
(1990) 04 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No's. 441 and 450 of 1989

Vajubhai Patel and Another

APPELLANT

Vs

Charity Commissioner, Maharashtra State and Others

RESPONDENT

Date of Decision : 05-04-1990

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(20), 2(8), 36A(3), 41D
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 3
Trusts Act, 1882 — Section 50, 51

Citation : (1990) 2 BomCR 702

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : A.P. Inamdar, instructed by Kantilal Underkat and Co. in W.P. 450/89, A.M. Setalvad, instructed by Rustamji and Ginwala in W.P. No. 441/89, for the Appellant; A.P. Inamdar, instructed by Kantilal Underkat and Co. in W.P. 441/89, A.M. Setalvad, instructed by Rustamji and Ginwala in W.P. No. 450/89 for respondent No. 1 to 3, B.E. Patil, in 441/89 and for respondent No. 4 in W.P. 450/89, for the Respondent

Judgement

S.M. Daud, J.

1 These are cross petitions under Article 226 of the Constitution aimed at the verdict of the Charity Commissioner (CC) in a proceeding u/s 41-D r.w. 41-E of the Bombay Public Trusts Act, 1950 (B.P.T.A.).

2. Basic education is one of the many concepts which this country owes to Mahatma Gandhi. To popularise this ideal certain individuals including Vajubhai Patel in 1964 organised themselves into a Council known as the Indian Council of Basic Education. In April 1964, the Council was registered under the Societies Registration Act of 1860 (SR. Act) as also the B.P.T.A. Vajubhai, amongst others was recorded as a Manager as also a Trustee of the Council and the application for registration was moved by him. Accompaniments to the application included a Memorandum of Association and Rules and Regulations. The latter recited that

the management of the affairs of the Council vested in the Board of Governors (B.G.) which was to be the sole executive of the Council. It was also stipulated that the General Body of the Council would appoint a Board of Trustees (B.T.) once its assets exceeded the value of Rs. 10,000/-. This came about in 1969 and the General Body elected a B.T. who included Mohanbhai, as also Vajubhai the principal contestants in this litigation. Mohanbhai and Nayanbhai are father and son respectively. Their munificence enabled Vijubhai to obtain sizable donations to enable the Council to start a School and College. The School was to be named after Mohanbhai's father and the College of Education after his mother. The prefix to both names were the words "Gandhi Shikshan Bhawan". It is the alleged misdeeds in relation to the College which gave rise to the proceedings before the CC. It began functioning as from the academic session 1970-71. Till about November 1971, Vijubhai was the Principal of the College. His functioning as such was not accepted as he was a mere B.A. Pass Class coupled with an M.A. from the Columbia University. Neither came upto the qualifications prescribed for a Principalship by the Bombay University to which the College was affiliated. Despite recommendations by some individuals to accept Vajubhai for the post, the university was unrelenting. Vajubhai vacated the office to be followed therein by witnesses Dr. Bhawe and Mrs. Ankolvil. The trust had contracted a building for the College on site taken on lease on its behalf by Vajubhai as the sole lessee and therefore in 1973 or thereabouts moved into the same, Vacating the rented premises taken earlier. In course of time Chotabhai and Nayanbhai also became members of the B.T. The proceedings which have given rise to these petitions arise out of an application attributing to Vajubhai, his wife Leelabehn, Sonalbehn Shukla and Kusumbehn Thakkar various sins of omission and commission allegedly attracting section 41-D B.P.T.A. The lapses were formalised into charges numbering 63. The proceeding begun in 1881 dragged on and culminated in 1989 in the verdict of the CC. To be brief, the CC exonerated Vajubhai, Leelabehn, Sonalbehn, and Kusumbehn of all the charges levelled against them. This exoneration is assailed by Mohanbhai, Chotabhai and Nayanbhai through W.P. No. 450 of 1989. The CC found that there were certain irregularities which needed rectification. The B.G. & B.T. were directed to rectify the errors. Following the initial suspension, Vajubhai, Leelabehn and Sonalbehn were restrained from participating in the management of the trust's affairs. This was continued vide orders passed in Writ Petitions bearing Nos. 833 and 1200 of 1981 and 630 of 1982. Initially an interim board of management and administration was appointed until the disposal of one of the above petitions. By order dated 30-7-1986, Pendse, J., made this Board's terms co-extensive with the conclusion of the enquiry by the CC. A sentence from the order, relied upon by Vajubhai etc., reads thus:-

"The CC to pass further orders relating to the management of the Trust if the above enquiry is concluded with orders passed against the petitioners (i.e. Vajubhai etc.) in W.P. No. 630 of 1982".

The direction given by the CC and impugned by Vajubhai, Leelabehn and

Sonalbehn in Writ Petition No. 441 of 1989 is to the effect that the interim Board is to make over the management and administration of the trust to the B.G. and B.T. Their attempt to get the directions clarified/amended at the hands of the CC., was negated.

3. Intervening events in the sense of proceedings having a bearing on the points herein for determination, had their origin-partly at least in the substitution of the Rules and Regulations of 1964 by another set in 1976. The two sets will for the sake of avoiding confusion be hereafter referred to as the "1964" and "1976" Rules. The 1976 Rules were taken exception to in Suit No. 3476 of 1984 by Mohanbhai and Chotabhai. That suit was against the Council with the CC being impleaded as a proforma defendant. On 1-7-1989 the said suit was decreed. Another suit bearing No. 2002 of 1982 was filed in the City Civil Court by one D.T. Sanghavi and another. Again the object was to impugn the 1976 Rules and an interim injunction staying the operation of the same was issued. Mohanbhai has instituted an application seeking the formulation of a scheme by the CC to regulate working of the trust. That application is still pending.

4. Having regard to the contentions raised in the two petitions, the whole controversy is at large. I will have to begin with the attack on the findings exonerating Vajubhai, Leelabehn and Sonalbehn of the charges levelled against them,. The persons charged contend that the exoneration is the result of an appraisal of the evidence. A possible view of the material has been taken and a writ court has no jurisdiction to reverse the verdict. Mr. Setalvad relies on various decisions to support this plea. I need not refer to more than the number absolutely necessary. In Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, Sabyasachi Mukharji, J., as his Lordship then was speaking for the Court formulated the ratio thus:

"The High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the facts in the absence of clear cut reasons where the question depends on an appreciation of evidence."

Again Venkatachaliah, J., in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, said:

"However, judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to an examination of the decisions making process."

Does the decision-making process include the reasoning or lack of it in the formulation of the verdict ? Chandavarkar (supra) precludes interference by the Writ Court where the decision impugned can be reconciled with the evidence on record or is not preverse. Counsel for Mohanbhai, Mr. Inamdar, points to the voluminous record comprising evidence-oral and documentary-and the written arguments running into hundreds of pages. Mr. Inamdar says that the judgment of the CC is scrappy and cryptic reflecting very little of the above material. There is no doubting the amplex of the evidence and submissions, in particular, that

placed on record by Mr. Inamdar's clients. Compared thereto, the judgment of the Cc is slight. An order to remit the case for a more informed judgment is an alternative. But having regard to almost a decade already gone spent in the enquiry, the better course is to appraise the material myself. This is a course permissible to a writ Court, the object being to see whether the findings of the Cc are inconsistent with the evidence and/or perverse or the same are correct irrespective of the deficiency in the process of reasoning.

5. Of the 63 charges levelled against Vajubhai, Leelabehn and Sonalbehn, six have been dropped. These bear Nos. 32, 39, 49, 50, 55 and 57. The remaining ones can be conveniently dealt with under eight heads. The first deals with the violation of the bar against profiting by the above persons and Kusumbehn in that though trustees they took up employment with the trust. The second group of charges ascribe impropriety and incompetence to the trustee-appointees. The third and largest category cover what may be loosely described as outright frauds. The fourth class can be conveniently described as relating to oppression of the staff. The fifth pertains to the creation of unwarranted posts and refusal to create wanted posts. The sixth group covers cases of neglect inclusive of defaults. The seventh batch covers misuse of their position as trustees. The eighth and last batch deals with doctoring of papers of the trust.

6. The factual position in regard to the first group may be stated. Vajubhai functioned as a Principal of the Trust's College of Education from June 1970 to October 1971. He drew a regular salary for this and whatever be the salary it was reimbursed by the Government as the College was a cent-percent aided institution. Next, Vajubhai functioned as a director of the College. This was not a post on the approved list of posts sanctioned for an aided institution. The salary or honorarium drawn by him---about Rs. 1,500/- p.m. came in its entirety from the funds of the trust. Roughly speaking, Vajubhai drew about Rs. 18,000/- per annum on this count for the period 1972 to 1981's first half. It is alleged that Leelabehn worked as a Tutor. No documentary evidence to support this exists. To make good this omission, reliance is placed by the accusers on Mrs. Ankolvi's deposition and a piece of circumstantial evidence. Mr. Ankolvi speaks of having seen a copy of the letter whereunder Leelabehn was appointed as a Tutor. This copy was done away with by Vajubhai after the initiation of proceedings by Mohanbhai. Assuming Mr. Ankolvi's version to be true, it does not establish that Leelabehn collected remuneration as a Tutor. I phrase it thus for the accusers themselves allege that Leelabehn did not, in fact, could not work as a Tutor. Reliance is next placed on the sequence in which Leelabehn's name appears in the Muster Roll and the salary admittedly drawn by her. That her name in the Muster Roll is in the same row as other Tutors or that she drew the same salary as them, cannot lead to a conclusion higher than that her name was so placed and she was paid the same salary as a Tutor. Even as a Rector her name had to appear in the Muster Roll and fixing the Rector's salary at par with that of a Tutor, would not lead to the conclusion that she was appointed as a Tutor. It is argued that Mrs. Ankolvi's version, if untrue, should have been refuted by

Leelabehn stepping into the witness box. But there is a better refutation in that the accusers have not been able to lay their hands on the college or trust accounts showing the payment of remuneration to Leelabehn as a Tutor. The absence of sustenance from the accounts clinches the issue against Mohanbhai. It is not disputed that Leelabehn was appointed and worked as a Rector for which she drew a fairly substantial remuneration. For the period 1970 to 1974, the remuneration paid to Leelabehn was fully reimbursed. Partial reimbursement was granted for the period 1974 to 1976. For the period thereafter, the trust had to bear the burden. Sonalbehn got paid as either a Lecturer or Tutor from August 1977 to May 1978. So, at least the college's accounts and other papers show. Kusumbehn Thakkar was working as a salaried Lecturer. For the post of a Joint Director to which she was appointed, Kusumbehn received no salary or additional payment. The evidence does not show that she ever worked as a Joint Director. The stand taken by the accusers is that this appointment was a to humiliate Mrs. Ankolvi who though the Principal, was made to submit to Kusumbehn, a member of the staff, for directions. The fact-situation cleared, let us now turn to an appraisal of the legal position.

