a suit in a court of competent jurisdiction and its decision in accordance with Sub-sections (5) and (6) of Section 43. In the case before Ramaswami, C.J. referred to above, the question raised by the appellant was that the suit filed by the respondents for a declaration that the trust was a private trust was not maintainable. In view of the provisions of Section 43 of the Act, this contention was repelled, and his Lordship, after referring to the relevant provisions of the Act, said:

It is, therefore, obvious that the provisions of Bihar Act I of 1951 only applies to disputes with regard to property of a religious trust as defined in Section 2 (1) of the Act, that is, a public trust, and Section 43 of the Act has, therefore, no application to a case where the trust itself is claimed to be a private trust and not a religious trust within the meaning of the Act. In other words, the disputes as to the character of the trust is outside the ambit of Section 43 of Bihar Act I of 1951.

I am in respectful agreement with the view of law expressed in this judgment. The same view has been expressed by Ahmad, J., as he then was, in (6) Kamal Das Vs. Bihar State Board of Religious Trust, .

4. Choudhary, J., in the case referred to above, has expressed the view on the authority of the Supreme Court decision in the case of (4) Ram Saroop Dasji Vs. S.P. Sahi, Special Officer-in-charge of The Hindu Religious Trusts and Others, that "unless a decision is taken u/s 43 of the Act that a particular institution is a public trust, the Board cannot interfere with the rights of management of the properties attached to that institution in possession of any person." With very great respect I venture to point out that this is not the correct view of Law. After referring to certain provision of Section 43 of the Act, his Lordship has said:

"Thus, the scheme of the Act appears to be that, on the appointment of an authority by the State Government for deciding the question whether a particular institution is a public trust or not that authority has to give a general notice to all concerned to put forward their respective claims with respect to that institution and decide whether such institution or the property attached to it are or are not trust or trust property." His Lordship has wrongly assumed that the authority

appointed by the State Government has to decide "whether a particular institution is a public trust or not." This assumption is not warranted by the wordings of Sub-section (1) of Section 43 or by the provisions contained in Sub-section (2) which obliges the authority to issue a general notice to be published in a prescribed manner, calling upon persons to lodge their claims or by Sub-section (3). Every provision of Section 43 leads to the conclusion that primarily and necessarily the dispute to be decided by the authority must be one as to whether any immovable property is or is not a trust property. As I have said above in some cases the character of the trust may fall for determination before the authority incidentally and indirectly in order to enable it to determine the main dispute as to whether any immovable property is or is not a trust property within the meaning of the Act. In Ramswaroop Das Ji's case, the main question decided was that the Act does not apply to private trusts and the Salouna asthal in respect of which the dispute had arisen in that case, has been declared in First Appeal No. 10 of 1941 not to constitute a public trust, in such a situation, it was held that as long as the declaration made by the High Court in the First Appeal stood and in absence of some evidence to the contrary, the appellant before the Supreme Court was entitled to say that the salouna asthal and the properties appertaining there too did not constitute a public trust and the Act and its provisions do not apply to it. In passing, thereafter, as I read the judgment of the Supreme Court, it was said with reference to the provisions of Section 43 in Paragraph 15 at page 959 that no decision has been given even under this section of the Act against the appellant in respect of the Salouna asthal and the properties appertaining thereto. The further observation was: "it would be open to the respondent to take such steps as may be available to them in law to get it determined by a competent authority that the trust in question is a public trust." This observation, to my mind, does not mean that the Supreme Court was of the view that the question as to whether the Salouna asthal is a public trust or not would be determined by the authority u/s 43 of the Act. It would appear from the last paragraph of the judgment while that the issue of an appropriate writ was directed quashing the order of the respondent Board calling upon the appellant to file a statement of income and expenditure with regard to the properties of the Salouna asthal and also prohibiting the respondents from interfering with the rights of the appellant in the management of the Salouna asthal and the properties appertaining thereto, "unless and until the respondents have obtained the necessary determination that the Salouna asthal is a public trust," (Sic) here, their Lordships of the Supreme Court did not say that the necessary determination was to be obtained from the authority u/s 43 of the Act. The power of the civil court to determine the character of the trust and to give the necessary declaration is undoubtedly their, and that power has not been taken away by Section 43 of the Act, and, in my opinion, Choudhary, J., is not correct in saying that the decision of the Supreme Court in Ramswaroop Das Ji's case is an authority for the proposition that a dispute in regard to the character of a trust is one which must necessarily be, in the first instance subject only to the result of the suit under Sub-sections (5) and (6) of Section 43, within the

