

2009

915/11/C/1/2009 Pol

फाइल सं०  
File No.  
खण्ड  
Volume

भारत सरकार  
GOVERNMENT OF INDIA  
प्रधान मंत्री कार्यालय  
PRIME MINISTER'S OFFICE

*Political*

अनुभाग/प्रभाग  
SECTION/DIVISION  
टिप्पणियां/पत्राचार  
NOTES/CORRESPONDENCE

120400

..... को सूचीकृत की गई  
indexed on

आद्याक्षर .....  
Initials

अभिलेख क/ख  
Record A/B

अभिलेख ग ..... में नष्ट किया जाए  
Record C Destroy in

अनुभागीय नोट बुक में नोट किया जाए  
नोट न किया जाए

To be noted in Sectional Note Book  
Not to be noted

अनु अ./अधीक्षक के आद्याक्षर .....  
Initials of S.O./Supdt.

लिपिक के आद्याक्षर .....  
Initials of Clerk

विषय  
SUBJECT  
WP no. 8215 (w)/2008 filed in  
the Calcutta HC by Subhash  
Chandra Basu and Ors vs. 13.11.2005  
Re: Disappearance of M. J. S. C. Bose

CONTENTS			
Notes		Correspondence	
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01	02	01	108



पिछले हवाले  
Previous References

915/11/C/2/2008 - WP no. 8215 Calcutta HC  
915/11/C/2/2008 - Writ IV

बाद के हवाले  
Later References

Ref file  
RTI/219/2008-Pol

109/Asst/11  
2.11.5

111

112

(1)

**Internal**

**Sub: Writ Petition No.8215(W)/2008 filed in the Calcutta High Court by the Subhash Chandra Basu & Anr. Vs UOI & Ors.**

PUC is a letter received from Ministry of Home Affairs seeking comments of this Office on para 15 of the Writ Petition [No.8215(W)/ 2008] filed in Calcutta High Court.

2. Para 15 of the Writ Petition [No.8215(W)/2008] is at F/X.
3. The list of files, which were made available to Chief Information Commissioner, in respect of a RTI request received in this Office, is at F/Y.
4. F/Z is the list of files, which were made available to the Justice Mukherjee Commission of Inquiry vide this Office letter dated July 4, 2000 and July 25, 2000 respectively.
5. It may be seen that PMO has made available the list of files to CIC (F/Y), which had also been made available to Justice Mukherjee Commission of Inquiry (F/Z), except the files at Sl. No.19 and 20 (at F/Y).
6. As the files at Sl. No. 19 and 20 (F/Y) does not relate to disappearance of Netaji Subhash Chandra Bose, but are related to Bharat Ratna Award, hence the same were not shared/ made available to Justice Mukherjee Commission of Inquiry.
7. In 2000 relevant record regarding Justice Mukherjee Commission of Inquiry was dealt from these files in NGO Section i.e. the files mentioned at Sl. No.30 and 31 (F/Y). Hence, the same were also not made available to Justice Mukherjee Commission of Inquiry. *Accordingly, DFA is placed below for approval.*

Submitted please.

*Rajesh Sharma*  
(Rajesh Sharma)  
March 18, 2009

**Director (AA)**

*D.f.a.pl.*

*JS (M)*

*19/3/09*

*Dir (AA)*

*Sanjay Intre*

*Fair copies urgently pl. with 19/3  
encls. An advance copy also be endorsed (n.o.s.), with  
encls., to Shri S.K. Malhotra.*

*fol.*

*19/3*

1249196

Internal


**Sub: Writ Petition no. 8215(W)/2008 filed in Calcutta High Court in the Subhash Chandra Basu & Another Vs. Union of India & Others**

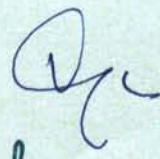
FR is an OM dated 15.12.2020 from MHA, seeking comments and suggestions regarding any edition / deletion on a draft affidavit [F/A], and confirmation whether this office may like to file a separate affidavit on Writ Petition no. 8215(W)/2008 filed in Calcutta High Court.