7. Mohanbhai's stand is that Vajubhai, Leelabehn, Sonalbehn and Kusumbehn were all trustees. They could not accept any office of profit from then trust. By accepting employment they had contravened sections 50 and 51 of the Indian Trust Act, 1882 (I.T.A.). This was violative of sub-sections (c), (d) and (e) of section 41D(1) of the B.P.T.A. Mr. Setalvad, for the accused, replies that the appointees as members of the B.G. were not trustees and certainly not till the coming into force of the changes effected in section 2(8)(c) of the B.P.T.A. by Mah. Act 20 of 1971. The Amending Act also did not make individual members, but the entire B.G. as deemed trustees. In terms, sections 50 and 51 of the ITA did not apply. Lastly, accepting a fair and reasonable remuneration for work done on behalf of the trust did not violate the restraints laid down in sections 50 and 51 ITA.

8. The B.P.T. A. vide section 2(20) has limited the application of I.T.A. to the use of its definitive parts for such words and expressions as are not defined in the B.P.T.A. This certainly excludes the literal application of the I.T.A. to the trustees of public trusts in this State. But as was stated in *State of U.P. Vs. Bansi Dhar and Others*, ---

"there is a common area of legal principles which covers all trusts, private and public, and merely because they find a place in the Trusts Act, they cannot become "untouchable" where public trusts are involved."

Sections 50 and 51 ITA incorporate basic prohibitions to which every trustee is expected to conform, lest trusts become the medium for self-aggrandisement. Therefore, the limitations in these sections will apply to trustees of public trusts. Section 50 prohibits a trustee from getting any remuneration for his skill, trouble and loss of time in executing the trust. Section 51 bars the use of trust property by a trustee for purposes unconnected with the trust. Does teaching or otherwise

working in an institution run by a trust, constitute a breach of either section ? Wadia, J., in *In Re: Sabnis, Goregaonkar and Senjit and Shivramdas and Others*, held that the firm of a Solicitor trustee acting for the said trustee and his co-trustees was not debarred from recovering profit-costs, as taxed between an attorney and client. Of course, the costs had to be reasonable and a fair return for the service rendered. Apart from this precedent, Mr. Setalvad relies on the decision dated 24-7-1981 of the Joint Charity Commissioner in Application u/s 41-D of the B.P.T.A. bearing No. 11 of 1979. Mr. Inamdar refer to the incongruity of trustees being masters as also servants where they allowed to take up employment with the trust. Wadia, J.'s decision concludes the matter and it is not necessary to dilate further on this subject. There remains the argument that the accused were not trustees, and at least, not till the incorporation of the amendment in section 2(8)(c) pursuant to Mah. Act 20 of 1971. The accusers reliance upon the application for registration of the I.C.B.E. as a public trust, is sought to be refuted by certain observations in Sabnis's case (supra). Briefly these amount to laying down that until there be a vesting of estate in a trustee, he is not a trustee in the legal sense of the word and this is so even if he describes himself as a trustee. The BG were not mere administrators. Funds received from the Government and under various heads were spent by them or under their supervision. These funds constituted property and the disbursal of the same was a jealously guarded prerogative of the BG. Vajubhai took recourse to this plea whenever questioned on this score. No doubt there existed a BT. Unfortunately this Board did pretty little not pass innocuous resolutions. They were content to reign while the BG in the name of management and administration supervised expenditure of lakhs of rupees every year. The argument that even after Mah. Act 20 of 1971 the BG and not any individual member would be a deemed trustee is difficult to accept. This is because its acceptance would lead to the strange result of individual members being at liberty to flout all limitations on rectitude, which as a collective entity they were bound to observe : The better interpretation is to treat as forbidden to individuals what is barred to the body.

9. One last point and consideration of this group will have been completed. The accused were paid and not meagrely, for their services. But there is no material to hold that the payments made were on the high side. The inference thus will be that they were paid a reasonable remuneration for the work they did. This is on assumption that their appointments were regular, that they were competent to hold those posts, that they worked conscientiously and that the college or trust needed their services. This clarification is necessary for the accusers have a different version on these aspects of the matter. Until these are examined and resolved in the favour of the accused, the conclusion afore-mentioned has to be treated as provisional.

10. The second batch of accusations cover what may be described as improprieties in the appointment of Vajubhai and Leelabehn to the posts for which they were remunerated. Indeed, the accusation is that Vajubhai primarily

and in conspiracy with Leelabehn gave the appointments to himself and his wife. The impropriety alleged has been specified and it will be necessary to adhere to that. This is because of a tendency on the part of the accusers to cast wide the net and go beyond the specified charges. In the case of Vajubhai's tenure as a Principal, the charge is that (i) he was not academically qualified to hold that post, (ii) yet worked as a Principal for 17 years and (iii) thus put the trust to loss. Now so far as academic qualifications are concerned Vajubhai was a B.A. in the Pass Class and a M.A. from Columbia University. These were not recognised by the Bombay University as sufficient for being a Principal in a College of Education. The salary paid to Vajubhai was fully reimbursed by the Government. The argument is that Vajubhai knew full well that he lacked the academic distinction necessary to adorn the Principal's chair. Even so he thrust himself into the post. And when the University made it clear that he would have to vacate, he tried to bring pressure upon it to condone his defects and regularise his appointment. These failings cannot be denied. Vajubhai did try to stick on to the post despite knowledge that he lacked the academic stature. But this does not mean that the appointment was a self donning of the Principal's mantle by Vajubhai. Mr. Inamdar argues that the post had not been advertised. No applications had been invited. No screening had taken place and no resolution appointing Vajubhai had been passed whether by the BG or BT. True, but there is no evidence to show that these formalities were observed in the appointments of Dr. Bhave who succeeded Vajubhai and Mrs. Ankolvi who succeeded Bhave. Indeed all appointments in the College seem to have been made without going through these formalities. It is quite possible that Vajubhai had a dominant voice in the making of all appointments. That however would not by itself attract the charge of his engineering the appointments of himself and his wife. Members of the BG & BT were not Unaware of what was happening. In fact the presence of Vajubhai and Leelabehn was all pervasive. No one could have been unaware of their being in the employ of the college and trust. Yearly statement of accounts were submitted. Everyone must have known that the two were being paid handsome emoluments. Unlike the other members of the BG or BT, the couple were permanent fixtures in the College, and, even encroaching on domains which could have been left to others. Such being the position it is not possible to accept the plea of Mohanbhai that until he heard the staff's tale of woes he had no idea of what was afoot. Details perhaps he was not aware of. But he certainly knew that Vajubhai functioned as the Principal or Director and of Leelabehn working as the Rector. Till 1981 every single member of the two boards must have known that the couple were being paid for the work done. The trust had to bear the liability of Vajubhai's salary as a Director and Leelabehn's salary wholly from 1976 and partly for the period prior thereto. The circumstances point to an implied approval by the BG & BT. The uprising in 1981 does not mean a belated discovery by one who was prepared to cross with the powerful Director and his wife. It is also consistent with wrath aroused by the tyrannical deeds practised against the staff by Vajubhai and his wife. Honourable as this impulse be it does not square with the wholesale protestations of ignorance.

11. Mr. Inamdar submits that the College or trust did not need a Director of Rector. Vajubhai and Leelabehn created these posts to line up their pockets for after leaving Nanavati Kanyashala they had no other means of livelihood. Deprived of the office of Principal and Leelabehn not being fit to be appointed as a Tutor or Lecturer, they had to create some slots into which they could ease themselves. The trust's College and School had their Principal and Headmaster. Staff required for supervisory and administrative duties existed or could be easily appointed. The salary payable to all those office holders was reimbursable from the Government. Vajubhai had no business to arrogate to himself functions which legitimately belonged to others. He had usurped their functions and that was no justification for the trust being saddled with the liability to have and pay for the luxury of a Director. Vajubhai relies on resolution dt. 14-8-1969 at page 23-A of Ex. 203 which is the Minutes Book of BG meetings. The placement of the resolution in Ex. 203 on the left side when the majority of the written pages are on the right side has given rise to the charge of the same being a fabrication and his having been done after the accused had got to know of the application moved by the accusers. This is a possibility; but just that. Imputations reflecting on the integrity of people have to be fortified by proof of a high degree. Even if the proceeding u/s 41-D be not a criminal proceeding, the proof required to sustain charges therein must satisfy a higher standard than that normally required in cases governed by the rule of preponderance of probabilities. Page 23-A of Ex. 203 is an interpolation. First, it is suggested that page 23-A is in ball pen while the rest of the minutes would have been in the body rather than a separate paper. Last there is a difference in the pen pressure and even the writing instrument between page 23-A and the rest of the minute dated 14-8-1969. Now whatever he suspicions attaching to the entry made in page 23-A, there is no denying the fact that Vajubhai was functioning and recognised as the Director. He was so acknowledged by Dr. Bhawe, Mrs. Ankolvi and the staff. He was also drawing a salary in that capacity. The annual reports of the college and trust described Vajubhai as a Director. That no one questioned this position and enjoyment of the perquisites till 1981 is consistent only with the conclusion that the same had the approval of the trustees inclusive of the BG & BT. Whether the trust needed a Director is not for the CC to decide. Perhaps it did not and again perhaps the many loose ends required supervision by an knowledgeable person like Vajubhai. That is more probable seeing that the other trustees had personal vacations to attend to. The initial years of the College required the guidance of a full-time trustee and an educationist who moreover had nothing else to distract his energies.

12. Leelabehn's appointment as a Rector has now to be considered. The College did not have a hostel and under the University Regulations was not entitled to have a Rector. The accused admits this but contended that Leelabehn's service were required to Counsel students from rural areas and the poorer classes as also mind the working of the staff. Mr. Ankolvi and Dinnath Raj together with certain other members of the staff, are those with bitter memories of slights

inflicted on them by Vajubhai. Their feelings are understandable, but that also is a reason for scrutinising their evidence with care. These witnesses speak of Leelabehn doing no more than sending coffee, milk and meals every two hours or to Vajubhai, cornering the mail and generally speaking, throwing her weight about. As against this Vajubhai, Mrs. Patankar and Mrs. Savur testify to Leelabehn counselling the poor, the needy and the inexperienced staff. In fact she was doing what is required of a Dean. Whether her post was necessary or not was a decision for the trustees to take. That they could not have been unaware of her receiving the salary of a Rector, if not working, must have been known to them. They raised no protest till 1981. In other words, her appointment however unnecessary and a drain on the resources of the trust, had their implied, if not express concurrence. The trust had to bear the brunt of the salary paid to Leelabehn. But it seems to have borne this loss with equanimity. A belated realisation that the decision was unwise would not make the appointment actionable under any of the sub-sections of section 41-D

13. To sum up, the appointment, functioning and remunerating of Vajubhai and Leelabehn had the imprimatur of the trust. The need for the posts in which they functioned was decision the trust had to and did make. The long silence on these counts warrants the inference that the posts were considered useful. A review by hind sight is not called for.

