PETITIONER:
SHIVAJIRAO NILANGEKAR PATIL

Vs.

RESPONDENT:
DR. MAHESH MADHAV GOSAVI & ORS. AND VICE VERSA

DATE OF JUDGMENT09/12/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
PATHAK, R.S.
NATRAJAN, S. (J)

CITATION:
1987 AIR 294 1987 SCR (1) 458
1987 SCC (1) 227 JT 1986 1071
1986 SCALE (2)977

ACT:
Evidence-- Admission of additional ' evidence, principle of-Admissibility of evidence as to "similar fact "--Affidavits evidence--Value of..
Code of Civil Procedure, Order XIX Rule 3 Mala fides--Allegation of mala fides against men in power--Courts' duty to view such allegations vis-avis purity in public life, explained.
Post-graduate medical examination in Maharashtra--Allegation of manipulation in the grade sheets of M.D. (Gynae) examination to clear the candidate, a daughter of the Chief Minister of Maharashtra--Adverse remarks against the Chief Minister, whether justified as a finding off act or as a comment based on no evidence--Judicial pronouncements and duty of the Judges.

HEADNOTE:
Dr. Mahesh Madhay Gosavi appellant in CA 4453/86 and respondent in CA 4452/86 was a failed candidate at the M.D. examination in the speciality of Gynaecology and Obstetrics held in the year 1985. He filed a writ petition under Article 226 of the Constitution of India in the High Court of Bombay challenging the results of the M.D. examination held in November' 85. He alleged that favouritism was shown by one Dr. Rawal who went to the extent of tampering with grade sheets of the examinees so as to clear unsuccessful candidates and in particular Smt. Chandrakala Patil daughter of the Chief Minister of Maharashtra appellant in CA 4452/86 and respondent in cross appeal CA 4453/86. In support of the writ petition alleging how the malpractice took place, he filed an affidavit (hearsay evidence) of one Dr. Manikant Mishra, who is supposed to have heard certain talks that took place between Dr. Rawal and Smt. Chandrakala Patil at Dr. Rawals' Chambers and that what the deponent heard came to be proved by the M.D. (Gynae) results in which one Dr. Smita Thakkar and Smt. Chandrakala Patil who could not clear the said examination thrice were shown to have passed. It was alleged that the tampering of the grade sheets were done by Dr. Rawal at the behest of the appellant in C.A. 4452/86. The said allegations were refuted by the appellant Shivaji

Rao Patil, Smt. Chandrakala Patil, his daughter, Dr. Rawal and another Dr. Shah on oath by filing their affidavits. The 459
respondent, though he had verified his petition, did not disclose the so called reliable source of information derived by him. (about the allegations made against the appellant & others.

The learned Single Judge held: (i) that the evidence of Respondent Madhav Gosavi as well as of Dr. Mishra were unsatisfactory and unreliable: (ii) that it was impossible to place any reliance on the evidence of Dr. Mishra as it was not known how he came to contact Dr. Gosavi or why he did not choose to file affidavit till 28.2.1986 when the appellant Patil had already filed his affidavit on 26.1.86; (iii) that the allegation and the averments made in paragraph 14 of the writ petition were wholly unsatisfactory and insufficient because the Respondent--petitioner had not disclosed from whom he derived them; (iv) that there was tampering with grade sheets of Respondents 4 to 15 by Dr. Rawal and (v) that in the facts and circumstances of this it could reasonably be inferred that the alteration was done at the behest of the appellant in CA 4452/86 and her daughter Chandrakala. This was because Dr. Rawal was an experienced examiner, not young or immature and a person like him would not proceed to do a criminal act and tamper with the record of the examination on his own with a view merely to please the people in power. The risk involved in what Dr. Rawal had done was so enormous that it was difficult to conceive that he did it on his own. Accordingly he allowed the writ petition, passed some structures against Dr. Rawal and the appellant in CA 4452/86 and gave certain directions about examination of 12 other candidates whose results were also affected by the conduct of Dr. Rawal.

An application made before the Judge for adducing certain additional evidence was rejected. After the judgment the Vice Chancellor and the Chief Minister resigned from their posts.

Three appeals, No. 214/86 by Dr. Rawal No. 215/86 by Dr. Chaodrakala Patil and No. 216/86 by the appellant Shivaji Rao Patil, were heard and disposed of by the Division Bench consisting of the Acting Chief Justice Kania and Shah J. of the Bombay High Court on 16th June, 1986. So far as appeal No. 216 of 1986 is concerned, according to the Division Bench; (i) there was no direct evidence that the alterations in the grades of Chandrakala Patil were made at the instance of the appellant; (ii) the reasonings of the trial Judge in coming to the conclusion that respondents No. 3 and 4 the original petition were responsible for getting Dr. Rawal to alter the grades was based on certain contingencies and were too tenuous for the conclusion based on such reasoning to amount to a positive finding; (iii) Merely because respondent No. 3 to the original petition held a position of great power and would have been happy to see that his daughter had passed the M.D. examination, it was difficult to conclude, as a finding of fact that he must have
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influenced Dr. Rawal to alter the grades of his daughter; (iv) it was true that a seasoned examiner like Dr. Rawal would not have taken the risk involved in altering the grades except under a great pressure or pursuation, but it cannot be ruled out the possibility of various motives which might have induced Dr. Rawal to take the risk of altering the grades; (v) however in all probability Dr. Rawal would not have acted unless he had made him assured that the appellant Shivaji Rao Patil was behind the person who pur-

suaded him 'to alter the grades; (vi) that when allegation of this type is made against anyone holding a position of prestige and power, it was necessary that the evidence should be closely examined before holding such allegation well founded. Therefore the Bench observed that the remarks made against the appellant. Nilangekar Patil cannot be supported as conclusions arrived at against him but these can be regarded as adverse comments and not finding of fact and such comments were not wholly unjustified in the facts of this case. However, the Division Bench refused to entertain an application to introduce additional evidence as part of the claim of public interest litigation. Hence the appeal No. CA 4452/86 by Nilangekar Patii against the adverse comments were allowed to remain and there was a cross appeal 4453/86 by Dr; Madhav Gosavi against refusal to accept additional evidence.

Dismissing the appeals by special leave, the Court,

HELD: 1.1 The basic principle of admission of additional evidence is that the person seeking the admission of additional evidence should be able to establish that with the best efforts such additional evidence could not have been adduced at the first instance. Secondly the party affected by the admission of additional evidence should have an opportunity to rebut such additional evidence. Thirdly that additional evidence was relevant for the determination of the issue. [474 G]

Here, the additional evidence sought to be introduced mainly consist of alleged instances when the appellant on previous occassions had in respect of some criminal proceedings and other matters pending used his influence to drop those proceedings. Applying the principle as to admission of "similar fact evidence" it must be held that the allegations of the alleged conduct of the appellant in similar cases would not be a safe basis upon which to admit additional evidence in this case having regard to the issues involved and nature of the issues involved in these matters and at the stage when these were sought to be introduced. [474 H, 476 E]

Mood Music Publishing Co. Ltd. v. De Wolfe Ltd., [1976] 1 All E.R. 763 @ 766, quoted with approval.