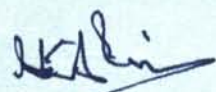
2. Relevant background and facts to the matter are as under:

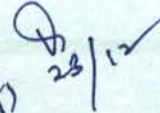
- (i) Writ Petition no. 8215(W)/ 2008 had been filed by Shri Subhash Chandra Basu & Another Vs. Union of India & Others. Besides MHA, Principal Secretary to PM, M/o Parliamentary Affairs and MEA are respondents.
- (ii) Earlier, comments of this office were sought on paragraph 15 of the Writ Petition, which refers to newspapers cuttings relating to direction given by CIC to PMO about Secret / Top Secret etc. files available in PMO. Requisite inputs were provided to MHA with the request to take necessary action in the matter [3/I].
- (iii) As per draft affidavit, petition contains reference to this office at pages 18-19 (paragraph 15, at F/B) and page 23 (paragraph 16.4, at F/C). Information in respect of these has already been provided to MHA.
- (iv) There are several cases regarding Netaji Subhas Chandra Bose in High Court. In another case [4/N, on linked file no. 915/11/C/2/2006-Pol (Vol IV)] a decision was taken that MHA would act as the nodal Ministry for PMO as well as other Ministries impleaded as respondents, and file affidavits on behalf of all.

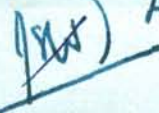
3. In view of the above, we may convey no comments and request MHA to file affidavit for Government of India, in consultation with the other Ministries concerned, after due vetting.

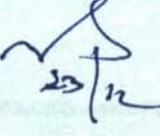
  
(Amit Agrawal)  
22.12.2010

JS(V)  
  
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Secy Ad  
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23/12  
Principal Secretary

  
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Di (F/A)

Secy. (M)  
  
23/12

12 pr.  
  
23/12  
So (F/A)

1615913

Ministry of Home Affairs  
I S Division-II : Legal Cell

Lok Nayak Bhawan, New Delhi-3

Subject: WP No. 8215 (W) /2008 filed in the Calcutta High Court  
by the Subhash Chandra Basu & Anr. Vs UOI & Ors.

Pt. speak  
with papers imm.

So (Pd.)  
17/3/09 Reference is invited to PMO's ID Note No. RTI/219/2006-PMA dated 27<sup>th</sup>  
February, 2009 on the above mentioned subject.

2. Ministry of Home Affairs is taking action as per the decision taken in the meeting chaired by Secretary to the Prime Minister on 1.9.2008. However, para 15 of the Writ Petition read with the newspaper cuttings referred to ~~the~~ <sup>in</sup> para 15 and enclosed with the petition as Annexure – P/6 relates to direction of CIC given to PMO about some Secret / Top Secret etc files available in PMO. English version of the Newspaper cutting mentioned in the said para is enclosed herewith. It may be seen from these newspapers cutting that references have been made to the records available with PMO. As such, MHA is not able to comment on these records.

3. Therefore, PMO may kindly either suggest an answer to para 15 of the Writ Petition or accord concurrence to the reply prepared by MHA before filing the same in the Hon'ble Court.

Encl : As above.

13/3/09  
(S K Malthora)  
Deputy Secretary to the Govt. of India  
Tele : 2469 7124

PMO [ Kind Attn : Shri Amit Agarwal, Director], South Block, New Delhi -1.

MHA Note ID No.12014/6/2008-Cdn

Dated, the 16<sup>th</sup> March, 2009.

## CIC DIRECTED PMO TO GIVE LIST OF 29 FILES ON NETAJI

Name of the News Paper 'Bartaman'

New Delhi, 19 February, 2008 - Chief Information Commissioner Shri Wahjat Habibullah directed the PMO to bring to the notice of the public the list and title of 29 secret files relating to Netaji within 10 days, this was in continuation with its earlier direction dated 15<sup>th</sup> February. These 29 files marked as 'Top Secret', 'Confidential' and 'Secret' are kept in the PMO. CIC gave written direction to the Director PMO Shri Amit Aggarwal that this list is to be given to the organization named 'Mission Netaji' of Delhi. This organization has filed a RTI petition for the above information.