14. The more numerous and major charges have now to be considered. The first in the series are charges relating to Sonalbehn's name in the Muster roll showing her as a Lecturer or Tutor and the salary said to have been misappropriated by Vajubhai, though nominally shown to have been paid to her. Charge Nos. 14 and 16 require to be carefully read. So perused they give the impression of referring to the tenure of Sonalbehn as a Lecturer in the College for the academic session 1977-78. Unfortunately, though not infrequently, the accusers have gone on to refer to what was done even prior thereto. The charge is restricted on the 1977-79 academic session and in fact covers only the period August 1977 to May 1978. What favours were shown to her and why in the earlier period, was not relevant. About the only explanation for dragging it into the evidence seems to have been to lay a foundation for charges 14 and 16. The combined effect of the said charges comes to this, Sonalbehn did not work as a Lecturer. The muster roll gave the contrary impression. Salary shown as payable to or even paid to her was in fact misappropriated by Vajubhai. In other words Sonalbehn's name was used with her active consent to enable Vajubhai to rob the College of a sizeable chunk of money. Let us now see the evidence led to sub-ststantiate this allegation.

15. Forgetting the exact import of the charge, Mrs. Ankolvi, Dinanath Rai and Meera Katdare speak of Sonalbehn coming to the College as and when she wanted, doing little more than singing a Bhajan or two in the morning prayers, signing the muster roll whenever she had the time or inkling to do so and in fact doing nothing worthwhile in the matter of lecturing to classes. Mrs. Ankolvi speaks highly of herself and yet seems to have done nothing to check the

waywardness of Sonalbehn. As a Principal she was not expected to be the silent tomb. But even assuming that she was reduced to silence because Sonalbehn was a Court favourite being close to Vajubhai and Leelabehn, she could have withheld the payment of arrears which Sonalbehn became entitled to consequent to a revision in the pay and allowances of teachers. The arrears are paid to Sonalbehn not when she was reeling under the tyranny of Vajubhai; but on 27-3-1981 (see Ex. 793) when the complaint of the misdeeds of the trio had gone. The remittance went under Mr. Ankolvi's signature. The least that she could have done was to send a stinker pointing out that the payee was receiving something she was not entitled to.

16. As to the testimony of witnesses, their antipathy towards Vajubhai and Sonalbehn is no secret. Mrs. Ankolvi was not allowed to exercise powers annexed to her post and was constantly humiliated once by being required to take instructions from a subordinate Kusumbehn Thakkar. Dinanath Rai smarts under the humiliation of having been made to do menial work and this in the name of "dignity of labour". Prejudices of a like nature afflict other members of the staff. True, the other side represented by Mrs. Patankar and Mrs. Savur may not be as blameless as is suggested on behalf of Vajubhai. A student examined to show that Sonalbehn was not teaching is from the Hindi Medium section, while the lady i.e. sonalbehn was attached to the English medium classes. The result is that the oral evidence is of no assistance in reaching a proper answer.

17. Reliance is placed on the photo-copy of the muster roll, which at one stage shows a number of blanks against Sonalbehn's name. This it is said is proof of the liberties permitted to the lady. From this it cannot be presumed that she did not attend the College or that she was a mere name-lender to the muster roll so that Vajubhai could pilfer money meant for the College. Next is the absence of work assigned to her in a diary maintained by Mrs. Ankolvi showing subjects allotted to teachers for any academic session. The diary on Mrs. Ankolvi's own showing used to be drawn up at the start of the term. Sonalbehn came midway in August 1977. Naturally enough, her name would not find a place in the assignment drawn up at the start of the new term.

18 Whether Sonalbehn worked at all or how much is incidental to the accusation. The crucial part of the charge is that the name of Sonalbehn in the muster roll was used to line the pockets of Vajubhai. The evidence adduced rests on a pile of conjectures, each more flimsy than that on which it rests. Hence a negative answer has to be recorded to the charge.

19. The National Council for Educational Research and Training in collaboration with the Nai Talim Sangh had sponsored a seminar between 27-9-1978 to 2-10-1978 at Bombay. The participants comprised outsiders as also teachers from Bombay. The trust's College sent a contingent which included Mr. Ankolvi, Dinanath Rai and Meera Katdare. The participants were to be paid T.A. and D.A. for the seminar's duration and the disbursal was to be made by Vajubhai who was a Convenor of the workshop. Receipts showing payment of T.A. and D.A.

were obtained from the staff of the trust's College and admittedly the amounts were not received by them. Vajubhai pleads that the same were donated by the local participants to defray the expenses incurred by outsiders. The T.A. and D.A. received by the outsiders was said to be insufficient and therefore the locals voluntarily donated their entitlement. This version cannot be brushed aside as frivolous. Whatever the rate of T.A. and D.A. to the outsiders, judicial notice can be taken of the fact that boarding and lodging in Bombay is no inexpensive affair. In the circumstances Vajubhai succeeding in "persuading" the local to donate their T.A./D.A. to the hospitality account is not difficult to believe. That the locals were pressurised into the donation is quite likely for none likes to forgo money. That however is far different from saying that the sum was pocketed by Vajubhai. Significantly, until 1981 the victims maintained a discreet silence. Use of pressure and no more is what can be concluded against Vajubhai. But that would not amount to coercion or undue influence in the legal sense. And even if it does, the question as to whether it amounts to misconduct, misfeasance or malfeasance remains. That will be the subject of separate issue altogether.

20. There is a wide gulf in the accusation covered by Charge No. 18 and the evidence led in regard thereto and argument built thereon. The charge is that from 1970 to 1981 the students of the College were entitled to refund of caution money of Rs. 25/- P.A. paid by them. Signatures on papers showing refunds were obtained. No refund was ever made. Vajubhai pocketed the sum and this converted to his own use a sum of Rs. 2,500/- per year. The evidence led shows that student signed papers showing that they had donated the refundable sums to the College. The accusation has therefore been changed to coercion from criminal misappropriation. The change is itself reflective of a certain degree of recklessness in the levelling of charges. But that apart, the evidence shows no more than some students---possibly only Patil and Singh examined by the accusers---were pressurised into donating to the College the caution money refundable upto them. The speak of fear influencing their consent for the internal marking could effect their grades. Mrs. Ankolvi realise that the charge of misconduct in regard to this accusation will not stick. No matter, for the points to the rules requiring channelling of unrefunded caution money to the Students Aid Fund and no other till. If the students sign a donation, the caution money has not lapsed. As to the theory of coercion, no donor unless he wants to take a splash of publicity or is really high-minded (a rare breed:) is happy when made to give a donation. That does not vitiate the donation. And surely its better to go by the contents of the signed donations, than the pitiful recollections of a student or two years after the event. That the donations went to the trust fund is not disputable and is proved by the entries in the accounts.

21. Dr. Bhave while on the verge of departure was found to have rendered himself liable for a library fine of Rs. 7/-. A book lent to him was lost and he paid the fine amount to the librarian. The Librarian passed on the sum to Vajubhai who told her to show the amount as going to "Sarvodaya Patra". That head was devised by Vajubhai as a receptacle for helping the poor and needy. That at least

is what Mrs. Ankolvi professes to have learnt from Vajubhai. Until 1981 there were no accounts of this fund. Vajubhai alone knew of the collections and disbursals. By rights the amount of fine should have gone to replace the book lost or to the library account. As the charge is worded i.e. failure to credit the fine to the college or trust, it is proved. Whether this would attract section 41-D is a different issue to be dealt with later.

22. The Mahalaxmi Temple Trust (MTT) made a donation to the College for the library. According to Mrs. Ankolvi, Vajubhai told her that the MTT had donated Rs. 1,00,000/- towards the library, that a plaque be prepared to show this and that she make an announcement to this effect in the morning assembly. As was usual with her, she complied. As to what became of the money, the value of the books in the library as on 31-3-1981 was placed at Rs. 50,994.90 ps. Including the MTT donation the stock of books on that date should have been worth Rs. 2,15,000/- Conclusion---the entire sum had been swallowed by Vajubhai. No holds barred fights are no rarities. But better care should be bestowed on levelling accusations. The accusers should have taken the elementary care of checking up with the MTT as to the amount donated and the steps they had taken to see whether or not the donation had been properly utilised. Mrs. Ankolvi insists that the amounts---be what is may---could be spent for nothing but buying of books. In the ordinary parlance a library grant is not so restricted. The same can be used for library shelves, furniture and stationary also. Vajubhai testifies that the donation totalled Rs. 60,000/- only and came in four equal instalments. The amount was utilised in purchase of books and cupboards etc. That the library accounts were not upto the mark and that mess was the doing of Vajubhai is the lament of Mrs. Ankolvi and the Librarian Lata Gharpure. That is not the subject of the charge and its existence does not prove defalcation of the MTT's donation.

23. Charge Nos. 28 and 51 can be taken together for they are interlinked. The accusation is that Vajubhai and Leelabehn had donated their life saving of Rs. 75,000/- to the College on 9-6-1973. This was done by a proclamation made at a public meeting. Leelabehn spoke of this to Mohanbhai in terms befitting a haloed benefactor and the audience was much affected. Mrs. Ankolvi and Dinnath Rai join the chorus to say that they had heard the public announcement about the donation. The trust's books show no such transaction. On the contrary they show that the couple had deposited their savings with the trust. The trust used their money free of interest for quite some time. The charges amount to this :---

(i) Rs. 75,000/- declared to have been donated by Vajubhai and Leelabehn was not credited to the corpus of the trust.

(ii) The books of the trust falsely showed Vajubhai and Leelabehn to be depositors of this very sum with the trust, thus making them its creditors.

(iii) The couple showing their unemployed daughter Sujata as a creditor of the trust having kept a sum of Rs. 60,000/- at an interest of 18% p.a. and debiting the trust regularly.

It is necessary to rivet attention to the break-up given above for the accusers have secured an unintended bonus by discovering that the loaning of money to the trust and its liability to pay interest did not have the sanction of the CC. Now that is not the subject matter of the charge, though it is a moot point whether so glaring a lapse should be overlooked in the name of fairness to the accused.

24. The evidence of a donation of Rs. 75,000/- announced on 9-6-1973 rests not on what the alleged donors said on the public platform, but what was given out as communicated to them by Madhukarrao Chaudhary who announced the donation. The announcer is not examined. Mrs. Ankolvi, Dinanath Rai and Mohanbhai have scores to settle with the domineering Vajubhai and Leelabehn. Technically, a gift envisages delivery and acceptance. In this case there was no more than puffing in order to arouse instincts of generosity-assuming that the announcement of a donation was made by one authorised by the couple and Leelabehn did speak of the same to Mohanbhai. Mr. Inamdar relies on the unproved issue of the Times of India making a reference to the donation. Items in newspapers have not yet been accepted as proof of their contents. It is argued that Vajubhai and Leelabehn were impecunious teachers who could not have had savings of the kind shown as lying to their credit with the trust. It is not possible to demand that Vajubhai their credit with the trust. It is not possible to demand that Vajubhai and his wife render a credible account of their earnings before they came to the I.C.B.E. The books of the trust show that they had deposited near about Rs. 80,000/- with the trust. The position on 23-11-1979 was that the trust had to pay Rs. 73,000/- to them. Rs. 60,000/- therefrom was transferred to Sujata's name---the girl being their daughter. This may have been a contravention of the laws governing gifts. That however is not the charge. To sum up, the gift of Rs. 75,000/- to the trust by Vajubhai and Leelabehn is not proved. The question of fraudulently recording a donation as a loan does not arise. As to the showing of Sujata as a creditor she was only a front for her parents. The interest credited to her was 10% p.a. which rate is not shown to be excessive. To put the record straight the interest though credited to her account was not ever paid. Whether sections 41 and 36-A of B.P.T.A are attracted is a different question which will be gone into later.