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2. The mere fact that several infirmities were noticed in the affidavit of Dr. Mishra upon which the original petitioner Dr. Gosavi based his own petition could not lead to the argument that the entertainment of the petition itself was wrong. The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumed the character of public interest litigation and such an inquiry cannot be avoided if it is necessary and essential for the administration of justice. [477F, 477G--478A]

3.1 It is true that exercise of the power under Article 136 of the Constitution is discretionary. There is no question in this case of giving any clean chit to the appellant in the first appeal. It leaves a great deal of suspicion that tampering was done to please Shri Patil or at his

behest. It is true that there is no direct evidence. It is also true that there is no evidence to link him up with tampering. Tampering is established. The relationship is established. The reluctance to face a public enquiry is also apparent. Apparently Shri Patii, though holding a public office does not believe that "ceaser's wife must be above suspicion". The erstwhile Chief Minister in respect of his conduct did not wish or invite an enquiry to be conducted by a body nominated by the Chief Justice of the High Court. The facts disclose a sorry state of affairs. Attempt was made to pass the, daughter of the erstwhile chief Minister who had failed thrice before by tampering the record. The person who did it was an employee of the Corporation. It speaks of a sorry state of affairs and though there is no distinction between comment and a finding and there is no legal basis for such a comment. [484A- D]

3.2 The court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in this country along with or even before cleaning the physical atmosphere. The pollution in the values and standards is an equally grave menace as the pollution of the environment. Where such situations cry out the Courts should not and cannot remain mute and dumb. [484 E]

3.3 Where allegations of mala fide were made, the Court must be cautious. It is true that allegation of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased
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in recent times. In this task which is cast on the courts, it will be conducive to have disposal and consideration of them if those against whom allegations are made came forward to place before the court either the denials or their version of the matter so that the courts might be in a position to judge whether the onus that lay upon those who make allegations of mala fides on the part of the authorities had been discharged in proving it. It is true that the basis of the allegations being the affidavit of Dr. Mishra was considered to be thoroughly unreliable. In this case there was specific and categorical denial by the erstwhile Chief Minister that tampering was done at his behest. Therefore, while the court should be conscious to deal with the allegations of mala fide or cast aspirations on holders of high office and power, the court cannot ignore the probabilities arising from proven circumstances. [478 B, F--G]

C.S. Rawjee & Ors. v. Andhra Pradesh State Road Transport Corporation, [1964] 2 SCR 330, referred to.

3.4 Where evidence was adduced by affidavits, such affidavits might be properly verified either on knowledge or from sources. Here it is true that undoubtedly the affidavit and the petition were defective, but the court has taken cognizance of the matter and certain inferences followed from the inherent nature of facts apparent from the facts brought before the court. [479A. D]

The Barium Chemicals Ltd. & Anr. v. The Company Law Board & Ors., [1966] Supp. SCR 311; Padmabati Dasi v. Rasik Lal Dhar, ILR XXXVII Calcutta 259; The State of Bombay v. Purushottam Jog Naik, [1952] SCR 674; E.P. Royappa v. State of Tamil Nadu & Anr. [1974] 2 SCR 348; Tara Chand Khatri v. Municipal Corporation of Delhi & Ors., [1977] 2 SCR 198; and Sukhvinder Pal Bipan Kumar v. State of Punjab & Ors., [1982] 2 SCR 31; Seth Gulabchand v. Seth Kudilal & Ors., [1966] 3 SCR 623 at 629; Jarat Kumari Dassi v. Bissesur, ILR 39 Cal. 245:16 C.W.N. 265; Raja Singh v. Chaichoo Singh, AIR 1940 Patna 281 at 203, referred to.

The State of Uttar Pradesh v. Mohammad Naim, [1964] 2 SCR 363. Vineet Kumar v. Mangal Sain Wadhera, AIR 1985SC817; The Bank of lndia & Ors., v. Jamesetji A.H. Chiney and Messrs. Chinoy and Co., AIR 1950 PC 90; Sri Harasingh Charan Mohantv v. Sh. Surendra Mohanty, [1974] 3 SCC 680; Niranjan Patnaik v. Shashibhushan Kar and Anr. [1985] 2 SCC 569, distinguished.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4452-53 of 1986
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From the Judgment and Order dated 16.6.1986 of the Bombay High Court in Appeal No. 216 of 1986.

D.R. Dhanuka, V.M Tarkunde, and Dr. L.M. Singhvi, Pramod Swarup, Milind Sathe, P.N. Gupta, P.C. Srivastava, U.S. Prasad, A.M. Singhvi, C. Mughopadhaya, Raian Karanjawala, Mrs. Manik Karanjawala, Hardeep S. Anand, Ejaz Moqbool, S. Radhakrishn anand Surya Kant for the appearing parties.
The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. These two special leave petitions arise out of the decision of the Bombay High Court in the appeal No. 216 of 1986. Leave as asked for is granted in both and appeals arising therefrom are disposed of by this judgment.

The first appeal was filed by the appellant Shivajirao Nilangekar Patil who was at the. relevant time the Chief Minister of the State Maharashtra and the second one was filed by Dr. Mahesh Madhav Gosavi, the applicant in the original writ petition out of which appeal ultimately came to the Division Bench of the Bombay High Court resulting in Civil Appeal No. 216 of 1986.

The controversy in this case centers round the conduct, if any, of the appellant in the first appeal in the M.D. Theory examination in the discipline of Gynaecology and Obstetrics held by the University of Bombay on 14th to 17th October, 1985. In that subject, the practical examination was held by the University at K.E.M. Hospital, Bombay. This is a well-known hospital in Bombay and we are told that it is run by the Municipality. The total number of candidates registered for the examination was 52 of which 5 remained absent. One Dr. Mahesh Madhav Gosavi, original petitioner, who was at the relevant time Assistant Medical Officer of K.E.M. Hospital, Bombay was the petitioner. He and Smt. Dr. Chandrakala Patil alias Dawale, a Junior Assistant Medical Officer in the said K.E.M. Hospital, Bombay, who was respondent No. 4 to the original petition and one Dr. Mrs. Smita Thakkar who was respondent No. 5 were three candidates amongst others who had appeared for the examination. One Dr. M.Y. Rawal was the head of the Department of Gynaecology and Obstetrics in the said hospital and was the convener of the Board for the said examination. Respondent No. 4 of the original petition, Smt. Chandrakala Patil is the daughter of the appellant, the erstwhile Chief Minister of Maharashtra. The appellant was at the relevant time the Chief Minister of Maharashtra.
On 15th November, 1985, a circular was issued by the University of
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Bombay convening a meeting of local examiners for the finalisation of M.D. results on 18th November, 1985. On the said 18th November, 1985, the meeting was attended only by Dr. Rawal as Dr. Mukherjee, another coexaminer was not available

at Bombay. On 30th November, 1985 the result of M.D. examination was declared. Out of the 47 candidates who had appeared for the examination, 34 candidates were declared successful including Dr. Chandrakala Patil alias Dawale and Dr. Mrs. Smita Thakkar. The petitioner, Dr. Gosavi was declared to have failed.

Upon these, a petition was filed by Dr. Gosavi under article 226 of the Constitution of India in the High Court of Bombay.

Our attention was drawn to the fact that in the affidavit in support of the petition one Dr. Manikant Mishra had stated that he had approached Dr. Rawal to find out whether his wife had appeared in the said M.D. examination and it was alleged that on this occasion he had over-heard certain alleged conversation between Dr. Rawal and Smt. Chandrakala Patil, daughter of the Chief Minister. It transpired later that Mrs. Kalpna Misra wife of the said Manikant Misra was not even registered as a candidate.

In the petition under, article 226 of the Constitution filed before the High Court of Bombay on 16th January, 1986 Dr. Gosavi challenged the results declared in the said examination. The petitioner had claimed that he had been working as a junior Assistant Medical Officer and that he had done his housemanship in the Department of Obstetrics and Gynaecology at K.E.M. Hospital Respondent No. 2 i.e. Dr. Rawal was the Head of the Department of the same. It was further the case of the petitioner that due to some reasons the petitioner had no good terms with the said respondent No. 2. The petitioner had passed the MBBS examination in April, 1981 and after completion of internship got registration for M.D. (Obstetrics and Gynaecology) in June, 1982. It was further the case of the petitioner that the petitioner had completed all the requirements and conditions for appearing for the M.D. examination. The petitioner stated that the University had declared examination programme and the petitioner thereafter had appeared for the said M.D. examination in the month of October/November, 1985.