Earlier PMO has informed the CIC that if the information is made public it can effect the relation with a particular Country. CIC has directed that they are not directing to divulge the contents of the file. On 15<sup>th</sup> February CIC directed PMO to submit in sealed cover the details and contents of the secret files, the PMO had submitted a list of 35 files out of which 2 files has been declassified and its contents has been made public. The CIC informed that out of the 33 secret files 7 are Top Secret, 3 Confidential, 23 Secret and out of these 33 files 4 relates to Foreign Affairs, as such information has been asked on 29 files.

P. 66/cor.

## LIST OF 29 SECRET FILES ALONG WITH LETTERS OF NETAJI'S WIFE AND DAUGHTER MADE PUBLIC BY THE CENTRE

Name of the News Paper 'Bartaman'

New Delhi 26<sup>th</sup> March, 2008 - Under RTI Central Government was forced to provide information on 29 files relating to disappearance of Netaji. These files are kept in a vault of PMO alongwith letters to the Government of India from wife of Netaji Smt. Emily Sechel and daughter Ms Anita Basu. 'Mission Netaji' of Delhi sought the information from PMO. But the Central Government did not give the details of the Secret files stating that sovereignty of the country and relating with some other country may get effected if contents of these files are divulged. On 8<sup>th</sup> February Chief Information Commissioner directed the PMO to bring to the notice of the public the list and title of 29 secret files relating to Netaji. Other than these files the letter from the wife and daughter of Netaji papers relating to Ashes of Netaji, Indian National Army and its Treasury, Policy Paper on conferring 'Bharat Ratna' posthumously etc are also kept in PMO. The CIC informed that out of the 29 secret files 7 are Top Secret, 3 Confidential, 23 Secret.

Name of the News Paper 'Anand Bazar Patrika'

New Delhi 26<sup>th</sup> March, 2008 - Under RTI Central Government was forced to provide information on 29 files relating to disappearance of Netaji. So far these information were kept in the PMO as Top Secret. Other then these files the letter from the wife and daughter of Netaji papers relating to Ashes of Netaji, Indian National Army and its Treasury, Policy Paper on conferring 'Bharat Ratna' posthumously etc are also kept in PMO.

2/1

L4

**Most Immediate**

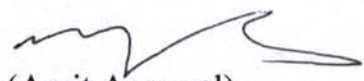
**PRIME MINISTER'S OFFICE**  
[POLITICAL SECTION]

**South Block, New Delhi – 110 101**

**Sub: Writ Petition No.8215(W)/2008 filed in the Calcutta High Court by the Subhash Chandra Basu & Anr. Vs UOI & Ors.**

Reference is invited to Ministry of Home Affairs' ID note no. 12014/6/2008-Cdn dated March 16, 2009 on the above subject.

2. The following relevant documents on the subject are being forwarded:
- (i) Copy of the letter by which the list of the files on Netaji Subhas Chandra Bose provided to CIC with reference to a RTI request of Shri Anuj Dhar, r/o Vikas Puri, New Delhi.
  - (ii) Copies of the letters dated July 4, 2000 and July 25, 2000, by which the list of files on disappearance of Netaji Subhas Chandra Bose was provided to the Justice Mukherjee Commission of Inquiry.
  - (iii) Copy of the letter dated July 24, 2000 by which the list of Top Secret files on disappearance of Netaji Subhas Chandra Bose was provided to the Justice Mukherjee Commission of Inquiry. [**Top Secret document, being sent separately**].
3. The Justice Mukherjee Commission of Inquiry was not made available the following 4 files due to the following reasons, out of the list of files made available to CIC:
- (a) Files at Sl. No. 19 and 20 – The files does not relate to disappearance of Netaji Subhash Chandra Bose, but related to Bharat Ratna Award.
  - (b) Files at Sl. No. 30 and 31 - Request of Justice Mukherjee Commission of Inquiry seeking relevant Top Secret files, were dealt with on these two files.
4. I am directed to request that the Ministry of Home Affairs may kindly take necessary action in the matter.