exclusive jurisdiction of the authority u/s 43(1) of the Act.

5. I shall lend support to the view which I have expressed above by pointing out here that a dispute as to a moveable property is clearly outside the scope of Section 43 of the Act.

Take, for instance, a case where a particular trust has got considerable sums of money lying in deposit in the name of a particular trustee in a Bank fetching interest. At the time of the filing of the return u/s 59 or budget u/s 60, a dispute is raised as to whether the said money appertains to the public trust or not. Such a dispute obviously is outside the purview of Section 43, as it relates to a movable property and not an immovable one. If that be so, it does not stand to reason that the dispute as to the character or nature of a trust, to which may appertain not only immovable properties but also movable ones, will be one within the exclusive jurisdiction of the authority to determine. In my opinion, therefore, the view of law expressed by Chaudhary, J., in Criminal Revision No. 170 of 1961 must be held to be erroneous.

6. Having held, in agreement with the view of the learned Munsif Magistrate, that Section 43 was not a bar to the launching of the prosecution to the Board against the various accused, if really they were trustees of the public trust and have failed without reasonable cause to comply with the requirements of law, it became necessary to examine the facts of each case and the evidence adduced therein for final disposal of the appeals. Feeling doubt as to whether this Court in such an appeal can remand the case to the court below in exercise of the power u/s 423 of the Code of Criminal Procedure, we proceeded to examine the evidence ourselves, which were of the two kinds, as indicated earlier in my judgment. Mr. Sahay has fairly conceded and, in my opinion rightly too that the evidence adduced by the Board to establish the fact that the trust in question, in any case, was a public trust is not up to the mark or sufficient to establish this fact. We have examined this evidence ourselves, and although I shall very briefly refer to it separately to the cases when I come to deal with them, I may state at the outset that on such evidence no finding can be recorded in favour of the Board that they have succeeded in establishing that the trust was a public one and the trustee was liable to be punished for his failure to comply with the requirements of the law. I may also state that the accused in all these cases have also adduced evidence in their endeavour to establish that the trust in question is a private one and not a public one. In these criminal cases, on examination of some pieces of the defence evidence, we do not think it advisable or feel persuaded to come to a definite finding in favour of the defence either and to hold that the accused have succeeded in establishing that all these trusts or any of them are or is a private trust.

7. The evidence adduced by the Board in support of their plea that the trusts in question are public ones has been examined by us in the light of the well established principle of law, drawing distinctions under the Hindu Law between private trusts and public trusts, as found mentioned in the celebrated book of

Tagore law lecture delivered by the late Bijan Kumar Mukherjee, known as the Hindu Law of Religious and Charitable trust, in (7) Mahanth Ramsaran Das Vs. Jai Ram Das and Another, , in (8) Deoki Nandan Vs. Murlidhar, and in the case of (4) Ram Saroop Dasji Vs. S.P. Sahi, Special Officer-in-charge of The Hindu Religious Trusts and Others, . Reference may also be made in this connection to Mullah-Hindu Law, 12th edition, page 597, paragraph 424, where distinction between public and private indent has been drawn up. It is unnecessary to mention in any great detail those distinction and to discuss the evidence adduced in these cases elaborately.