There are several allegations made by the petitioner about the irregularities and it was further alleged, inter alia, that the grade sheets were manipulated and tampered with as a result of which the said Dr. Chandrakala Patil and Dr. Smita Thakkar were passed by respondent No.2 Dr. Rawal at the instance and behest of respondent no. 3 in that petition, the appellant in the first appeal, being the Chief Minister of Maharashtra at the relevant time. He prayed that the record of grade sheet submitted to the University of Bombay
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by all the four examiners of M.D. in Obstetrics and Gynaecology examination, necessary papers and rules and regulations, should be produced and to set aside the result of the M.D. examination to the extent that those students who had secured P minus grade be disqualified. It was further asked to declare those students who secured upto any number of P minus to be passed. A prayer was made in the writ petition filed in the High Court for producing grade sheets.

The petitioner incidentally verified the petition stating that the contents of paragraphs 1 to 22 and paragraphs 24 to 30 were true to his own knowledge while various other relevant paragraphs were verified as information received from reliable sources but the source was not disclosed. In these circumstances the petitioner claimed that the results declared in respect of some of the candidates declared failed should have been declared passed. The allegations had been made against the appellant in paragraphs 14 and 25 of

the petition. In paragraph 14 it was alleged that after these irregularities came to light, the petitioner in the original petition had started enquiring.as to the way in which respondent No. 2 had committed these irregularities. The petitioner thereafter learnt that one Sree P.K. Shah who happened to be a good friend of Dr. M.Y. Rawal, respondent No. 2 in the original petition and also happened to be a good friend of respondent No. 4 as they were together as the assistant medical officers at K.E.M. Hospital, Bombay. The petitioner also learnt that the said Dr. P.K. Shah and Dr. M.Y. Rawal though not permitted by Rules and Regulations had been practising in Zaveri Clinic for Dr. C.L. Zaveri, since long time, and thus they became dose friends. It is also learnt that on behalf of Dr. (Mrs.) Chandrakala Patil, who is the daughter of erstwhile Chief Minister of Maharashtra the said P.K. Shah met respondent No. 2 and requested him that Dr. (Mrs.) Chandrakala Patil had appeared several times for M.D. Examination (Obs. & Gyn.) but could not get through and therefore she should be shown some favour. It was learnt that the respondent No. 2 informed the said Dr. P.K. Shah that he would definitely favour Dr. Mrs. Chandrakala Patil if she failed, provided the Chief Minister himself phoned him personally. The respondent No. 2 also told the said Dr. P.K. Shah that he would come to know about the result only after the submission of the grade sheet to the University because thereafter only one would know the position with regard to the names of the students who have failed and till that time he would not know. It was further stated that it was learnt that the respondent No. 2 also informed the said Dr. P.K. Shah that he would take the risk only if the Chief Minister gave him a telephone ring otherwise he would not. It was alleged that the respondent No. 3 in the original petition and the appellant herein after receiving this message from the respondent No. 4 and from Dr. P.K. Shah accordingly contacted respondent No. 2 and requested him to favour his daughter.

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In paragraph 25 of the petition, the petitioner stated as follows:

> "The petitioner states that on the basis of information from reliable source, the petitioner has made allegations on Chief Minister of Maharashtra, therefore, he has been made respondent No. 3 in this writ petition."

These were the only allegations upon which the petition was factually based. The necessary verification has been set out hereinbefore. The appellant Shri Shivajirao Nilengekar Patil filed an affidavit denying the allegations in paragraphs 14 and 25 of the application stating that he had played no part in the said examination as alleged or otherwise. It was also stated in the aforesaid affidavit that the petitioner has not disclosed the 'so-called' reliable sources of information. No affidavit was filed by the petitioner himself. The alleged source of information was not disclosed at any time. As mentioned hereinbefore an affidavit was filed by one Dr. Manikant Mishra on 28th February, 1986 in support of the allegations. Further affidavit was sought to be tendered on behalf of the petitioner to the learned single judge regarding certain additional facts after the final hearing had started before the learned single judge of the High Court of Bombay. It may be mentioned as a matter of historical record that Dr. M.S. Gore, Vice-Chancellor of University of Bombay resigned.

The learned single judge by his judgment held that the evidence of the petitioner as well as of Dr. Misra were

unsatisfactory and unreliable. Reference was made to the submissions of the petitioner's counsel relying under section 114 of the Evidence Act. In para 18 of the judgment it was held that it could be reasonably inferred that altering and tampering of the gradesheets were done by Dr. Rawal at the behest of respondents No. 3 and 4. On 7th March, 1986 the day after the judgment, the appellant Shivajirao Nilangekar Patil resigned as the Chief Minister of State of Maharashtra in view of the Judgment. It may be mentioned that on or after 14th April, 1986 certain affidavits were sought to be filed on behalf of the petitioner in pending appeals purporting to rely upon certain allegations in writ petition No. 1709 of 1985 filed by Sub-Inspector Lambe challenging the order of transfer and also an article which had appeared in INDIA TODAY.

The Division Bench of the Bombay High Court rejected the prayer to adduce the additional evidence. We have perused the nature of the additional evidence which were sought to be adduced as is apparently from the special leave application by Dr. Gosavi, the original petitioner in the writ petition and the respondent in the first appeal herein. These deal with the alleged involvement of the erstwhile Chief Minister of Maharasthra in the matter of
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the careers of his son, his son-in-law and in respect of transfer of one Inspector Lambe. As the additional evidence were not admitted and the appellant in the first appeal herein had no opportunity to deal with the same, it would not be, fair to take these allegations into consideration. But these if true make dismal reading and give a sordid picture of the state of administration prevailing at that time in the State of Maharashtra. But as the High Court did not admit these, perhaps because these were belated and perhaps would have unnecesserily prolonged the trial and were not directly connected with the immediate issues before the High Court, this Court in the exercise of its jurisdiction under Article 136 of.the Constitution would not interfere with the decision of non-admission of these additional evidence and say no more.

On 16th June, 1986, the Division Bench of the Bombay High Court in appeal No. 216 of 1986 delivered judgment holding in para 35 of the judgment that the conclusion arrived at against Shri Nilangekar Patil was to be regarded merely as an adverse comment and not as a finding of fact. To that extent the finding of the learned single judge was upset. The special appeal has been preferred by the original petitioner against the appellant challenging the findings respectively. In the appeal by the original petitioner an affidavit had been filed in this case claiming the right to adduce additional evidence.

The controversy before this court is rather narrow--namely; was there justification for the remarks made by the learned trial judge against the appellant Patil in his judgment to the extent that manipulations in the gradesheets of M.D. examination was done at the behest of the appellant, the then Chief Minister of Maharashtra to help respondent No. 4 to pass the M.D examination can the same be justified either as a finding of fact or as a comment? In order to consider the same must be examined in little detail.

"Something is rotten in the state of Denmark" sensed Marcellus in Scene V of Act 1 in Shakespeare's Hamlet. It can well be lamented that there was something rotten in once premier and prestigious University of Bombay: as the facts reveal. Justice Pendse of the Bombay High Court, the learned

single judge before whom the matter came up for hearing has in an exhaustive discussion narrated the sad state of affairs in this University of Bombay which has produced so many eminent professors and students.