  
(Amit Agrawal)  
Director  
Tel. 2301 2613  
Fax No. 23016857

Home Secretary

PMO ID no. 1249196/PMO/2009-Pol.1

Dated March 19, 2009

Encl: as above

m.o.o

Copy to:

Sr. PPS to Principal Secretary to PM.

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Most Immediate

**PRIME MINISTER'S OFFICE**  
[POLITICAL SECTION]

**South Block, New Delhi – 110 101**

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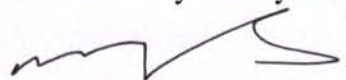
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 (Amit Agrawal)  
 Director  
 Tel. 2301 2613  
 Fax No. 23016857

of c

Home Secretary

PMO ID no. 1249196/PMO/2009-Pol.1

Dated March 19, 2009

Encl: as above

*Processed by N/90 Section  
19/3/09*



16  
Most Immediate

**PRIME MINISTER'S OFFICE**  
[POLITICAL SECTION]

**South Block, New Delhi – 110 101**

**Sub: Writ Petition No.8215(W)/2008 filed in the Calcutta High Court by the Subhash Chandra Basu & Anr. Vs UOI & Ors.**

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(Amit Agrawal)  
Director  
Tel. 2301 2613  
Fax No. 23016857

Home Secretary

PMO ID no. 1249196/PMO/2009-Pol.

Dated March 19, 2009

Encl: as above

n.o.o.

Copy, with enclosures, to:

Ministry of Home Affairs [Attn: Shri S. K. Malthora, Deputy Secretary]

**PRIME MINISTER'S OFFICE**

South Block  
New Delhi - 110 101

No. RTI/219/2006-PMA

Dated 14 March - 2008

To:

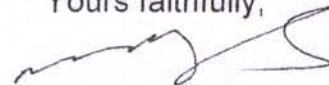
Shri Anuj Dhar  
263, Kangra Niketan  
Vikas Puri  
New Delhi - 110 018

Subject: List of files on Netaji Subhas Chandra Bose in Prime Minister's Office

Sir,

In pursuance of Central Information Commission's order dated 8.2.2008 in Adjunct to Appeal no. CIC/WB/A/2007/00129A, a list of the files referred to in the order is enclosed.

Yours faithfully,



(Amit Agrawal)  
Director and  
Central Public Information Officer  
☎: 2301 2613

Enclosure : as above

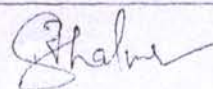
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*Handwritten notes:*  
R. S. ...  
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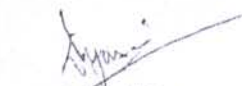
*Handwritten notes:*  
24/3/08