25. Mohanbhai charges Vajubhai with having invented three bogus labels to extract donations and grants and showing expenses on these, which money in reality went into his pockets. The labels were an Adult Education Centre, Community Centre & Research Centre. The allegations in relation to them are covered by charge Nos. 30, 33 and 34.

26. Charge 30 is to the effect that on a misrepresentation that the trust was running an Adult Education Centre (AEC) Vajubhai got the COI to grant Rs. 38,000/- . To the extent of Rs. 20,000/- accounts had not been submitted. An enquiry had been ordered and it was in progress. The depositions of Mrs. Ankolvi and Rai are to the effect that work done by the students and staff as part of community service and national social service, was passed off as the doing of the

AEC. The AEC was in fact the burden of the College Principal. As was the common practice Vajubhai pushed her aside and cornered the entire first instalment of Rs. 20,000/- out of the grant of Rs. 38,000/-. No accounts of the expense had been submitted and therefore the Government of Maharashtra at the behest of the Government of India, addressed Ex. 370 to Mrs. Ankolvi. The trust's accounts show that the AEC was at Vasai and money was spent on it. Mrs. Ankolvi's real grievance is that she was supplanted by Vajubhai. That however is not the charge. As to non-submission of accounts, I presume they must have been submitted though late. Had it been otherwise the trust would have been asked to make a refund and that is not even suggested by the accusers.

27. The 33rd charge relates to Vajubhai floating a bogus Research Centre (RC), collecting donations in its name and though dormant, debiting expenses to it-in other words using the paper existence of RC to filter money into his own pockets. Witnesses examined in this connection are Mohanbhai, Mrs. Ankolvi, Rai and Meera Katdare. Their evidence is to the effect that the College was carrying on no research, that Vajubhai did not have the antecedents to do and did not do any research, that the little that could be described as research was evaluation of text books and that even this passed though under Vajubhai's signature, was done by others and not necessarily remunerated. A donation of Rs. 5,00,000/- was given to the RC by Impact Containers a company of Mohanbhai. This donation was made on 6-3-1978 i.e. just two years prior to the scheme which culminated in the application to the CC. Vajubhai credits "Quest in Education" i.e. the trust magazine, as the result of the research it is not for the CC or this Court to evaluate, as the monetary worth of the research. I am constrained to make this observation for Mrs. Ankolvi speaks of having commissioned such an evaluation by the Board of Management and Administration. The evaluators have not been examined and what they opined to Mrs. Ankolvi is not evidence. The money did not go only to actual research. Some of it went into the construction of annexes or wings to the college building which were to be utilised by the RC.

28. Last of the fictitious entities was the Community Centre (Centre). The charge is that this Centre was non-existent and another label to pocket money by Vajubhai and Leelabehn. Once again the oral evidence led by the accusers is matched with that adduced by the accused. Meera Katdare in a moment of unawareness has admitted the Centre's existence by saying that she used to be called for work on Sundays and holidays and that the extra work also sometimes related to the Centre. Mrs. Ankolvi speaks of work done by the staff and students of the College being appropriated by Vajubhai as being that of the Centre. Contemporaneous conduct is a surer guide and at the relevant time, the Principal had no objections to whatever was ascribed to the Centre in the trust's accounts, yearly reports and write-ups in the quest in Education. To accept that the Principal and staff were over-awed by Vajubhai would be to give undue credit to witnesses, and, that for reasons insufficient cannot to the rule.

29. A second set of three charges bearing Nos. 35 and 37 covers two sets of allegations. One is the illegal and unauthorised use of College premises for sale of khadi, non khadi and by the Nai Talim Samiti. Next, is the assertion that consideration received for such user has been pocketed by Vajubhai instead of being credited to the trust. At the stage of arguments it was contended that even if no compensation was received from the users of the premises, that was a loss to the trust. The defence is that the Khadi Mandal was allowed to exhibit its cloth in the College to facilitate purchase of material for the college students since the uniform had to be in the Khadi. Next, Sohan Prints were allowed to exhibit their garments for the benefit of the female students and staff of the College. As to the Nai Talim Samiti, nothing more than the College address was being used and this because Vajubhai was the Secretary of the Samiti. The accusers have been content with the depositions of Mohanbhai, Mrs. Ankolvi and Rai. The allegation that compensation for the use of the premises was received is a pure guess, though Rai who is free with figures claims to have heard one of the sales person say that as much as Rs. 5,000/- was paid for the privilege. The accusers could have certainly examined representatives of the bodies to show what compensation-if-any-was paid to Vajubhai. Knowing that proof of compensation received was not available. Mohanbhai shifted ground to allege that Leelabehn had a personal stake in the sales of cloth allowed to be exhibited. Again this is not the subject of the charge. So far as the Nai Talim Samiti is concerned I do not see how Vajubhai's using it as an address would result in the imposition of a financial burden on the trust. Once again recourse was had to leading evidence to prove an unformed charge viz. use of the trust's stationery, employees telephone etc. by Vajubhai for purposes of the Samiti. This evidence has to be overlooked as being irrelevant.

30. Does the charge of illegal and unauthorised user stick? Arranging display of wares of use to the staff and students cannot be said to be illegal, as the Director Vajubhai had the implied authority to permit user of the College for purposes like the above. Similarly giving the trust's address as that on which he could be addressed in relation to the Samiti cannot be said to constitute an invasion of the trust's rights. Down, but not out, the accusers describe the triple user as subversive of discipline. This is not the charge and Mohanbhai and his co-accusers cannot be allowed to make use of anything that comes in handy-whether relevant or not.

31. Charge No. 45 relates to collection of House Rent Allowance (HRA) by Leelabehn though in occupation of rent-free quarters belonging to the trust. When exactly Leelabehn recovered HRA though staying in the rent-free quarters is not clear. Leelabehn occupied the quarters, according to Mrs. Ankolvi, from 15-8-1975. The resolution entitling her to do so was passed on 12-5-1975. the accusers have left everything confused. This hardly merits an answer. Vague assertions that HRA was drawn when Leelabehn was occupying quarters as an allottee are not proved by surmises that this was the position. The position here is worse for the person complaining want to link up payment of HRA to Leelabehn

when the allottee was Vajubhai.

32. The 47th charge is the strange one of Vajubhai committing defalcation by presentation of two books belonging to the trust to Mohanbhai. The title of the books were "Ashram Bhajana vali" and "Ashram Niyamavali". The charge is limited to two books. That however has not prevented leading of evidence designed to show that Vajubhai Leelabehn and their daughter Sujata were taking books from the library as and when they wanted. Not only this, Banibehn Patel confirmed that a book from the library was suitably decked up and presented to someone as a gift from Leelabehn. Evidence going beyond the charge has to be ignored. Assuming the worst viz. that the books were of the trust and were presented to Mohanbhai, their price was a niggardly Rs. 4/- or so. Mohanbhai had been instrumental in getting the trust sumptuous donations. Presentation of book or two costing a trifle could not be looked upon as a fraud. As a Director, Vajubhai was only showing a nice sense of gratitude on behalf of the donee trust. Vajubhai says the books were the personal property of himself and Leelabehn. Merely inscribing them as a presentation of the trust shows no more than a nice sense of self effacement on the part of the couple. In any case there is no evidence that the books belonged to the trust. That concludes the matter for if the base be missing the super structure cannot survive.

33. Mrs. Ankolvi during her trips to the residence of the Enquiry Officer Dholakia happened to notice a batik are-whatever that be-on the wall of the flat. This intrigued the lady for she had seen the same wall hanging in the College. Questioned, Dholakia came clean, admitting that the same was a present made to him by Leelabehn. Dholakia knew of the strained relations between Mrs. Ankolvi and the accused. It is difficult to believe that despite this knowledge he had no hesitation in telling Mrs. Ankolvi something which disqualified him from acting as an Enquiry Officer. As to whether or not the art belonged to the trust, Mrs. Ankolvi had seen it in the College and that sufficed to believe that the piece belonged to the trust. Vajubhai and Leelabehn occupied quarters in or near the College. Why the hanging could not have been their personal property never entered the mind of Mrs. Ankolvi. This is hardly the evidence required for proof of criminal breach of trust, if not theft.

34. Charge No. 53 arise out of the shooting of film "Desh Premee". It is the case of the accusers that Vajubhai in fact received Rs. 20,000/- and not Rs. 501/- which has been admittedly credited as a donation received from the producers or a person who acted in the film. The evidence led by the accusers is anything but convincing. Mohanbhai's informant so, he claims-in-this regard was the Producer Subhash Desai. This gentlemen was conveniently not alive when the evidence was being recorded. Next is the version of Dinanath Raj who speaks of having heard from someone in the horde accompanying the film unit that the producers had paid more than Rs. 5,000/- and Rs. 20,000/-. Rai does not know the name of these persons. Why he assumes that they were connected with the producers is not explained. Rai's tendency to inflate is so marked a feature of his testimony

that it would be unsafe to rely on him. Mohanbhai claims to be acquainted with the film world and says that Juhu where the College is located was a favoured area for filming commanding fabulous fees. If so, there should have been no difficulty in examining some gentleman from the film industry to bear out the estimates or expectations of Mohanbhai. Last is the argument that black money plays a large part in financing of films. If Rs. 501/- was paid by cheque, it must be accepted that Rs. 20,000/- was paid in black. The first supposition has yet to attain the status of a fact of which judicial notice can be taken. And as to the next inference, I do not see how it follows from the premise.

35. On 11-10-1981 a fund-raising programme was staged by Vajubhai at the Birla Matushri Sabhagriha (BMS). A credit of Rs. 51,200/- has been made in the accounts of the trust as the proceeds received from this show. Mohanbhai claims that Vajubhai made an announcement that the show had fetched Rs. 1,05,000/-. Regarding the balance coming to about Rs. 50,000/- had been misappropriated. Naya Shikdhar's recollection about the figure announced is Rs. 1,00,000/-. Even if this be assumed to be true the figure would represent gross receipts. The outgoings has to be taken into the reckoning and they have not been. The greater probability is that Vajubhai made no announcement as to the sum collected and this because the audience would not be interested in what amount the show had fetched. So states Vajubhai and that is consistent with the probabilities. A slightly different story comes from Meera Katdare. She claims that the staff and students were made to contribute for advertisements in Souvenirs and no receipts were given by Vajubhai for these contributions. Now, there is no charge on this point. It is not clear as to how the Souvenirs were connected with the BMS show on 11-10-1981. How much the unreceipted contributions came to is not known. Having regard to the deviations and discrepancies, this charge cannot be held proved.