The University of Bombay conducts M.D. examinations, inter alia, in the disciplines of Obstetrics and Gynaecology in the Faculty of Medicine. The theory examination consists of four papers, of which paper No. IV is of Essay. The theory papers 1 to 111 consist of three questions each. The practical clinical examination consists of a long and short case in obstetrics and a long and short case in Gynaecology and Viva. The theory papers are assessed by individual
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examiners and the grades are allotted in respect of each question in each paper n accordance with the provisions set out in the note giving special instructions to the examiners in the Faculty of Medicine. The M.D. theory examination in the instant case was held between 14th October and 17th October, 1985 and was followed by practical examination which was held between 4th November and 9th November, 1985. The University had appointed four paper-setters and examiners in accordance with the necessary provisions of the Act, two of which were internal examiners, namely Dr. M.Y. Rawal as mentioned hereinbefore and one Dr. S.N. Mukherjee from Indian Navy. There were two external examiners who were Dr. (Mrs.) A. Nafeesa Beebi from Madras and gr. S.T. Watwe of Sangli. It is not necessary to deal in more detail with the 7actual aspects which as mentioned hereinbefore have been exhaustively set out in the judgment of the learned single judge, and which were not disputed before us by any of the parties. We may mention that grading had to be made on the following lines as noted in the judgment of the trial judge:

"G" -- Good.
"p" -- Little better than passing.
,'p" -- Passing
Border line failure
"F" -- Failure.

The learned single judge noted that 37 candidates had been declared successful including respondent No. 4 being Chandrakala Patil and respondent No. 5 Dr. Mrs. Smita Thakker. The other respondents no. 6 to 15 mentioned hereinbefore were other successful candidates whose result came to be nullified and made subject to re-examination by the judgment of the learned single judge. We are not concerned with this aspect or with them any more. The petitioner had claimed that he had wrongly been declared as failed. The petitioner stated that he had some doubts as to whether his code number was properly decoded and he made various other allegations. The petitioner complained and the gravamen of his charges was that there were large number of irregularities in the declaration of result and mark-sheet was tampered in favour of respondent no. 4 Chandrakala Patil who is the daughter of the erstwhile Chief Minister and that Dr. Rawal was instrumental in tampering with the result which was done at the behest of the then Chief Minister. The learned judge came to the conclusion that Dr. Rawal alone was responsible for tampering with and altering the tabulated grade-sheet of theory examination. After discussing all these aspects in detail at the concluding paragraph 15 of the judgment, the learned judge had observed that he had no hesitation in concluding that Dr. Rawal was responsible for manipulating the result by tampering with and altering the grade-sheet so as to favour respondent No. 4
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and respondent no. 5 in the writ petition namely Chandrakala

Patil and Dr. Smita Thakkar.

The next question, and which is the main issue before us, to which the learned judge's attention was drawn was whether the manipulation was done by Dr. Rawal at the instance of or behest of respondent no. 3, the appellant herein, the then Chief Minister of Maharashtra. The learned judge discussed the evidence in great detail. The allegations in respect of the same are contained in paragraph 14 of the petition which have been set out hereinbefore.

The learned judge noted after setting out the gist of the allegation in paragraph 14 of the petition that the averments made in that paragraph were wholly unsatisfactory and insufficient because the petitioner to the writ petition and the respondent herein had not disclosed from whom he had learnt what he had averred. We are in entire agreement with that conclusion of the learned single judge. Indeed this aspect was not disputed by any of the parties before us. The learned single judge further noted that the allegations were not only denied by Dr. Rawal, Dr. Shah and Chandrakala Patil but also by the Chief Minister, the appellant, on oath by filing affidavit. Dr. Shah had claimed that he had never contacted Dr. Rawal in connection with the examination of respondent no. 4 and so was the claim of respondent no. 4 and of Dr. Rawal. The appellant in his affidavit dated 26th January, 1986 had stated that Dr. Shah did not send any message nor did be contact Dr. Rawal at any stage. An effort was made by the original petitioner, respondent herein to establish by direct evidence the link between Dr. Rawal and respondent no. 4 by relying upon the evidence of one Dr. Mishra sworn on 28th February, 1986. Dr. Mishra had claimed that his wife who is a doctor had left home to appear in M.D. examination in November, 1985, but subsequently the wife declined to answer as to whether she had appeared or not. Dr. Mishra claimed that he went to Dr. Rawal to enquire and he noticed that respondent no. 4 was sitting in the doctor's chamber. Dr. Mishra claimed that he over-heard Dr. Rawal telling respondent No. 4 about her poor performance in the examination and suggested that he could do something only if her father, the Chief Minister, gave any message. The learned single judge observed in his judgment the less said about this affidavit was better. The learned judge further observed that it was impossible to place any reliance on the evidence of Dr. Mishra as it was not known how he came to contact the original petitioner--respondent herein or why he did not choose to file affidavit till 28th February, 1986. Dr. Rawal had denied in his evidence that this Mishra came to see him and pointed out that on that relevant date, that he was heavily occupied and he had hardly any time to contact any visitor. Smt. Chandrakala Patil also denied the meeting that 'transpired between her and Dr. Rawal. In the judgment of the learned trial
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judge, it was unsafe to place any reliance on the words of Mishra. We respectfully agree. The learned judge thereafter concluded that there was no direct evidence to establish the involvement of respondent no. 3, the erstwhile Chief Minister or the daughter, respondent no. 4 in the original writ petition in securing favourable result from Dr. rawal. The learned judge noted that counsel appearing on behalf of the petitioner before the trial judge had accepted this position but had urged that it was not possible or in any event extremely difficult to establish by direct evidence the link between the wrong doer and the benefit seeker in such cases. It was, therefore, submitted that it was necessary for the court to draw inference from the probabilities of the case

as well as the surrounding circumstances. Reliance was placed on the principles of section 114 of the Indian Evidence Act and it was claimed that from the facts found by the High Court, the inference was irresistible that the results were tampered with or altered at the behest of the erstwhile Chief Minister and his daughter.

After referring to the factual position and noting the principles of law, the learned judge observed that undoubtedly there was no direct evidence that the result of respondent no. 4 namely Smt. Chandrakala Patil was tampered with at the behest of the appellant, Shivajirao Nilangekar Patil, respondent No. 3 in the original petition but that would not automatically lead to the conclusion that the charges against the said respondents no. 3 and 4 to the original petition were not established. The learned judge went on to observe that it would be a mockery of justice if the courts chose to close their eyes to the facts which were brought on record by the University by producing the original documents etc. The learned judge observed that it, in the facts and circumstances of this case, could reasonably be inferred that the alteration was done at the behest of Nilangekar Patil, erstwhile Chief Minister and her daughter, Chandrakala Patil. It could not be overlooked, according to the learned judge, that only these three were interested in securing favourable result at the examination According to the learned judge there were two contingencies which had to be taken into consideration. The first was that respondent no. 4, Smt. Chandrakala Patil, might have used the name of her father, the erstwhile Chief Minister to secure favourable result from Dr. Rawal and secondly, the appellant, the erstwhile Chief Minister might have used his office to obtain a favourable result for his daughter. Learned counsel on behalf of the original petitioner had urged before learned trial single judge that the third contingency could not be overlooked that it was probable that Dr. Rawal on his own did all these. Learned trial judge rejected the third contingency as wholly improbable. He was of the view that Dr. Rawal was an experienced examiner and he was not young or immature and it was impossible to accept the view that a person like Dr. Rawal would proceed to do a criminal act and tamper with the record of the examination on his own with a view merely to

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please the people in power. No same person, according to learned judge, was likely to take such risk unless he was prompted to do so and given an assurance of protection by the persons in power. The learned judge was of the view that the risk involved in what Dr. Rawal had done was so enormous that it was difficult to conceive that he did it on his own. It was further urged by learned counsel before learned trial judge that respondent no. 4, Chandrakala Patil had failed in the examination on three previous occasions when her father was Law Minister and yet previously the said Nilangekar Patil, respondent no. 3 had not used his influence and power, therefore it was difficult to accept the position that he would do it on this occasion. This hypothetical question, according to the learned trial judge, overlooked the fact that every examiner was not necessarily obliging or subservient as Dr. Rawal was. The learned judge, therefore, concluded that the corollary of this finding was that Dr. Rawal had done it at the behest of either the appellant Nilangekar Patil or Chandrakala Patil or both of them. Then the learned judge passed some strictures on Dr. Rawal and suggested some punishment and gave certain directions about examination of 12 other candidates whose results were also

affected by the conduct of Dr. Rawal. As these appeals are not concerned with the same, it is not necessary to refer to these. The learned judge directed that the result declared on 30th November, 1985 in respect of respondents nos. 4 to 15 be revoked and that there should be fresh examination by the other examiners. These appeals are also not concerned with such direction.