8. Mr. Sahay, however, laid great stress on the fact that in all these cases, in one manner or the other, the accused by their previous statements or conduct have admitted that the trust is a public trust or have acquiesced in this position or have waived their right to challenge the stand of the Board that the trust is a public one. After having examined the evidence in all these cases, the general conclusion at which we have arrived is that the point is not sustainable, and before I come to deal with the specific cases. I may briefly record my reasons for taking this view.

9. u/s 34 of the Act, the Board shall prepare and maintain in such form as he thinks fit a register of all religious trusts in the state. Under Sub-section (2), "entries in the register may be made by the Board on its own motion or on application made by any Hindu after such enquiry as the Board thinks fit." Stress in some of these cases was laid on the fact of the entry in such a register maintained by the Board about the particular trust or the trustee as being one of public nature. But in none of these cases, any application filed by any trustee has been produced to show that the applicant got the entry made making a statement that his trust was a public one. The expression used by the learned counsel that his name was registered, if I may say so, is not quite appropriate, as there is no provision in the Act for the registration of the name of the trustee or for issuing any license or registration certificate. u/s 70 of the Act, fee payable by a particular trustee of a public trust is assessed, and in some of these cases the evidence adduced by the Board is that such fees were paid. u/s 59 of the Act, trustees are to furnish statements to the Board in the prescribed form, which is Form I, as prescribed by the rules framed under the Act, containing the prescribed particulars in respect of the trust, of which he is a trustee. Properly and commonly, they were known as return. The evidence adduced by the Board in some of these cases is that such returns in the past were filed by the trustee. u/s 60 of the Act, the trustee of every public trust shall prepare a budget before the 15th day of January in each year of the estimated income and expenditure of such trust for the next succeeding financial year and shall send a copy thereof to the Board. In some cases, the evidence adduced by the Board is that such budget were filed by the trustees concerned. In a nutshell, therefore, the nature of such evidence is that the trustees had submitted to the jurisdiction of the Board and had done something in compliance with one or more requirements of the various provision of the Act. Question, however, is as to what is the effect of

such conduct on the part of the trustee. The fact of conduct being a relevant fact u/s 8 of the Evidence Act, as was argued on behalf of the appellant, may be admissible in evidence, but such fact by itself will not lead to the conclusion, within the meaning of Section 8 of the Evidence Act, that the trustee by his conduct influenced or was influenced by the fact that the trust in question is a public one. The conduct by itself is no proof of that fact, unless the conduct amounts to waiver or acquiescence. I shall deal with the question of admission, as argued on behalf of the appellant, a bit later. It is a well-settled principle of law that waiver or acquiescence may be expressed or may be implied by conduct, but at the same time it has to be remembered that "waiver is the abandonment of a right, and is either express or implied from conduct", vide Article 1175 at page 637 of Halsbury's Laws of England, third edition, volume 14. It has been further said: "where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right". But at page 638 in Article 1176, it has further been pointed out that for waiver to be effectual "it is essential that the person granting it should be fully informed as to his right".

Similar is the law in regard to acquiescence, which means, as said in Article 1170 at page 638 in the same volume of Halsbury's Laws of England-"in its proper legal sense it implies that he refrains from seeking redress when a violation of his rights, of which he did not know at the time, is brought to his notice". But even in regard to acquiescence it has been said that it operates by way of estoppel and for bringing into operation the principle of estoppel, "acquiescence is founded on conduct with a knowledge of one's Legal rights"--vide Article 1179 at page 639. It has been pointed out earlier that the view taken by this Court in the year 1954 in the case reported in 1955 B.L.J.R. 88 was that even the private trusts were within the ambit of the Act and this view prevailed until it was upset by the Supreme Court in 1959. In such a situation, if the trustees went on submitting to the jurisdiction of the Board under the Act and complying with one or more requirement of the various provisions, can it be said that they did so consciously of their rights? Will it be reasonable to infer from their conduct that they waived their right of claiming the property as appertaining to a private trust or as their own, or that they acquiesced in the position that the trust was a public one? The answer, to my mind, obviously must be given in the negative. I may also point out that the law of estoppel, as engrafted in Section 115 of the Evidence Act, says:

When one person has, by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

By their conduct, the trustees did nothing of the kind, and, therefore, Section 115 of the Evidence Act will be no bar in their way to deny the fact that the trust

in question is public one. The position in all the cases was that the Board had taken the view that the trusts were subject to their jurisdiction and liable to be governed in accordance with the provisions of the Act. The trustees not being fully conscious of their rights or not being aware of the true states of law or facts, submitted to the dictates of the Board. That being so, I am definitely of the view that their conduct neither amounted to waiver of their rights nor to acquiescence with knowledge of their legal rights. In one of the cases, returns were filed even after the decision of the Supreme Court in year 1959 in Ramswaroop Das Ji's case but that action will not bring about the conscious waiver or acquiescence of the trustee concerned in regard to his rights, unless it could be shown that he had waived it after being aware of the law laid by the Supreme Court. The maxim that ignorance of law is no excuse obviously will not apply for determination of the question of waiver or acquiescence.

10. Learned counsel for the appellant further submitted that the various statements filed by the accused could be used against them as admissions u/s 21 of the Evidence Act. But he had to give up this point when it was pointed out to him that mere conduct is not admission, as defined in Section 17 for making it eligible to be used as admission u/s 21 of the Evidence Act. The former section says:

An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant facts, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Conduct is not statement, and statements contained in the various return filed u/s 59 of the Act were not such that it could be held that they amounted to an admission of the fact that the trust in question was a public one. That being so, in my opinion, no evidence adduced by the Board in any of these cases can be relied upon in support of the fact that the trust is public trust and the failure of its trustee to comply with the provisions of Section 59 or 60 of the Act is punishable u/s 67.

11. In support of the second point submitted by the learned counsel for the appellant, reliance was placed upon an unreported decision of a bench of this Court in (9) Mahanth Bisheshwar Das V. State of Bihar through Ram Chandra Pd. Singh, agent (Criminal Revision 1143 of 1960 decided on the 3rd of January, 1963). The trial court in the criminal case launched by the Board against the trustee held that it was a public trust, and the Mahant, the petitioner before the High Court, having failed to comply with the Requirements of Section 60 had committed an offence punishable u/s 67 of the Act. The point raised on behalf of the petitioner before the High Court was that the enquiry envisaged u/s 43 of the Act was not made by competent authority before the launching of the prosecution, and, therefore, the criminal case was not maintainable. This point was not decided and answered by the bench. Their Lordships said that the question of enquiry in the circumstances of that case, was altogether beside the point. In passing however they observed that the enquiry contemplated by

Section 43 was to be started only when a dispute arose as to the character of any property attaching to any trust. In the case before their Lordships, it was found by the trial court that the petitioner had submitted to the authority of the Board constituted under the Act, accepting the character of the Mathia as one created according to Hindu religion by submitting various statements and returns. The genuineness of these statements and returns was questioned by the petitioner, but in face of the findings of fact recorded by the trial court, he was not allowed to do so in the revision, and in that view of the matter it was lastly observed that "the petitioner when he was called upon by the Board to submit the various returns, did not raise any dispute regarding the character of his Mathia. Therefore, there was no occasion for the Board to have an enquiry made as postulated by Section 43 of the Act. This being so, the prosecution of the petitioner cannot be said to be bad in law". The decision of the bench, if I may say so with respect, is neither on the question of interpretation of Section 43, nor is an authority for the proposition as to what would be the effect of the conduct or statement of a person in relation to the compliance with the requirements of certain provisions of the Act. On the facts of that case, the two points were mixed up, and it was held that the prosecution was not bad. When it was further argued on behalf of the petitioner that by mere filing of statements in response to the demand of the Board, the real character of the Mathia could not be changed and the petitioner was not estopped from challenging it, the argument was repelled by the observation:

It is true that an admission can be shown to be wrong, but it can be so done in appropriate proceeding. Regard being had to the own conduct of the petitioner prior to the institution of the prosecution, he cannot be allowed to raise in this proceeding the question of the character of the trust, having previously accepted it to be one falling within the mischief of the Act.