36. The fourth set of charges relate to the oppression of the staff by Vajubhai. First, is the accusation that the Principal was not allowed to maintain or rather supervise the maintenance of accounts. The charge broken up into coherent parts comes to this :

- (i) The principal was not allowed to maintain the accounts.
- (ii) Principal was not allowed access to the accounts and this despite the critical comment of an Officer of the Government.

As is usual with the accusers they have travelled a far wider range when leading evidence on this point. The consideration here will have to be restricted to the confines of the accusation. There is no denying the virtual take-over of the accounting by Vajubhai. He did this presumably on the strength of being the Director. It does not however appear that Mrs. Ankolvi wanted to do her bit in the supervising of accounts. What really offended her was Vajubhai daring to take her explanations for the slightest intrusions into the sphere of accounts. That Vajubhai was pushy and had trespassed into several domains not strictly his

business is writ large in the material that has come before the CC. As the Director he would seem to be justified in so doing. That this contravened remarks made by some officer and the rules is of course there. The real question is whether this was done to perpetrate frauds. The appraisal made till now does not so indicate. Whether it would attract section 41-D need not be considered.

37. Dr. Bhavé's not being paid various sums has been picked upon to show Vajubhai as violating the obligations of a trustee. Taking up item by item, Dr. Bhavé's first grievance is in regard to Houses Rent Allowance. His assertion is that he was entitled to HRA " Rs. 202.90 ps. per month from 1-7-1973 to 26-4-1974. However, he was paid HRA " Rs. 75/- per month Dr. Bhavé realised the short payment quite late. The next grievance is in regard to the management's share of the provident fund contribution to Dr. Bhavé's account. The University was opposed to such a claim and changed their view quite late. Thereafter the necessary amount was paid. The last haggle is over delay in payment of difference in pay and allowance to Dr. Bhavé. Dr. Bhavé on his part was averse to sending advance receipts be living that receipts could be given only after the payment was received. Whether wilful delay and inaction in regard to Dr. Bhavé's claims would attract the provisions of section 41-D need not be examined.

38. This brings me to the bunch of charges dealing with Vajubhai's failures in the matter of staff. He is said to have resisted making necessary appointments and perversely enough making unnecessary appointments. First, is his failure to allow the principal to appoint an Accountant for the College. The charge as phrased is to the effect that this failure was despite a direction of the Board of Governors. But there is no recorded resolution. Had the matter been so pressing as to necessitate intervention by the BG they would have surely followed up the failure assuming that the recording of the resolution was deliberately overlooked by Vajubhai. It is said that the failure to appoint an Accountant for the College was deliberate as such an appointee would not have taken orders from Vajubhai nor allowed him to cook up the accounts. If so, the BG or BT would have taken Vajubhai to task. Perhaps they felt safer with Vajubhai handling the accounts. Next is the alleged failure to appoint an Assistant to the College Librarian. The said Librarian Lata Gharpure complains that she was made to do all manner of work besides that of looking after the library. Her working hours were far in excess of that prescribed. Miss Gharpure's duties ranged from the menial to ghost-writing. No extra remuneration was ever given to her. For work done by her which was remunerated, the remuneration went to Vajubhai. She was not allowed leave-not even to prepare for examination. She could not rest even on holidays. It does appear that witness had to attend to a number of chores besides looking after the library. But this she did uncomplainingly. And if she could do all that was entrusted to her, the possible reason may be that her work as a Librarian was not very taxing. Her adverse testimony may be on account of her kinship to Dr. Bhavé whose niece she admittedly is. And Dr. Bhavé-perhaps justifiably has no reasons to think well of Vajubhai. Her grievance of over-work

etc. etc. is therefore belated and raked up to batter the erstwhile rulers.

39. Then comes the grievance of Vajubhai creating unwanted and unnecessary posts. Kusumbehn Thakkar was conferred the designation of Joint Director. Admittedly this did not entitle her to any pecuniary advantage. The argument is that Kusumbehn was a Lecturer and therefore a subordinate of the Principal Mrs. Ankolvi. By elevating Kusumbehn to the position of a Joint Director and enjoining Mrs. Ankolvi to take instructions from her during the absence of himself, Vajubhai was subjecting her to undeserved humiliation. Humiliation apart, the Joint Director's nomenclature did not carry any allowance or perquisites. As to the humiliation aspect, Mrs. Ankolvi does not appear to have complained in writing to the BG or BT. To now recall it as a slight seems to be like a command performance. In any case the Joint Directors functions were limited to account aspects and did not affect the supervisory or disciplinary role expected to be played by a Principal.

40. Next in this series is the appointment of Bani Patel as an Arts Teacher. The lady was appointed as such from 1973 and the salary paid to her till 1978 was reimbursed by the Government. Bani Patel ceased working in 1981. The refusal of the Government to reimburse her salary from 1978 to 1981 forced the trust to bear this burden. As Arts Teacher was not a sanctioned post for a College of Education and that was the reason for the Government's refusal to reimburse the trust for the salary paid to her as from 1978. The accusation in this regard boils down to the following:---

- (i) That the post of an Arts Teacher was not a sanctioned post.
- (ii) That Bani Patel was appointed without an advertisement application and interview and indeed without the approval of the BG or the BT.
- (iii) That Bani Patel was already in the full-time employ of the trust's School and could not therefore be simultaneously on the rolls of the trust's College.
- (iv) That Bani Patel was not in fact teaching at the college.
- (v) That though her appointment was illegal she was paid gratuity and the management's share of the provident fund when she left in 1981.

In so far as the post not being a sanctioned one is concerned, it has to be remembered that the trust's College was not a mere College of Education. It was that and run as closely as possible to be tenants of basic education. The Arts Teacher was supposed to impart instruction in craftmanship also. Teaching of different crafts is a vital part of basic education. Reference is made to Vajubhai's repeated assurances to the University that he would abide by its regulations in the matter of curriculum etc. Good as this assurance is the same did not in any way preclude a deviation from the prescribed curriculum, to the extent that it did not violate the fundamentals. Dr. Bhave, Mrs. Ankolvi and Rai all agree that teaching of crafts is a feature of basic education. This indeed is so obvious that we can take judicial notice thereof. Bani Patel's appointment without an

advertisement and interview etc. was in keeping with the general practice. None of the college teachers appears to have been selected in that manner. If there be no grievance at the selection of Bani Patel. The third factor pressed against the appointment is that Bani Patel was already teaching full time in the trust's School and could not therefore be so appointed in the College also. To this effect is the evidence of Mrs. Ankolvi and Rai etc. The best evidence to substantiate this would have been the muster or pay rolls of the School and College. The repetition that the evidence given by Mrs. Ankolvi and Rai could have been effectively repudiated by the examination of Bani Patel is not acceptable. Had there been any truth in the allegation it would have been made sometime during the years 1973 to 1981. It is argued that full time teachers had to put in a prescribed number of clock-hours in teaching students and this was not done in the case of Bani Patel. The lapse does not wash away the fact that she was designated a full time teacher. Emboldened by their performance, Mrs. Ankolvi etc. have gone to the extent of saying that Bani Patel was not teaching at all. How an Arts Teacher should impart instruction is difficult to comprehend. It may be by the conventional method and the deviations into the unconventional may be beyond ordinary concepts. Paying Bani Patel the retirement benefits is also taken exception to. In fact this payment is sought to be contrasted with the tardiness shown in the case of Dr. Bhawe. In some respect there was foot dragging so far as Dr. Bhawe. was concerned. That however would not vitiate the payment made to Bani Patel.

41. Asha Kalla's elevation to the post of Vice-Principal is cited as another instance of Vajubhai creating unwanted posts. The real grievance is different. Mrs. Ankolvi also once functioned as a Vice-Principal. But she was paid no additional remuneration. Her grievance is that Asha Kalla who was elevated from the same grade was given additional remuneration. The first question is as to the propriety and legality of the Vice-Principal's post. It is contended that this post cannot be created for colleges having a strength of less than 500 students. The strength of the trust's College never went beyond 100 or thereabouts. No rule has been shown to support the first part of the argument. Mrs. Ankolvi's bare word that such a rule exists is not acceptable. Be that as it may, Asha Kalla received recognition as qualified to teach post graduation classes before Mrs. Ankolvi and it was in that capacity that she became entitled to a higher grade of pay. Mrs. Ankolvi concedes this though after a great deal of humming and hawing. The higher remuneration which Asha Kalla got was in her capacity as a Lecturer/Professor higher grade and not because she had been made Vice Principal.

42. Now come the group of charges pertaining to the alleged negligence of Vajubhai. Charge Nos. 9 to 11 can be taken together as they deal with inter-linked matters. The University Grants Commission is said to have given a grant of Rs. 67,500/-. The accusers go on repeating this figure though the total of the two instalments which the grant was paid comes to Rs. 65,000/- i.e. Rs. 40,000/- and Rs. 25,000/-. A condition to the grant was that the trust had to

contribute a sum of Rs. 12,500/- despite an undertaking given to that effect. So far as the sum of Rs. 65,500/- is concerned, the College did purchase library and laboratory equipment. A utilisation certificate was obtained from the Chartered Accountant and it is at Ex. Y-58. Some part of grant had to be refunded as the required expenditure on purchase of books had not been incurred. Vajubhai and Mr. Ankolvi blame each other for the failure to purchase and the issue resting on word against word, cannot be satisfactory resolved.

43. Charge No. 27 implies a design on the part of Vajubhai to cover up his frauds by a deliberate use of the emblem "Gandhi" Shikshan Bhawan" when taking receipts and vouchers. The trust ran a School and College which were two different entitles. The accounts of the two were separate Yet Vajubhai chose to mix them up by the above device and continued doing so, despite instructions to the contrary by an Officer on Special Duty of the Government of Maharashtra. The OSD's objection was recorded in his report dated 16-10-1978. Whatever printed stationery of the Bhawan was used after this date had the rubber stamp indicating whether it pertained to the School or College. This was done as an economy measure. Gandhi Shikshan Bhawan was a synonym for ICBE. Using the said name in the receipts and invoices was not therefore per se deceptive. Continuance of the old ambiguous practice is not proved. Its commencement cannot be condemned out of land. All said and done it was no more than a trifling error in the mode of maintenance of accounts. This cannot be magnified into a deliberate ruse to perpetrate and perpetuate frauds.

44. Vajubhai is accused of being negligent in the convening of meetings and submission of change reports. That the BG and BT did not meet in a regular periodicity is undeniable. But the members of the two boards were busy people. As the minutes of the two boards show it was rare for all the members to be in attendance. Waxing and waning of enthusiasm in the convening of the attendance at meetings of social organisations, is a very common phenomenon. This is more so when the elected persons are those connected with many institutions and have their own profession or businesses to attend to. The trust's BG and BT comprised people of this category. Their very engrossments must have acted as a dampener to Vajubhai in the matter of convening of meetings. Vajubhai certainly did not submit change reports to the CC though the membership of the BC and BT kept changing regularly. Neither did not maintain all the Registers required by the BPT Act and the Rules framed thereunder. To this extent he is guilty.