It may be mentioned that an application was made before the learned trial judge for adducing certain additional evidence on behalf of the petitioner. As the learned trial judge thought that it would prolong the trial and for other reasons, he declined to admit the additional evidence.

As mentioned hereinbefore there are three appeals filed namely appeal No. 214 of 1986 by Dr. Rawal, appeal no. 215 of 1986 by Chandrakala Patil and appeal No. 216 of 1986 by Nilangekar Patil.

These appeals came up before a division bench consisting of Kania, Ag. C.J. Shah, J. of the Bombay High Court. By a judgment delivered on 16th June, 1986, these appeals were disposed of. So far as appeal No. 214 of 1986 by Dr. Rawal was concerned, the division bench found that some of the remarks against Dr. Rawal were too harsh and the punishment was too severe. They directed that enquiry be held against him. These appeals are not concerned with this. So far as appeal No. 215 of 1986 preferred by Chandrakala Patil was concerned, the same was dismissed with no order as to costs. No appeal had been preferred to this Court from the said decision, So far as appeal No. 216 of 1986 before the division bench was concerned, the learned judges pointed out after discussing the evidence and the principles of law that there was no direct
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evidence that the alterations in the grades of Chandrakala Patil were made at the instance of the appellant. According to the division bench, the reasoning of the learned trial judge in coming to the conclusion that respondent Nos. 3 and 4 to the original petition were responsible for getting Dr. Rawal to alter the grades aforesaid was based on certain contingencies. According to the division bench the reasonings adopted by the learned trial judge were too tenuous for the conclusion based on such reasoning to amount to a positive finding. The Division Bench observed that merely because respondent no. 3 in the original petition had held a position of great power and would have been happy to see that his daughter respondent no. 4 and passed the M.D. examination, it was little difficult to conclude as a finding of fact that he must have influenced respondent no. 2 to alter the grades of his daughter. The learned Division Bench noted that it was true that a seasoned examiner like Dr. Rawal would not have taken the risk involved in altering the grades except under a great pressure of persuasion. The position that grades were altered was upheld by the division bench. The Division Bench, however, was of the opinion that there might have been various motives which might have induced Dr. Rawal to take the risk and alter the grades. The division bench observed that theoretically it was possible to conclude as was urged by Mr. Dhanuka, the learned counsel, that the respondent no. 4 might have used the name of her father and persuaded Dr. Rawal to alter the grades or some other influential person might have intervened and persuaded Dr. Rawal to alter the grades on the footing that respondent no. 3 would be very happy to see his daughter passed and would reward Dr. Rawal or take care of him or there might be some other inducement. However, the Division Bench was of the view that in a11 probability Dr. Rawal

would not have acted unless he had made him assured that the appellant in the first appeal was behind the person who persuaded him to alter the grades. In the view of the Division Bench therefore the conclusion of the learned trial judge that the grades of respondent no. 4 must have been altered by respondent no. 2 at the instance of respondent no. 3 by using his official position under a promise of protection was certainly not one which could properly amount to a finding. The Division Bench further observed that the evidence in support of such a conclusion is too slender to support a finding of such gravity. The Division Bench was of the view that merely because the appellant held a position of great prestige and power, it could not be said that the action of Dr. Rawal must have been induced by him and in fact when allegation of this type is made against anyone holding a position of prestige and power, it was necessary that the evidence should be closely examined before holding such allegation well-founded. The Division Bench in its exhaustive judgment noted various decisions of this Court as well as of the English Courts. The High Court referred to the decision of this Court in Niranjan Patnaik v. Sashibhushan Kar and Another, [1986] 2 SCC 569., a decision in which the judgment was delivered by one of us (S. Natarajan, J.). 473

The High Court observed that the remarks made against the appellant, Nilangekar Patil cannot be supported as conclusions arrived at against him but these can be regarded as comments and not finding of fact and such comments were not wholly unjustified in the facts of this case. The said appeal No. 216 of 1986 was disposed of accordingly. The Division Bench also upheld the finding of the learned single judge that there was tampering with the grade sheets. The Division Bench also uphold the finding that Dr. Rawal was mainly responsible for the same. The setting aside of the results of Smt. Chandrakala Patil and Smt. Smita Thakkar was also upheld. So far as the learned trial judge, held that the same was done at the behest of the erstwhile Chief Minister, the same was not upheld as a finding of fact but remarks to that fact made by the learned trial judge were not interfered with. An affidavit was filed claiming the right to adduce certain additional evidence and introducing certain writings from the magazine INDIA TODAY etc. Such additional evidence were sought to be introduced as part of the claim of public interest litigation because it involved the conduct of the Chief Minister in respect of the affairs of the University. Such claim for introduction of additional evidence, was, however, not entertained by the Division Bench. The Division Bench, however, in its judgment noted that the appellant was party to the writ petition and had an opportunity of explaining and defending himself. There were materials on record bearing on his conduct justifying the remarks which the Division Bench characterised as comments and not findings. A prayer was made before the Division Bench for deletion of such remarks. The Division Bench was of the view that as the appellant had opportunity to meet such remarks and such remarks were made upon hearing of the petition the question as to the conduct of the appellant in the episode was a matter of argument and it naturally fell for consideration before the Court. Judging the conduct of respondent No. 2 i.e. Dr. Rawal the part played by the appellant, erstwhile Chief Minister naturally fell for consideration. If the finding of the learned trial judge, according to the Division Bench, was looked upon as more adverse comments and not as a finding as such, there could not be any objection to the same. The Division Bench was

further of the view that the circumstances noted by the learned judge against the appellant Nilangekar Patil, aforesaid, formed a reasonable and cogent basis for adverse comment on his conduct. However, the Division Bench made it clear that these were merely in the nature of adverse comments and based on the material on record and at the hearing of a proceeding which involved the taking of evidence merely on affidavits. According to the Division Bench, a fuller enquiry might lead to a conclusion that the comment was not justified. In view of this, the Division Bench had asked the learned counsel for the appellant Shri Dhanuka, whether the appellant desired that there should be a full-fledged factual enquiry into the charges of the alteration of the grades of respondent no. 4 having been altered as aforesaid with a view to pass respondent no. 4, Smt. Chandrakala Patil and
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further that this was done at the instance of the erstwhile Chief Minister. The Division Bench noted that the appellant made no request for any such enquiry and he was merely taking a stand on the footing that the evidence on record did not justify any conclusion being arrived at or a comment being made against respondent no. 3. The Division Bench suggested that even at that stage, if the appellant wanted a full fledged enquiry and requested the University to hold the same, the University might hold such an enquiry into the results of M.D. examination in Gynaecology and Obstectrics held in November, 1985, particularly in respect of the results of respondents Nos. 4 & 5, but if such an enquiry was held, the person designated to hold the enquiry should be selected with the consent of the Chief Justice of the Bombay High Court.