Details of files relating to Netaji

S.N.	File No.	Subject
1.	2/658/53-PMS	Jankinath Bhavan at Cuttack, birthplace of Shri Subhas Chandra Bose – acquisition by the Orissa Government of – use of the building as a hospital by the Netaji Subhas Seva Sadan
2.	23(11)/56-57PM	INA Treasure
3.	2/64/56-66-PM(V.1)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
4.	2/64/56-66-PM(V.2)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
5.	2/64/56-67-PM(V.3)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
6.	2/64/56-68-PM(V.4)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
7.	2/64/56-70-PM(V.5)	Death of Shri Subhash Chander Bose -Appointment of an inquiry committee to go into the circumstances of the death
8.	2/67/56-71-PM (V.1)	Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about
9.	2/67/56-71-PM (V.2)	Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about
10.	2/64/78-PM	Death of Netaji Subhash Chander Bose, appointment of an inquiry commission to go into the circumstances of death
11.	2/64/78-PM Annexure	Death of Netaji Subhash Chander Bose, appointment of an inquiry commission to go into the circumstances of death- Annexure
12.	2/67/78-PM	Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about
13.	2/64/79-PM	Death of Netaji Subhash Chandra Bose – Appointment of an inquiry commission to go into the circumstances of – INA treasures etc
14.	2/64/80-PM Annexure	Death of Netaji Subhash Chandra Bose – Appointment of Enquiry Commission to go into the circumstances of – and papers reg. INA treasure, etc.
15.	2/64/86-PM	Death of Netaji Subhash Chandra Bose – Appointment of Enquiry Commission to go into the circumstances of – and papers reg. INA treasure, etc.
16.	800/6/C/3/88-Pol	Death of Netaji Subhash Chandra Bose – Appointment of an enquiry commission to go into the circumstances – papers regarding INA treasure etc.
17.	800/6/C/1/89-Pol	Netaji Subhash Bose
18.	870/11/P/17/90-Pol	Netaji Subhash Chandra Bose – disappearance regarding – reference from Prof. Samar Guha, MP
19.	800/5/C/1/91-Pol(V.1)	Bharat Ratna Award – Maulana Abul Kalam Azad, Subhash Chandra Bose, JRD Tata, Morarji Desai
20.	800/5/P/2/91-Pol	Bharat Ratna Award – Policy papers about – posthumous conferment guidelines – Maulana Abul Kalam Azad, Netaji Subhash Chandra Bose
21.	870/11/P/10/91-Pol	Netaji Subhsash Chandra Bose – disappearance regarding – reference from Prof. Samar Guha, MP
22.	870/11/P/16/92-Pol	Netaji Subhash Chandra Bose - disappearance




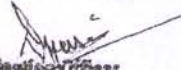
(RAJESH SHARMA)  
Section Officer  
Prime Minister's Office  
New Delhi



Section Officer  
Prime Minister's Office  
New Delhi

23.	870/11/P/10/93 Pol(V.2)	Disappearance of Netaji Subhash Chandra Bose
24.	870/11/P/11/95-Pol	Disappearance of Netaji Subhash Chandra Bose
25.	915/11/C/6/96-Pol	Disappearance/ death of Netaji Subhash Chandra Bose, etc.
26.	915/11/C/9/99-Pol(V.1)	Netaji Subhash Chandra Bose – disappearance/ death inquiry reg
27.	23(11)/56-57-PM-NGO	INA Treasure
28.	T-2(64)/78-PM-NGO	Death of Netaji Subhash Chandra Bose – Appointment of an enquiry commission to go into the circumstances of death
29.	G-12(3)/98-NGO	Transfer of the Ashes of Netaji SC Bose to India
30.	G-16(4)/2000-NGO(V.1)	Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry
31.	G-16(4)/2000-NGO(V.2)	Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry

  
(RAJESH SHARMA)  
Section Officer  
Prime Minister's Office  
New Delhi

  
Senior Officer  
Prime Minister's Office  
New Delhi

SECRET

10

13/c

Prime Minister's Office

No. 915/11/C/2/2000-Pol

4th July, 2000

From : Ms. Archana Ranjan,  
Director  
Prime Minister's Office  
South Block,  
New Delhi.-110011.

To: Shri P.K. Sengupta  
WBHJS (Retd.)  
Secretary,  
Justice Mukherjee Commission of Inquiry  
B' Block.(Third Floor)  
11/A Mirza Ghalib Street, Calcutta 700 087.

Sir,

I am directed to refer to your letter No.JMC/Meeting/48/95 dated 23<sup>rd</sup> May, 2000 and to forward the photocopies of the files/records concerning Netaji Subhas Chandra Bose/INS as per the list enclosed. Two files which are classified as Top Secret, are being sent separately.

2. The file No.12(226)/56-PM which contained agenda paper/cabinet decision regarding "Investigation into the circumstance leading to the death of Shri Subhash Chandra Bose" was destroyed in 1972 in course of routine review/weeding of old records since records of Cabinet proceedings are kept permanently in Cabinet Secretariat, from where they may be procured.

3. Certain documents of F.No.23(156)/51-PM required by the Commission have been destroyed while recording that file in 1969. The list of the papers destroyed may kindly be seen in that file.