45. This brings me to a group of changes which fall under the category of misuse of the office and position of a trustee by Vajubhai, Charge No. 19 relates to the occupation of a quarte by Vajubhai and Leelabehn free of rent. This deprived the College of making it available to the Principal and thus enabling the trust not only to comply with the rules, but also earn an income reaching upto 252% of the salary payable to that functionary. Ex. 203 shows the BG passing a resolution on 12-8-1975 authorising rent free quarters in the College building to Leelabehn in

her capacity as a Rector. The resolution is said to be a fabrication. Its location in Ex. 203; the identity of persons proposing and recommending it; the disentitlement of the College to have a Rector and the Unsuitability of Leelabehn for the post are all cited as pointers to the resolution afore-mentioned being a concoction. While appraising charge Nos. 7 and 8, I have negated the accusation of the post being a creation to enable the couple to rob the trust. It was for the BG or the BT to decide whether the Rector or the Principal should occupy the quarter. The couple did occupy the quarter and were not paying rent for it. Not everyone on the BG and BT was beholden to the erring couple or ignorant of the properties. Until 1981 not a whisper questioning the occupation was raised. Whether the Principal would have occupied the quarter is not clear. Be that as it may, an error of judgment by the BG allowing the quarter to be occupied by Leelabehn cannot be converted into a venality ascribable to the lady and her spouse. If loss was caused to the trust, the blame has to be shared by all. It is not the accusers case that all of them i.e. members of the BG and BT, were personally corrupt or conniving at the occupation of the couple.

46. The events incorporated in Charge No. 29 triggered a series of events including the present litigation. It all began with a direction of Vajubhai to Mrs. Ankolvi not to initiate proceedings for admitting students to the course for the academic sessions 1981-82. The charge is restricted to a desire on the part of Vajubhai to transfer the College to the Vile Parle Kelavani Mondal (VPKM). This was to be done though the BG and BT had not even been informed of this. When taxed on the subject, Vajubhai far from being unnerved came out with the retort that he was not obliged to consult the boards-certainly not the trustees-as the proposed transfer, fell within the area of management which was an exclusive concern of his and the BG. Vajubhai further made it clear that he had decided to go ahead with the proposal. The papers relating to the proposed transfer were ready, having been prepared by a Solicitor to whom he had been introduced by Damu Zaveri. After the transfer of College, the FSI would be sold this to be done through a series of seemingly innocuous transactions which would reap him a rich harvest. Now the charge is restricted to a design to transfer the College to the VPKM. As always, this has not deterred the accusers from spreading a wider net at the stage of evidence by alleging that Vajubhai was hell bent on a transfer to any institution and had approached many, in case VPKM was found to be unwilling. Evidence to this effect will be ignored. The charge speaks of Vajubhai's reason for a transfer being the pretext of the College running in deficit. This also is not correct. There was a recurring deficit. Possibly it was on account of the not inconsiderable unreimbursable salaries/ honorariums that Vajubhai, Leelabehn and Bani Patel were trousering. These payments had the implied if not express approval of the BG and BT and they were finding it difficult to repair the deficit in the trust's finances. Therefore, the recurring deficit was no pretext. Whether getting rid of ubiquitous Director and Rector would have improved matters is a different thing. No one from amongst the two boards seems to have suggested this measure at the relevant stage. Coincidentally Bani Patel resigned and

pressed her resignation.

47. The above facts notwithstanding, Vajubhai had not been authorised to broach the subject much less represent to the VPKM as if the whole thing was virtually settled. The resolution of the BG on which reliance is placed on his behalf includes a reprimand to him for not making it clear that the talks he was engaged in were of an exploratory character. It is argued that there was nothing surreptitious and could not be, seeing that the accusers themselves were connected with the VPKM. The question is one of propriety and thus viewed Vajubhai should not have begun even exploratory talks without a specific resolution of the BG and BT if not the general body. The transfer of the College meant severing the trust of a vital limb. This was not a function of the management for the trust would lose ownership of the building and its movable stock. Apart from this even the BG had not authorised Vajubhai to go about as if the whole show was over. That precisely is how he went about in the matter. Mrs. Ankolvi was instructed not to give admissions for the next academic sessions. The tenor of letters written to VPKM had an air of finality about them. Whether this activity of Vajubhai would attract section 41-D will be considered separately.

48. Misuse of College premises for allegedly non permissible purposes has now to be considered. Permitting sale of Khadi and handloom through the Khadi and Village Commission and Sohan Prints would be an activity allied to basic education. Human beings cover up their nakedness with garments. Gandhiji's emphasis on khadi and other handloom products was equally if not more pronounced than that on basic education. True, Vajubhai had not obtained the permission of the boards to allow the College premises to be used for sale of khadi and handloom. But every allied diversion vis-a-vis education did not require the permission of the boards. Mohanbhai and his witnesses allege that the material exhibited for sale by Sohan Prints was costly stuff only within the reach of the opulent. Even so, handloom cloth does not cease to be that because a certain quantity of the same is only within the reach of rich. Shortly stated, allowing the use of the premises for vending khadi and other handloom material would not amount to misuse of authority or an illegality on the part of Vajubhai.

49. The user of the College for the purpose of the Nai Talim Sangh whatever be the extent of such user was on account of Vajubhai being elected to an all India post of the said Sangh. Assuming that the trust facilities like its building, staff, telephone and stationery were used for the purposes of the Sangh, it cannot be said that such user was illegal or unauthorised. The Sangh was vitally interested in basic education in fact, the institutional progenitor of the concept. The constitution of the trust permitted it to co-ordinate its activities with like minded bodies. This would be authority enough to justify the user of the trust premises for the purposes of the Sangh. And, it is not as if the user by the Sangh was to the detriment of the trust.

50. Allowing the College to be used for the filming of "Desh Premee" is used to cite as an excess committed by Vajubhai. Mrs. Ankolvi and Prof. Rai speak as if

the whole picture was filmed in the College with not only the film crew but also the students and outsiders doing nothing during the filming, but gawk at the spectacle. Vajubhai and his band of supporters say that a point near the compound of the College was used to enable climbing of a tree by the film's hero. If the user was as much as alleged by the accusers, the BG or BT's sanction may have been necessary. On the other hand, so small a user as that alleged by the accused, would be a triviality well within the jurisdiction of the Director. The burden lay upon the accusers and the highly coloured accounts given by Mrs. Ankolvi and her likes cannot be accepted. Someone connected with the film must be alive though Subhash Desai be dead and that person would have inspired greater confidence than that admissible to the witnesses examined. The allegation that the permitted shooting was of a film depicting sex and violence, remains just that an allegation. In fairness I must point out that an offer was made to screen the film for my viewing so that I could judge for myself. But if the sex and violence were so prominent feature of a film someone should have testified to that from amongst those examined. And a bare assertion would have sounded more credible if supplemented by details. The written argument speaks of the film's producer Manmohan Desai being well known for producing films depicting sex and violence. In the first place I do not know of any such trusim. The other side of the axiom is that sinners have their good deeds, as do saints their sins. Into which class "Desh Premee" fell had to be established by first hand evidence and not left to conjectures.

51. Installation of a telephone at his home and payment of the instrument-user bills by the trust in one more misconduct laid at Vajubhai's doors. There is no resolution recorded in the Minute Book of the BG and BT showing the granting of a residential phone facility at the expense of the trust to Vajubhai. The residence her spoken of is the private flat of Vajubhai at Tardeo. But the facility and at the cost of the trust was there right upto 1977. The telephone was in the name of the trust or its bulletin. Reliance is placed upon the Phone Directory of 1983 showing the phone to be in the name of Vajubhai. New in 1983 Vajubhai was not in the saddle. As from 1981 or thereabouts the trust was not paying the bills of the telephone at Vajubhai's residence. It is alleged that the phone was used by Vajubhai for his personal purposes including calls to his daughter in Canada. Vajubhai says that the calls were to canvass clientele for the trust's magazine. Accounts of the trust were audited every year. An Auditor's okay is of course not conclusive proof of propriety of an expense item. Even so, the general body, BG and BT were made acquainted with the accounts. It cannot be assumed that expenditure lavish and unwarranted escaped all eyes upto 1981 and these inclusive of Mohanbhai and Chotabhai. Belated accusations based on circumstances that can be read either way even if plausible, cannot be accepted.

52. Damu and Maroti were two Peons of the College were allegedly used by Vajubhai as personal servants. To soothen them the trust was made to foot the exorbitant increments and gifts given to the Peons by Vajubhai. As phrased the charge implies that (i) Damu and Maroti though College Peons were utilised for

domestic work by Vajubhai and (ii) they were granted unwarranted increments and gifts at the expense of the trust. Never once to be deterred by specificity. Mohanbhai's witnesses have gone beyond the confines and the written arguments submitted on his behalf have ignored the limitation in toto. The strayings have to be discarded. This discussion will be limited to appraisal of the charge as indicated above. Mrs. Ankolvi, Rai and Shivaji speak of Damu and Maroti never being available for college work as they were always busy with the chores of Vajubhai's home. The College had three peons. If two were used for Vajubhai's home, the menial work of the College would have suffered. Mrs. Ankolvi says that it did. One of Rai's grievances is that he was made to do menial work by Vajubhai. A part of the reason was in the College menials being used as domestics by Vajubhai. The normal reaction to this would be a protest by Rai. Inside himself, he may have been incandescent. But there was no protest in writing nor an approach to the members of the Boards. Not that the members of the boards were easily accessible or very vigilant until 1981 Vajubhai had a free hand to do what he wished. I also understand that people in subordinate positions cannot be vocal with their job grievances. Nonetheless a belated accusation is always suspect. Next, Mrs. Ankolvi and Rai have their strong prejudice requiring caution in the matter of acceptance of their testimony. Shivaji it would appear suffered at the hands of Vajubhai. This place him in the same capacity as the other foes of Vajubhai.

53. Mrs. Ankolvi has placed through the pay sheets before coming out with the pronouncement that increments granted to Damu and Maroti were getting Government reimbursed salaries. If there was no warrant for the increments, the Government would have objected. As to costly gifts the impression sought to be created is that the donor though given out to be Vajubhai or his wife, was in reality the trust or the staff of the College forced to contribute money for purchase of the presents. Giving credit where it is due Mohanbhai, Mrs. Ankolvi and Rai pur admissions into the mouths of Vajubhai Leelabehn or the donees. This device-of-employed and always fruitlessly-carries no conviction. The donor of donees would not confide in third persons of what is indiscreet behaviour. Giving and receiving costly presents would arouse talk and the principals to the transaction would hardly provide material for that purpose.