Two appeals--one arising out of Special Leave Petition (Civil) No. 7568 of 1986 filed by Shivajirao Nilangekar Patil against the alleged adverse remarks and the other arising out of Special Leave Petition (Civil) No. 10665 of 1986 by the original petitioner are before this Court. There is an application for introduction of additional evidence.

There are three points involved in these two appeals. Firstly, we have to determine in the appeal by the appellant, Nilangekar Patil, the erstwhile Chief Minister of Maharashtra, whether the observations made by the division bench about the comments on the conduct of the Chief Minister were justified or not or should be expunged. Secondly, and connected with the first question is the question whether the Division Bench of the Bombay High Court was right in upsetting the finding that the tampering with the grade-sheets was done at the behest of the Chief Minister was a finding based on no evidence; and thirdly whether, in the facts and circumstances of this case the court was justified in refusing to admit additional evidence and whether we should at this stage admit additional evidence.

The additional evidence as we have mentioned hereinbefore consist of certain report in INDIA TODAY and certain other Magazines and certain affidavits. The basic principle of admission of additional evidence is that the person seeking the admission of additional evidence should be able to establish that with the best efforts such additional evidence could not have been adduced at the first instance. Secondly the party affected by the admission of additional evidence should have an opportunity to rebut such additional evidence. Thirdly, that additional evidence was relevant for the determination of the issue. The additional evidence sought to be introduced mainly consist of alleged instances when the Chief Minister on previous occasions had in respect of some criminal proceedings and other matters pending used

his influence to drop those proceedings. Now about these, these are controvertial allegations. There is no satisfactory explanation that these so-called material in the form of
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additional evidence could not have been obtained before the institution of the petition in the High Court. To this Mr. Tarkunde's submission was that it was difficult to gather evidence against a Chief Minister in office but as the case had gathered momentum, people had come in and after decision of the learned trial judge, the Chief Minister had resigned and there was an atmosphere of belief for offering to adduce evidence which people were hesitant to give before that. We are of the opinion that at this belated stage there was not sufficient material ground on which additional evidence should be admitted for the determination of the issues involved in these appeals.

In the appeal filed by the original petitioner Dr. Mahesh Madhav Gosavi, it was submitted that there were sufficient materials upon which the conclusion arrived at by the learned trial judge that the tampering was done at the behest of the erstwhile Chief Minister and the Division Bench was in error in deciding that, that was not the finding of fact. Mr. Tarkunde conceded, and in our opinion rightly, that the view of the Division Bench that the observation of the learned single judge that tampering of the grade-sheets in M.D. examination was done at the behest of the Chief Minister was in the nature of a comment and not a finding was a distinction without any difference. We are of the opinion that he is right in this submission. We are also of the opinion that the Division Bench was right in holding that there was no direct evidence. We are conscious that in a situation of this type it is difficult to obtain direct evidence.

So far as admission of additional evidence is concerned, we are unable to accept the position that such additional evidence should have been admitted in order to show the nature of the conduct of the Chief Minister in other cases in similar situations.

The admissibility of evidence as to 'similar fact' has been considered by the courts. In this connection it may be instructive to refer to the observations of Lord Denning in Mood Music, Publishing Co. Ltd. v. Dc. Wolfe Ltd., [1976] 1 All England Law Reports 763 at 766., to the following effect:

> "The admissibility of evidence as to 'similar facts' has been much considered in the criminal law. Some of them have reached the highest 'tribunal, the latest of them being Boardman v. Director of Public Prosecutions (1974)3 All ER 887, (1975) A C 421. The criminal courts have been very careful not to admit such evidence unless its probative value is so strong that it should be received in the interests of justice: and its admission will not operate unfairly to the accused. In civil cases the courts have followed a similar line but have not been
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> so chary of admitting it. In civil cases the courts will admit evidence of similar facts if it is logically probative, that is if it is logically relevant in determining the matter which is in issue,' provided that it is not oppressive or unfair to the other side; and also that the other side has fair notice of it

and is able to deal with it."

On this aspect cross On Evidence, Sixth Edition page 346 has observed that although in some early Civil cases in England rejected similar fact evidence as res inter alias act, it was soon accepted that the rule of exclusion was certainly no stricter than that in criminal cases. The real question was whether there was a special rule of exclusion at all, or whether it were not rather a question of simple relevance in each case. The learned author noted that in more recent time, there has been a further relaxation of the exclusionary rules in civil cases. Cross at page 346/347 further noted that the aforesaid observations of Lord Denning might be interpreted as applying in civil cases a similar sort of balancing approach to the rules for the admissibility of similar fact evidence as applied in criminal cases. The factors to be weighed were however different on account of the peculiar position of the accused in criminal cases. The learned author noted that there was very high authority accounting for the existence of an exclusionary discretion in criminal cases solely by reference to the accused's vulnerability to prejudice.

Applying the aforesaid principles to the facts as we have mentioned hereinbefore, we are of the opinion that the allegations of alleged conduct of the appellant in similar cases would not be a safe basis upon which to admit additional evidence, in this case having regard to the issues involved and nature of the issues involved in these matters and at the stage when these were sought to be introduced.

In support of the appellant in Civil Appeal arising out of Special Leave Petition No. 7568 of 1986, Dr. Singhvi submitted that the petitioner/appellant had suffered and would continue to suffer serious civil consequences on account of findings or adverse comments or strictures made by the learned single judge. It was in those circumstances that this appeal had been filed, The appellant had resigned as Chief Minister and he is due, according to Dr. Singhvi, to contest the bye-election in November, 1986. He has further submitted that the question in these appeals had to be viewed in the perspective of law and strictly on the basis of the record and should not be permitted to be politicised either by extraneous allusions or by. presumptions and presuppositions inconsistent with legal principles or by an attempt by political opponents to convert the proceedings into a political trial. It was his submission that the averments and the supporting affidavits which formed the
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basis of the allegations against the appellant were dealt with in the two courts below in the manner as we have indicated. He specially referred to the observations of the learned single judge about the affidavit in support of these allegations. He also relied on the observation on Dr. Mishra's affidavit and the adverse comments made by the learned single judge on Dr. Mishra's affidavit. He also referred to the finding of the Division Bench that the petitioner had no personal knowledge of this incident nor had he disclosed the source of the information. That the petitioner had filed the affidavit of one Manikant Misra and then drew our attention to the various allegations and infirmities of the affidavit and specially relied on the various motives which might have induced Dr. Rawal, respondent no. 2 in the original petition to take the risk and alter the grades and also he referred us to the finding at page 132 of the Paper Book of the Division Bench that the evidence was much too slender in support of the charge against the appellant. He emphasised that these appeals

arose out of exercise of extra-ordinary jurisdiction by the civil court, not by trial on examination and cross-examination of evidence but an exercise of extra ordinary jurisdiction on the basis of the affidavit, and the court should insist that there should be 'commensurate' proof for judicial certitude and that the distinction between 'finding' and 'adverse comment' was a distinction without any difference because it was throughout recognised as a finding.

The Division Bench in Appeal No. 216 of 1985 has held that the conclusion arrived at against Shri Nilangekar Patil was a comment and not a finding of fact. Dr. Singhvi referred extensively to the affidavit of Dr. Mishra and comments of learned single judge and the Division Bench as to how unreliable such affidavit was.

It was submitted that in view of the infirmities of the affidavit of Dr. Mishra upon which the original petitioner, Dr. Mahesh Madhav Gosavi based his own petition was of such an unreliable credience that the courts should not have entertained the application. The Division Bench was unable to accept that position. We are in agreement with the Division Bench.