Again, if I may say so with respect, it is not clear to me from this decision as to on what principle of law the petitioner was estopped from asserting the fact of his trust being a private one. If there were admissions, as it appears from the passage which I have just quoted above, leading to the conclusion that the trustee had admitted it to be a fact that it was a public trust, the admission could be used u/s 21 of the Evidence Act as a piece of evidence against the person making the admission. But on examination of the various statements filed in the instant cases, I have come to the conclusion that there are no such admission. I have pointed out above that mere conduct does not seem to have been taken as an admission in the case aforesaid before the bench of this Court.

Cr. A. No. 16/63

12. Coming to the facts of the case, I shall first take up Criminal Appeal 16 of 1963. P.W. 1 is a formal witness. From the evidence of P.W. 2 an attempt was made to prove that the accused in this case had been prosecuted for non-compliance with the Board's order but that the case was withdrawn as the accused had filed the requisites, but this fact was denied by the accused, who

examined himself as D.W. 1. No document was produced or proved by the Board to substantiate this fact. In my opinion, oral evidence in this regard was not sufficient. If documentary proof could be given of the fact, it could be examined as to whether by his conduct the accused led the Board to believe that his was a public trust and made the Board to withdraw the prosecution on that belief, bringing the case within the principle of estoppel as engrafted in Section 15 of the Evidence Act. P.W. 3 said that registered letters were sent to the accused for submission of budget for year 1960-61 and 1961-62, but he did not file it. This was all in relation to the charge against the accused. It has also been said by the witness that the accused had got the trust registered in their office and returns had been filed by the accused, and on the basis of those returns the trust has been registered. The word "registered" had been loosely used by the witness and entry in the register made by the Board u/s 34 is not tantamount to registration, as understood in law. No return has been filed in this case. P.W. 5 has proved the carbon copy of the receipt which had been granted to this accused, accepting some amount on account of the assessment fee u/s 17 of the Act and the sum of Rs. 30/- on account of cost of some criminal case. On the back of this receipt (Ext. 4) has been proved Ext. 5 the signature said to be in the handwriting of the accused. The accused has denied the signature. Even assuming that the receipt and the signature are genuine, as there is no reason to doubt the genuineness, it proves nothing. Mere payment of the assessment fee before the year 1959, obviously as it was in this case, or even some prosecution cost will not bring the case within any principle of admission, waiver or acquiescence, as discussed by me above. P.W. 6 merely proved Ext. C, serial no. 681 dated 25.3.1958 in the register maintained by the Board. This is also of no use to substantiate the fact that the trust in question is a public one. In that view of the matter, on a consideration of the evidence in the light of the discussion of law made above, I hold that no case has been made out by the appellant for setting aside the order of acquittal recorded by the court below in favour of the respondent although it has got to be maintained for reasons somewhat different from those given in the judgment of the court below.

Cr. A. 66/63

13. In Criminal Appeal 66 of 1963, P.W. 1 is a formal witness and so is P.W. 2. P.W. 3 who speaks about the trust being a public one is an assistant in the office of the Board, has said in cross-examination that he has no personal knowledge about the nature of the trust. P.W. 4 is on the point of failure of the accused to file the returns. P.W. 5 has proved the return (Exts. 2 series), a fact which is also admitted in the written statement of the accused, filed by him or his Guru, the predecessor in interest. Some of these returns were filed before 1959 and some even after that year, in 1960 and 1961. But there is no statement in column 9 in any of these returns or in any other portion of them, admitting that the trust is a public one or stating facts which would necessarily lead to the conclusion that it is a public trust. Ext. 3 is a letter said to have been written by the accused to the Board on 2.5.1960. The signature of the accused only has been proved and

marked as Ext. 3. The contents of this letter, as deposed to by D.W. 2 are not in the handwriting of the accused. No evidence has been adduced by the prosecution to prove the contents. Therefore, this letter cannot be used against the accused. P.W. 6 has proved Ext. 4, the budget filed by the accused on 5.6.1961, but there is no statement in this budget which can be used as an admission against the accused. P.W. 7 has proved two more returns, Exts. 2/5 and 2/6. They are no better than the ones proved by P.W. 5. This is all the evidence in this case also. For the reasons given above, I hold that no case has been made out for setting aside the order of acquittal in this case either.