54. A strange accusation levelled against Vajubhai is that G.B. Shah and Chhapekar were induced by him to become members of the BG so that they would attend meetings, collect attendance fees and thereby cause a financial loss to the trust. The evidence and arguments so astray and to a very wide extent. The attempt now is to show that these tried and true "yes-men" of Vajubhai were not elected to the BG. The persons elected were Prof. Aloo Dastur and Prof. Kothare. Scenting trouble, Vajubhai quietly changed the status of the elected governors to that of special invitees. This was to ensure support for himself and to reward the inductees, by paying them attendance fees. This is not a minor deviation from the charge which is at Serial No. 44. An Act of wilfulness resulting in loss to the trust is sought to be converted into criminal breach of trust

accompanied by falsification of records. The charge will be considered as it stands and not with the detours undertaking at the later stage. It was for the general body to elect the BG every year. The governors were not appointees or nominees of Vajubhai. If the general body in its wisdom decided to appoint Dr. Shah and Mr. Chhapekar to the BG, Vajubhai cannot be blamed therefore. The attendance fees paid to them covered no more than the fare and other admissible charges. It is not Vajubhai's fault that the general body chose outsiders to whom an attendance fee was required to be paid when this could have been avoided by the choice of locals like Professors Dastur and Kothare. And the position does not change even if it is assumed that Shah and Chhapekar were puppets of Vajubhai or that the latter swayed their selection or that he could have advised the general body to select locals rather than outsiders so as to lessen the burden on the trust.

55. The last item in this series of charges is that Vajubhai and his wife have caused a loss of near about Rs. 35,000/- by occupying the quarter in the College instead of making the same available for occupation by the Principal. Had the right thing been done, the trust would have received a Government subvention being part of a non-salary item. The quarter's occupation by Vajubhai and Leelabehn began in about 1975. University Rules required that the Principal stay in the College campus. For affiliation to the Bombay University and continuance thereof, Vajubhai had been giving written declarations. Had the College quarter been made available to the Principal, the trust would have become eligible to grant reaching upto 25% of the salary of Mohanbhai and Mrs. Ankolvi. That the couple was in occupation of a single-room apartment in the building could not have been unknown to the BG or BT. The letter included Mohanbhai and/or Chotabhai. Both of them are connected with many educational institution. As such, they could not have been unaware of the loss being caused to the trust by the deprivation of a quarter in the campus to the Principal. Until the break of 1981, none of the trustees including the accusers took up the issue. All this is on the basis that the trust resolution relied upon by the accused permitting rent free occupation of the quarter by the Rector is a fabrication. The long inaction also works the other way i.e. to furnish a refutation to the charge of fabrication. Thus the occupation of the quarter by Leelabehn and her husband was in pursuance of a resolution of the BT and BG. The loss if that occasioned to the trust is thus the common liability of all. It is said that persons who participated in the passing of the resolution were not members of the BG or even the general body. In 1981 it would be difficult to trace out the membership cards of receipts. Long occupation and that unquestioned by persons, aware and vigilant, leads to an inference in favour of the validity of the resolution. The authorities of the trust had to decide their priorities and they seem to have preferred the allotment of the quarter to the Rector rather than the Principal. If this occasioned a loss to the trust, the accusers should said so at the very inception. The very fact that they did not, means that the quarters were not meant for the Principal. The base having been demolished, the further question of a loss to the trust and the quantum thereof

need not detain us.

56. Charge No. 56 is to the effect that Vajubhai and Leelabehn have destroyed and/or secreted a large number of documents belonging to the trust e.g. attendance registers of the BG and the general body and counterfoils of donation receipts etc. This, it is alleged, has occasioned a loss to the trust. The circumstantial evidence is that the College was inexplicably closed from 5-4-1982 to 10-4-1982 a feat accomplished by Vajubhai and Leelabehn through their puppet Mrs. Asha Kalla, the in charge Principal the delay in the production of records the accused were directed to produce and the internal evidence of fabrication to be found in the documents produced. The inexplicability of the closure should have been got explained by examining Asha Kalla. The other circumstances are effectively answered by the argument that the accused would have acted more thoroughly instead of leaving tell-tale traces. Now of course it can also be argued that a certain artlessness was employed to lend veracity to the whole affair ! These and like conjectures can be argued endless. The better inference is that the missing documents did not exist or were lost, care not having been taken to preserve them because of their insignificance.

57. Mrs. Ankolvi gives a long list of documents she claims once existed and later disappeared. After the removal of her suspension, she resumed and discovered the loss. Significantly, she does not appear to have complained of the missing papers to the new management. With her pronounced hostility towards the accused, it would be necessary to seek corroboration. Mana Shikhadar claims to have witnessed tearing of papers and setting fire to the torn pieces by the College Peons on directions given by Vajubhai and Leelabehn. This, according to the witness, took place in March or April 1982. That witness should recall such happenings and yet make no complaint against the by now discharged Vajubhai and his wife seems improbable. The accused have given a long chart in their written arguments to explain their version of the so called missing documents. This chart is at least more definitive than the glib assertions of Mrs. Ankolvi and Ms. Shikadhar. This charge also fails.

58. Charge Nos. 58 to 63 relate to the alleged falsification of trust records by Vajubhai. Charges 58 and 59 relate to certain resolutions in Ex. 203 which is the minute book of the BG. These speak of the Governors appointing Vajubhai as a Director at a salary of Rs. 1500/-. P.M., the payment of a salary deemed reasonable for Leelabehn to work as a Rector and the allotment of a rent free quarter in the College campus to her. Much time and effort has been spent by Mrs. Inamdar on trying to establish the charges by what he describes as clenching circumstantial evidence. This includes the location of the resolutions on pages other than the ones normally used, the absence of signatures, the delay in the production of records by the accused and the pressure upon them i.e. the accused to dislodge the allegations levelled against them. Now the minutes book are not maintained with that degree of formality which one expects from a properly functioning institution. But assuming the worst viz., that the resolutions

are later interpolations, it would not lead to the conclusions that this was to cover up something sinister. Vajubhai was functioning as a Director from the very beginning. He was drawing a salary in that capacity. This was reflected in the journal "Quest in Education" and numerous other documents. Similarly Leelabehn was designated a Rector and drawing remuneration as such. Her occupation of a room in the building was visible to all and sundry. That no rent was being paid by her was clear from the yearly balance sheets. Till 1981 no member of either board questioned the above functioning, appropriation of salaries and occupation of the quarter. Therefore, the subsequent writings (assuming this to be so) were no mere than regularising of arrangements which had the implied sanction of the BG.

59. Charge No. 60 is in relation to the charges in the status of Professors Aloo Dastur and Kothare in the BG. They were members of the said board. This status was changed into special invites by Vajubhai while writing the minutes of the meetings held on 4-12-1980, 12-2-1981, 23-2-1981, 6-3-1981 and 16-3-1981. Dr. G.B. Shah and Chhapekar were "yes-men" of Vajubhai. They would be with him through thick and thin. The minutes were thus tampered to show the "yes men" as members and the members as "special invites". While discussing charge No. 44 I have referred to the phrasing of that charge implying that Dr. Shah and Chhapekar were inducted into the BG by Vajubhai with the object of paying them attendance fees and thus causing a loss to the trust. The implication of this charge i.e. the one under consideration, is just the reverse. The minutes used to be written as and when Vajubhai had the time. He had taken upon himself more than what one person could handle. This possibly explains the alternations and amendments. That apart, it has not been shown how changing the composition of the BG for 1980-81 in the minute book Ex. 203 could benefit Vajubhai.

60. Charge No. 61 relates to tamperings in the Register of Members at Ex. 200. Vajubhai's explanation is that the original membership register was lost and Ex. 200 is a reconstruction based on his recollections. With the aid of Ex. 203 it was not difficult for the accusers to point out incongruities in Ex. 200. But these very incongruities negative the possibility of Ex. 200 being a consciously forged document. If Vajubhai wanted to fabricate he would have prepared a new minutes book of the BG or membership register which was consistent with the entries in Ex. 203. Vajubhai's version in regard to Ex. 200 is accepted and he is absolved of the charge of concocting the impugned entries therein.

61. The last two charges can be taken together. The gravamen of the accusation is a fraudulent intent inspiring changes in the minute books of the BG and general body. The so-called fraud is not made out. It is not necessary to go into details in this regard.

62. To sum up, of the 63 charges, only some are proved and that not necessarily in the form levelled. First, there is the non-submission of change reports vis-a-vis the BG and BT. While the latter body was more or less unchanging, the former changed every year. This was so despite Vajubhai with or without

Leelabehn always being there. Section 22 of the BPT Act required the change to be intimated to the CC by the trustee. The excuse that the BG was not a body of trustees carries no conviction. Since the coming into effect of the legislative change brought about by Maharashtra Act 20 of 1971, the BG and every member thereof was a manager within the meaning of section 2(8) of the above Act. Vajubhai's all pervasiveness is undeniable. He was on the BG, a Director, Editor of the College magazine, custodian of the funds and what not. The minute books of the BG, BT and general body were written by him. Accounts of the trust and the College were written under his supervision. Receipts of incomings were handled by him. Every penny spent by the trust or College was spent by him. Therefore, it was for him to intimate charges u/s 22. The omission or failure is ascribable to him. Second, is the failure to maintain all the register required to be maintained by the Rules, Third, is the failure to obtain the sanction of the CC for loans borrowed from Vajubhai and Leelabehn and later Sujata as required by section 36-A(3) of the BPT Act. Fourth, is the manner in which the Colleges was sought to be given away to VPKM. That Vajubhai exceeds his brief in this affair is clear from the rebuke administered to him in not making it clear that his efforts in this direction were of an exploratory character. Fifth was the receipt of Rs. 7/- as the penalty from Dr. Bhawe for loss of a library book by him and its transmission to the Sarvodaya Patra. No accounts of the Sarvodaya Patra were maintained until 1981. Whatever the objects of the Patra, Vajubhai was using it as property wholly within his domain. Recompense for the loss of a library book could not go to the Patra which was to alleviate the distress of the poor. That no accounts were kept of the manner in which the Patra funds were spent is also a lapse attributable to Vajubhai. Whether these proved lapses would attract section 41-D is what I now turn to.

63. Section 41-D invests the CC with the power of suspension, removal or dismissal of any trustees of a public trust, where the said trustee amongst other things ---

- (a) makes persistent default in the submission of report, account or return;
- (b) ---
- (c) continuously neglects his duty or commits any malfeasance or misfeasance, or breach of trust in respect of the trust;
- (d) deals improperly with the properties of the trust;
- (e) accepts any position vis-a-vis the trust which is inconsistent with his position as a trustee.