The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one Of the highest medical degrees was a matter of public interest. Such state Of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary
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and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice.

The allegations of the petitioner have been noted about the role of the Chief Minister. It is well to remember that Rajagopala Ayyangar, J. Speaking for this Court in CS. Rowjee & Ors., v. Andhra Pradesh State Road Transport Corporation [1964] 2 S.C.R. 330 observed at page 347 of the report that where allegations of this nature were made, the court must be cautious. It is true that allegation of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. This Court made these observations as early as 1964. It is more true today than ever before. But it has to be borne in mind that things are happening in public life which were never even anticipated before and there are several glaring instances of misuse of power by men in authority and position. This is a phenomenon of which the courts are bound to take judicial notice. In the said decision the court noted that it is possible to decide a matter of probabilities and of the inference to be drawn from all circumstances on which no direct evidence could be adduced. The court further noted that it was somewhat unfortunate that allegations of mala fide which could have no foundation in fact were made and several cases which had come up before this Court and other courts and it had been found that these were made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not some of which might at least stick. It is therefore the duty of the courts, warned this Court in the said decision, to scrutinize these allegations with care so as to avoid being in any

manner influenced by them in cases where they have no foundation in fact. In this task which is cast on the courts, it will be conducive to have disposal and consideration of them if those against whom allegations are made came forward to place before the court either the denials or their version of the matter so that the courts might be in a position to judge whether the onus that lay upon those who make allegations of mala fides on the part of the authorities had been discharged in proving it. Of course, the facts in the instant case are different. It is true that the basis of the allegations being the affidavit of Dr. Mishra was considered by the learned single judge as well as the Division Bench to be thoroughly unreliable. In this case there was specific and categorical denial by the erstwhile Chief Minister that tampering was done at his behest. Therefore, while the court should be conscious to deal with the allegations of mala fide or cast aspirations on holders of high office and power, the court cannot ignore the probabilities arising from proven circumstances.

Our attention was drawn by learned counsel Dr. Singhvi on the observations of this Court in The Barium Chemicals Ltd. and Anr., v. The
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Company Law Board and Others, [1966] Supp. SCR 311 where at page 352 of the report the Court observed that where evidence was adduced by affidavits, such affidavits might be properly verified either on knowledge or from sources. But the basis of such knowledge or source of information must be clearly stated. This was laid down as early as 1909 by Jenkins, C.J. and Woodroofe, J. in Padmabati Dasi v. Rasik Lal Dhar, [ILR XXXVII Calcutta 259] where the Division Bench of the Calcutta High Court observed that the provisions of Order XIX, rule 3 of the Code of Civil Procedure, must be strictly observes: every affidavit should clearly express how much is a statement of the deponent's knowledge and how much of the statement was in his belief, and the grounds of belief must be stated with sufficient particularity. This has been followed more or less universally by courts in matters where reliance is placed on affidavits. This view has been reiterated by this Court in The State of Bombay v. Purushottam Jog Naik. [1952] SCR 674 It is on this principle that Dr. Singhvi urged that the original petition should not have been entertained because of the defective affidavit in this case. Undoubtedly the affidavit and the petition were defective as mentioned hereinbefore. But the court has taken cognizance of the matter and certain inferences followed from the inherent nature of facts apparent from the facts brought before the Court.

Reliance was also placed on the observations of this Court in E.P. Royappa v. State of Tamil Nadu & Anr., [1974] 2 SCR 348. The Facts or that case need not be referred in detail except to mention that there allegation was made against the Chief Minister by a member of the Indian Administrative Service in the cadre of the State of Tamil Nadu for not appointing him as the Chief Secretary. Ray, C.J. noted in the judgment several facts which were alleged as instances indicating mala fide. It was stated that those instances gave rise to the wrath of the Chief Minister against the petitioner in that case. After noting the alleged incidents, the Chief Justice rejected these events and indicated that from the affidavit evidence it could not have been said that the Chief Minister had committed acts of violence or intimidation and the entire affidavit evidence established beyond any measure of doubt that the allegations of the petitioner in that case imputing mala fides against

the Chief Minister were baseless. In a judgment concurring Bhagwati, J. as the learned Chief Justice then was, observed at page 389 of the report that in dealing with the allegation of mala fide, it was necessary to bear in mind two important considerations; that the court was not concerned to investigate into the acts of maladministration by the political Government headed by the Chief Minister at that time. It was not within the province of the court to embark on a far flung enquiry into the facts of commission and. omission charged against the Chief Minister in the administration of the affairs of Tamil Nadu. That was not the scope of the inquiry before the court and the court must decline to enter upon any such. inquiry. It was one thing to say that the Chief Minister had
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malus animus against the petitioner in that case. The court was only concerned with the later limited issue and not with the former popular issue. The court cannot permit the petitioner to side track the issue and escape the burden of establishing hestility and malus animus on the part of the Chief Minister by diverting courts attention to incidents of suspicious exercise of executive power. It is perhaps on this basis that the Division Bench of the Bombay High Court in the instant case rejected the application for additional evidence and rejected the contention in support of the view of misrule or misconduct by the erstwhile Chief Minister of Maharashtra, Nilangekar Patil, the appellant in the first appeal. The same principles in respect of affidavit evidence were reiterated in different context by this Court in Tara Chand Khatri v. Municipal Corporation of Delhi & Ors., [1977] 2 SCR 198. This Court reiterated that the High Court was not too wrong in dismissing the writ petition in limine in that case because a prima facie case requiring investigation had not been made out by the appellant. This Court reiterated that the High Court would be justified in refusing to carry on investigation into the allegations of mala fide if necessary particulars of the charge making out a prima facie case Were not given in the petition. Since the burden of establishing mala fide lay very heavily on the person who alleged and the allegations made in regard thereto in the writ petition were not sufficient in that case to establish malus animus, this Court found that the High Court was justified in dismissing the petition without issuing notice. Dr. Singhvi submitted that precisely the same was the position in the instant case.

Reliance was also placed on Sukhvinder Pal Bipan Kumar v. State of Punjab & Ors., [1982] 2 SCR 31 where at page 40 of the report after dealing with the allegations in the writ petition, this Court observed that the allegations in the writ petition were not sufficient to constitute an averment of mala fides so as the vitiate the orders of suspension issued in that case. In such a situation the court was justified in refusing to carry out investigation into the allegations of mala fides if necessary particulars of the charge making a prima facie case were not there in the petition. This Court reiterated that burden of mala fide prima facie lay very heavily on the person who alleged it. There the petitioner sought to invalidate certain orders of suspension and it was the onus on them to establish the charge of bad faith or misuse of its power by the government.

Halsbury's laws of England, Fourth Edition, Volume 17 page 16 paragraph 19 deals with the standard of proof necessary in these types of cases. It has been stated that in civil cases the standard of proof is satisfied on a balance

of probabilities. However, even within this formula, there are variations depending upon the subject matter of allegations.

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About the adverse remarks being made against the erstwhile Chief Minister, we were reminded of the observations of this Court in The State of Uttar Pradesh v. Mohammad Naim [1964] SCR 2 363 where this Court reiterated that it is a principle of cordinal importance in the administration of justice that the power, freedom of judges and Magistrates must be maintained and they must be allowed to perform their functions freely and without interference by any body, even by this Court. But it is equally necessary that in expressing their opinions, Judges and Magistrates must be guided by considerations of justice, fair-play and restriant. Judicial pronouncements must be judicial in nature, and should' not normally depart from sobriety, moderation and reserve. In that case this Court found that the remarks in the judgment in respect of the entire police force of the State were not justified in the facts of the case, nor were they necessary for the disposal of the case and should have been expunged. We are clearly of the opinion that the principle enunciated by that decision can have no application in the facts of this case. In the instant case, the first issue was whether there was tampering of the gradesheet, a fact which has been found by the learned single judge and by the Division Bench and which is not in dispute in any of these appeals before us. The other dispute was the allegation and the finding of the learned single judge was that the same was at the behest of the appellant in the first appeal and the respondent in the second appeal, Nilangekar Patil, the erstwhile Chief Minister. This point was very much in issue. He was a party. He had been heard on this point. So, therefore, whether the remarks were correct or not, is another issue but there was, no question of the remarks being beyond the issue and no question of the party against whom the remarks had been made had not been given an opportunity.