Cr. A. 32/63.

14. In Criminal Appeal 32 of 1963, P.Ws. 1, 2, 3 & 12 have attempted to prove the public character of the trust, but on going through their evidence, it is clear that they have failed to do so. Ingredients sufficient for the conclusion that the trust is a public one are not to be found in their evidence or in any event reading their evidence with their statements in cross-examination, no such conclusion can be arrived at. P.W. 4 has proved Ext. 1 the entry in the register maintained by the Board u/s 34 of the Act. P.W. 5 is a formal witness proving the complaint petition. P.W. 6 has proved Ext. 4 a return filed u/s 59 of the Act. No statement, which can be used as admission, is to be found in this return. P.W. 7 has proved the assessment note (Ext. 5 and the order Ext. 6), showing that fees were assessed on this trustee u/s 70 of the Act. P.W. 10 is a witness on the point of receipt of Rs. 200/- as assessment fee from the accused. The payment is noted in his hand and it bears the note of payment marked Ext. 9, which bears the signature of ex-Superintendent at the bottom. P.W. 8 is a formal witness. P.W. 9 has proved copies of letters (Ext. 8 series) written by the Board to the accused. P.W. 11 has proved the entries in the despatch register, Exts. 10 series, in proof of the fact of the despatch of the letters for the reasons similar to the one's given above. On examination of each and every documents proved by the witnesses aforesaid, I have unhesitatingly come to the conclusion that none of them can be used against the accused to prove the fact that the trust in question is a public trust. This appeal, therefore, also fails and the order of acquittal recorded in favour of the respondent cannot be interfered with.

Cr. A. 17/63

15. In Criminal Appeal 17 of 1963 the evidence is all the more meager. P.W. 1 is a formal witness, proving the complaint petition. P.W. 2 is on the point of failure of the accused to file the return. P.W. 3 has proved that the accused did not file the budget for the year 1960-61 and returns for the year 1956-58 and 1959-60, in spite of the fact that the letter marked Ext. 2 was sent to the accused. He has proved an enquiry report (Ext. 4) in support of the fact that on enquiry it was found that the trust is a public one. This enquiry report is of no use to the Board as a piece of substantive evidence in support of the fact in issue. This witness has also proved the statement (Ext. 5) filed by the accused u/s 59 of the Act. P.W. 4 has proved the entry (Ext. 6) in the register maintained u/s 34. It is,

therefore, manifest that the complainant has failed to substantiate in this case also that the trust in question is of the kind which is subject to the jurisdiction of the Board under the Act.

16. Before I conclude, I want to point out that if a prosecution is launched by the Board u/s 67 of the Act, then in a case where the question for determination happens to be as to whether the trust in question is a public trust or not, the onus undoubtedly will be on the Board to establish the fact, as before this fact is established the accused cannot be convicted of the effect of the failure to comply with any order or direction made u/s 28 or to comply with the provisions of Section 59 or Section 60 or any other section of the Act. Mr. Sahay submitted that if a trustee fails without reasonable cause to comply with the requirement, he has got to be punished u/s 67 and as provided in that section, the burden of proving that the failure was occasioned by reasonable cause is upon the trustee. Undoubtedly, it would be so but it would be so, if the initial burden upon the Board of proving that he is a trustee of a trust within the meaning of the Act is discharged, and not before that. In the result, all the appeals fail and are dismissed.

Dutta, J.

I agree