64. Mr. Inamdar, representing the accusers, relies on definitions of some of these expressions appearing in Black's Law Dictionary and Underhill's Law and Practice of Trustees. These definitions are all very well as a part of lexicography. The principle underlying section 41-D is different than that sought to be canvassed on the strength of the definitions afore-mentioned. The power to

suspend, remove or dismiss is itself one which casts a heavy responsibility on the wielder. It may be argued and rightly so, that whatever the consequences to an individual, the interests of the trust are paramount. To see that the trust is not put to jeopardy, the slightest taint in the functioning of the trustee has to merit his ouster. But it is not every lapse that can incur this serious penalty. The different clauses of section 41-D(1) lay emphasis on this aspect of the matter. An analysis of the clauses make clear that the emphasis is on persistent default, continuous neglect, impropriety vis-a-vis the property of the trust, moral turpitude and taking up a hostile position vis-a-vis the trust. Mr. Setalvad has pressed into service a few decided cases in support of the contention that the charges proved against accused do not attract section 41-D. There are *Azizor Rahman Chaudhury Vs. Ahidennessa Chaudhurani and Others*, , *Balmakund Vs. Nanak Chand and Others*, and AIR 1947 22 (Oudh) . The principle deducible from these decisions is best summarised in the headnote to the first case which reads as follows:---

"In the case of removal of a trustee the Court should be guided by considerations of the welfare of the trust estate, and before a removal of the trustee is directed, a clear necessity for the intervention of the Court to save the trust property must be established. It is not every mismanagement or neglect of duty which will induce the Court to remove a trustee. There must be such gross negligence or misconduct as to evidence a want either of capacity or of fidelity which is calculated to put the trust in jeopardy. Failure in the discharge of duty on account of mistake or misunderstanding is not a ground for removal unless such failure shows want of capacity to manage the trust. A trustee may be removed if he fraudulently misapplies the revenues of the trust property and grossly misbehaves himself in the execution of the trust for example, if he renews a lease for his personal benefit, purchase the trust property, concurs in a breach of trust, asserts a hostile title with knowledge that it was unfounded, fails to keep accounts, wrongfully alienates trust property, obstructs the management and wanted only to waste the estate."

In the Oudh case (supra) wherein *Azizor Rehman* was cited with approval, it has been emphasised that removal of trustees can only be where the lapses proved against trustees were actuated by dishonest and corrupt motives or showed an utter lack of competence to administer the trust property. To quote from this authority ---

"Errors of judgment or miscarriage of discretion have to be disregarded unless they be sufficiently chronic. One is apt occasionally to magnify such shortcomings into what are sometimes characterised as breaches of duty, misconduct, misfeasance or gross neglect. But if they are not the result of want of fidelity they cannot be made the basis of interference."

65. It can be urged that Clause (c) of section 41-D(1) treats any act of malfeasance or misfeasance or breach of trust in respect of the trust as sufficient to warrant suspension, removal and dismissal. This contention would have an

element of plausibility, but no more. The words would take colour from the context. Thus viewed any act of misfeasance, malfeasance or breach of trust would not cover technical deviations. The acts would have to be tainted in the sense contemplated by the authorities mentioned above to merit the penalty prescribed by section 41-D(1). It is in this background that the proved charges have to be appraised.

66. Failure to file charge resorts would be contravention of the duty prescribed by section 22 of the BPT Act. Vajubhai did not intimate a single change in the composition of the BG. For all practical purposes he was the Managing Trustee, In Chhotey Lal and others v. State of Uttar Pradesh ILR 1960 All. 539, the words "persistent default" were construed as something more than a casual and inadvertent failure to perform one's duty. But the lapse in the instant case cannot be said to be actuated by the vitiating factors of dishonesty or utter lack of competence. The BT was reduced to a decorative body of donors who for a decade were content to be in the imposing but empty husk of trusteeship conferred on them. The BG with Vajubhai always in it and occupying the centre-stage, was happy to leave the tiresome tasks to him. Vajubhai with his self imposed weariness may have forgotten the requirements of section 22. The default was not an act of defiance knowingly repeated year after year.

67. Failure to maintain different registered is the second of the proved lapses. The registers maintained by Vajubhai are the minutes of the meetings of the BG, BT and the general body. Ex. 200 is the reconstructed register of members. True, the deadstock register is missing and equally true it is that the books could have been maintained with greater precision. Vajubhai did not believe in decentralisation and the others in the trust were content to believe that things were in order. Concentration of authority to the extent of even dispensing with a scribe for writing the minutes explains the errors and omissions. Nothing sinister can be spelt out from the same. And this conclusion is fortified by the failure of the accusers to prove a single major charge.

68. The third charge established against Vajubhai is to obtain the sanction of the CC to the loans advanced by him and his wife to the trust. Later the sum due in this account was shown as a credit in favour of their daughter Sujata. Section 36-A(3) of the BPTA which prescribes the CC's previous sanction as a condition precedent to such borrowings may not have been attracted when the loans were initially advanced. This is because section 36-A came by way of Maharashtra Act 20 of 1971. Nonetheless, the conversion to Sujata's favour was a fresh transaction attracting sub-section (3). The infraction is in way lessened by the resolution of the BT authorising borrowings. But what does the transaction establish ? Borrowings of monies at a reasonable rate of interest cannot be said to be an act fraudulent or dishonest. Indeed Sujata has not been paid a penny as interest. Therefore even the violation of sub-section (3) would not attract the penalty.

69. The fourth charge established against Vajubhai is the proposed transfer of

the trust's College to the VPKM. Now it is true that these talks were exploratory in nature. But the tenor of the letters addressed by Vajubhai in this behalf gave the impression of the transfer having been finalised. This was exceeding his brief and the hitherto slumbering BG or BT was moved to chide Vajubhai for not making it clear that his moves were exploratory in nature. The peremptoriness shown by Vajubhai would amount to an attempt to take a position inconsistent with his position as a trustee. That would not attract sub-section (e) and there is no other sub-section that is applicable.

70. The last of proved charges relates to transfer of Rs. 7/- received from Dr. Bhave being the price of a library book lost by him to the Sarvodaya Patra. The patra was a fund to aid the poor. No accounts of the said Patra were maintained till 1981. The initiation that year was to avert an attack on this score by the accusers who had moved the CC, Transfer of Rs. 7/- to the Patra was certainly illegal for what belonged to the College could not go to a discretionary fund created by Vajubhai. This would not constitute an act fraudulent or dishonest. The maximum that could be said against Vajubhai would be that he was arbitrary and lacked judgment in benefiting a fund of his at the expense of the College or trust. The Patra existed and whatever the arbitrariness in the collection and disbursement thereof, it cannot be presumed that the same went into the private coffers of Vajubhai.

71. To sum up, the proved charges numbering five only are not such as to merit the penalty solicited by the accusers. Writ petition No. 450 of 1989 will therefore fail.

72. The cross petition of Vajubhai and Sonalbehn is aimed against paras 2 and 3 of the operative part of the CC's order. Para 2 directs the Interim Board of Management and Administration constituted by an order dated 2-4-1982 in Writ Petition No. 630 of 1982 as varied from time to time to hand over the management and administration to the BG and BT. Para 3 directs the two boards to take note of the irregularities brought to light and rectify the same. Petitioners (Vajubhai and Sonalbehn so referred in the discussion to this petition) impugn the directions on two counts viz. (1) that it goes against the final decision dated 30-7-1986 in Writ Petition No. 630 of 1982 and (2) that it goes contrary to the constitution of the trust which vested the management of the affairs exclusively in the BG. In fact it went further by excluding the BT from participating in the management.

73. Petitioners point to that part of order dated 30-7-1986 which enjoins upon the CC to pass further orders in relation to the management of the trust if the enquiry culminates in an order against petitioners. Mr. Setalvad submits that the CC having exonerated the petitioners of the charges levelled against them could not flout the High Court's order by installing the BT on part with the BG in the management seat. As to the decree passed in S.C. Suit No. 3479 of 1984, petitioners were not parties thereto and were therefore not bound by its results. They in fact were prevented from doing anything since 2-4-1982 by virtue of an

interim injunction passed in S.C. Suit No. 2002 of 1982. Neither suit had been instituted with the permission of the CC as required by sections 50 and 51 of the BPTA. Therefore the orders passed therein were void as being without jurisdiction. If charge was restored to the BG who included petitioners when the same was supplanted, immediate steps would be taken to get the adverse orders in the two suits vacated. The final order passed in Writ Petition No. 630 of 1982 cannot override the judgment delivered on 1-7-1989 in suit No. 3479 of 1984. Of course, the order dated 12-4-1982 in suit No. 2002 of 1982 would have to give way to the subsequent order dated 30-7-1986 in Writ Petition No. 630 of 1982. That petitioners were not parties to the suit of 1984 is neither here nor there, The trust's failure to defend the suit would not render the decision a nullity in the eyes of law. Neither would the absence of sanction vide section 50 and 51 of the BPTA. If the two sections apply the absence of the CC's sanction would render the verdicts voidable. Petitioners want a restoration of the erstwhile BG though undertaking to move the Civil Court for vacating the adverse and effective orders against them. Respect for legality prescribes the reverse course viz. withholding the restoration of the ancient regime until the decree in the 1984 suit holds the field.

74. The verdict in the 1984 suit quashes all changes brought about by the 1976 amendments to the constitution and admission of the certain persons to the membership of the trust. Going further it directs the CC to scrutinise and correct the register of membership. This being the wide scope of the order can it be ignored because of the final order passed in Writ Petition No. 630 of the 1982 ? This cause of action in the 1984 suit was separate and the decree passed therein has to be reconciled with the order passed in writ petition No. 630 of 1982. The proper course would be to let the status-quo prevail until the rectification of the membership register is complete. In case the CC's scrutiny is in favour of petitioners, they will be at liberty to apply for a restoration of the management to the BG who were substituted by the interim Board. Of course, this does not preclude petitioners from questioning the decree in the 1984 suit-assuming that the law permits them to do so.

75. The other contention advanced against the order of the CC is easily answered. If the constitution did not permit the trustees to participate in the management of the trust's affairs, the basic question as to the composition of the trust's membership being in dispute, it is not possible to know whether all those who were in the BG were entitled to a place therein. Until that question is resolved it would be best to leave matters in the hands of interim Board.

76. The CC has directed the interim Board to hand over the management to the BC and BT and these boards are enjoined to rectify the irregularities pointed out in his order. The proper course would be to continue the Interim Board until the rectification of the register of membership and the disposal of Suit No. 2002 of 1982. After all neither party has any grievance against the performance of its task by this board. Mr. Inamdar tried to establish that even the so called

irregularities established against Vajubhai sufficed to exclude him from being entrusted with the management at least to the exclusion of the BT. I need not say much on this contention except to point to the findings on the different charges.

77. One last question remains and that is about costs. The CC's Counsel has pressed for a direction that the costs of the CC should be made payable from out of the trust funds. Mr. Patil learned Counsel for the CC has put in a written submission claiming costs under two heads:

(i) Rs. 9,500/- representing fee payable to Counsel and

(ii) Rs. 1350/- for transport of the voluminous record brought to the Court on the hearings in a vehicle from the CC's office.

The hearing has been a long and difficult one. Complex issues of fact and law, necessitating a great deal of concentrated attention, have had to be comprehended. Counsel for the parties have put in a great deal of labour and learning into the matter. Having regard to these features, the proper course will be to leave parties including the CC to bear their own costs. Hence the order.

ORDER

78. The Charity Commissioner's order declining to remove or dismiss Vajubhai, Leelabehn and Sonalbehn u/s 41-D of the BPTA, is affirmed. His direction that the Interim Board do hand over the management to the BG and BT is stayed is until disposal of the scrutiny of membership register of the trust and the disposal of Suit No. 2002 of 1982. The Interim Board's management will and as per the result of the aforesaid proceedings.

79. Costs in both the petitions, as incurred.

80. Writ Petition No. 450 of 1989 fails. The rule issued therein is discharged. Rule issued in Writ Petition No. 441 of 1989 is made partially absolute in above terms.