Our attention was drawn to the decision of this Court in Vineet Kumar v. Mangal Sain Wadhera AIR [1985] SC 817 in aid of the submission that additional evidence should have been allowed but in our opinion the context in which the said observation was made was entirely different and cannot have any relevance to the facts of this Case.

The Privy Counsil in The Bank of India and Others v. Jamesetji A.H. Chinoy and Messers. Chinoy and Co. AIR [1950] P.C. 90 reiterated that speculation is not enough to bring home the charge of fraudulent conspiracy.

In a different context dealing with the election matter in Sri Harasingh Charan Mohanty v. Sh. Surendra Mohanty, [1974] 3 SCC 680 the question arose was whether the consent or agency was there. This Court observed that consent or agency of Shri Biju Patnaik could not be inferred from mere close friendship or other relationship or political affiliation. However, close was the relationship, unless there was evidence to prove that the person publishing or

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writing the editorial was authorised by the returned candidate or he had undertaken to be responsible for all the publications, no consent could be inferred. In our opinion, the observations must be read in the context of the facts of that case.

Seth Gulabchand v. Seth Kudilal and Others [1966] 3 SCR 623 at 629] was a case under the Contract Act, 1872 where under section 3 of the Indian Evidence Act, 1872 applied the same standard of proof in all civil cases. There this Court

after referring to certain observations referred to the observations of the Division Bench of the Calcutta High Court in Jarat Kumari Dassi v. Bissesur. ILR 39 Cal. 245:16 C.W.N. 265. The Court thereafter referred to the definition of section 3 of the words 'proved', 'disproved' and 'not proved'. -Reference was made to the decision of the Patna High Court by Meredith, J. at page 630 in Raja Singh v. Chaichoo Singh AIR 1940 Patna 281 at 203 where it was observed by Meredith, J. that it was well settled that where fraud had to be inferred from the circumstances and was not directly proved, those circumstances must be such as to exclude any other reasonable possibility. In other words, the criterion was similar to that which was applicable to circumstancial evidence in criminal cases. This Court observed that this Court was unable to agree with those observations. In that case this Court observed in respect of the allegation that a party had accepted bribe in a civil case did not convert it into a criminal case and ordinarily rule of civil cases would apply.

Reliance was placed on the observations of this Court in the case of Niranjan Patnaik v. Sashibhushan Kur and Another (supra) to which one of us (S. Natarajan, J.) was a party where this Court dealt with certain adverse remarks made against the Minister. This Court reiterated that the High Court and this Court must be deemed to have power to see that the courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it. The observations in that case in our opinion are inapplicable in the instant case. There an adverse remark had been made which the court found to be unjustified which was not relevant to the issue in point and the party 'against whom such observations having been made was not a party to the said proceedings but only a witness. Our attention was also drawn to certain English eases which have been noted by the Division Bench in the order under appeal and it is not necessary for us to refer to these in detail.

The Division Bench noted that this Court had in the case of State of Uttar Pradesh v. Mohammad Naim (supra) had exhaustively dealt with the limitation in making these remarks i.e. (1) whether a party whose conduct in question was before the court had an opportunity of explaining or defending himself; (2) whether there was evidence on record hearing on that conduct

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justifying the remarks; (3) whether it was necessary for the decision of the case as an integral part thereof to refer to that conduct; and (4) the observations must be judicial in nature. These tests, the Division Bench observed were satisfied in respect of the remarks made by the learned single judge. The Division Bench was of the view that the circumstances relied before the learned single judge formed a reasonable and cogent basis for the adverse comment on the conduct of the appellant herein in the first appeal. However, the Division Bench made it clear that it was merely in the nature of an adverse comment based on the material on record and at the hearing of a proceeding which involved the taking of evidence merely on affidavit. A fuller enquiry might lead to a conclusion that the comment was not justified. In that view of the matter the Division Bench asked the learned counsel whether the appellant in the first appeal desired that there' should be a full-fledged factual enquiry into the charge of the grades of respondent No. 4 having been altered as aforesaid. Such enquiry, however, must be done by a body, the Division Bench suggested, nomi-

nated by the Chief Justice of Bombay High Court. Counsel for the appellant in the first appeal before us made no request for such an enquiry, however, must be done by a body, the Division Bench suggested, nominated by the Chief Justice of Bombay High Court. Counsel for the an enquiry, before the High Court. In other words, he was not willing to invite an enquiry to clear his image.

Shri Tarkunde, appearing on behalf of the respondent in the first appeal and appellant in the second one, submitted before us that there was sufficient substantial evidence before the learned single judge to come to the conclusion that the tampering was done at the behest of the erstwhile Chief Minister of Maharashtra. He submitted it was a finding of fact based on substantial evidence and there was clear material on such evidence. He further submitted that in a matter of this nature where public interest was involved namely, state of affairs in the University of Bombay in respect of a high degree in the medicine and in which the conduct of the Chief Minister was involved, public interest demanded that the High Court should have investigated the matter even though there might be some infirmities in the affidavit supporting the petition. He submitted that in this case that after the initiation of the proceeding, public interest was involved and the High Court was justified in entertaining the application. He, therefore, submitted that the second appeal arising out of Special Leave Petition No. 10665 of 1986 should be allowed. He further submitted that in a case of this nature, additional evidence should have been admitted. It was further submitted by Mr. Karanjawala, counsel, that even if this Court was inclined to accept that there was no distinction between a comment and a conclusion of fact in view of the facts disclosed in this case, this Court in exercise of its judicial discretion under article 136 of the
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Constitution should not interfere in the facts and circumstances of this case. He urged that neither the cause of justice nor public interest demanded interference under Article 136 of the Constitution. It is true that exercise of the power under article 136 of the Constitution is discretionary.

There is no question in this case of giving any clean chit to the appellant in the first appeal before us. It leaves a great deal of suspicion that tampering was done to please Shri Patil or at his behest. It is true that there is no direct evidence. It is also true that there is no evidence to link him up with tampering. Tampering is established. The relationship is established. The reluctance to face a public enquiry is also apparent. Apparently Shri Patil, though holding a public office does not believe that "ceaser's wife must be above suspicion". The erstwhile Chief Minister in respect of his conduct did not wish or invite an enquiry to be conducted by a body nominated by the Chief Justice of the High Court. The facts disclose a sorry state of affairs. Attempt was made to pass the daughter of the erstwhile Chief Minister who had failed thrice before by tampering the record. The person who did it was an employee of the Corporation. It speaks of a sorry state of affairs and though there is no distinction between comment and a finding and there is no legal basis for such a comment, we substitute the observations made by the aforesaid observations as herein.

This Court cannot be oblivious that there has been a steady decline of public standards or public morals and public morale. It is necessary to cleanse public life in

this country along with or even before cleaning the physical atmosphere. The pollution in our values and standards is an equally grave menace as the pollution of the environment. Where such situations cry out the Courts should not and cannot remain mute and dumb.

In that view of the matter, we dispose of the two appeals and application for adducing additional evidence with the observations made aforesaid. In the facts and circumstances of this case, there will be no order as to costs.

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