Yours faithfully,

  
[Archana Ranjan]  
Director

570.4/c

Issued (with 20 files)  
M  
4/7/2000

copy to NCIO Secy.

p-1-512

9 c

List of files on Netaji Subhash Chandra Bose located in PMO records:

Sl.No.	Files Number	Subject
✓ 1.	23(156)/51-PM (Secret)	Disposal of properties of Indian National Army in the far East.
② *2.	23(11)/56-57-PM (Top Secret)	I.N.A Treasure.
③, ④, ⑤, ⑥, ⑦ *3.	2(64)/56-66-PM Vol. I,III,IV&V (Secret) Vol.II - (Top Secret)	(i) Death of Sh. S.C.Bose. (ii) Appointment of an Enquiry Committee to go into the circumstances of the death.
⑩ 4.	2(64)/78-PM (Secret)	- do-
⑪ 5.	2(64)/79-PM (Confidential)	- do-
✓ 6.	2(64) 80-PM	- do-
7.	2(64)/81-PM	- do-
8.	2(64)/82-PM	- do-
9.	2(64)/84-PM	- do-
✓ 10.	2(64)/86-PM (Secret)	- do-
✓ 11.	800/6/C/3/88-Pol (Secret)	-do-
✓ 12.	800/6/C/1/89-Pol (Secret)	Netaji Subhash Bose
13.	800/6/C/1/90-Pol	Netaji Subhash Bose
14.	800/6/C/1/91-Pol	Disappearance of Netaji Subhash Bose
⑮ 15.	915/11/C/6/96-Pol	Disapperance/death of Sh. S.C.Bose.
⑯ 16.	5/11/C/9/99-Pol [ Vol. I,II & III] (Vol.I-Secret)	Disappearance/death of Shri S.C. Bose.

\*Regarding F.Nos. 23(11)/56-57-PM and 2(64)/56-66-PM (Vol.II) be Top Secret a further communication will follow.

12  
**SECRET**

Prime Minister's Office

No. 915/11/C/2/2000-Pol

25th July, 2000

From : Ms. Archana Ranjan,  
Director  
Prime Minister's Office  
South Block,  
New Delhi.-110011.

To: Shri P.K. Sengupta  
WBHJS (Retd.)  
Secretary,  
Justice Mukherjee Commission of Inquiry  
B' Block.(Third Floor)  
11 A Mirza Ghalib Street, Calcutta 700 087.

Sir.

In continuation of my letter dated 4<sup>th</sup> July, 2000 I am desired to forward photo copies of 10 more files relating to Netaji Subhas Chandra Bose/INA which have since been located in PMO records ( as per list attached).

One more file (F.No.2(381) 60-66-PM – proposal to bring Shri Subhas Chandra Bose's ashes from Tokyo and to put up a memorial to him in front of the Red Fort in Delhi) is not readily traceable and would be sent when found. Efforts to locate it are on.

Yours faithfully,

*Archana*  
[Archana Ranjan]  
Director

Issued (with 10 f. lbs)  
M  
25/7

p-6-8/2

List of files on Netaji Subhash Chandra Bose located in PMO records:

Sl.No.	Files Number	Subject
✓ 1.	2(67)56-71-PM Vol.I & II (secret)	Widow and daughter of Shri Subhas Chandra Bose Misc. correspondence with and about.
✓ 2.	2(67)78-PM (secret)	-do-
✓ 3.	2(64)78-PM Annexure to S.No.38 (confidential)	Death of Netaji Subhas Chandra Bose - appointment of an Inquiry Commission to go into the circumstances of death).
*4.	2(64)80-PM (Annexure) (secret)	-do-
✓ 5.	2(658)53-PMS (secret)	Jankinath Bhavan at Cuttack. Birth place of Shri Subhas Chandra Bose - acquisition by the Orissa Govt. of - use of the building as a Hospital by the Netaji Subhas Seva Sadan.
✓ 6.	870/11/P/17/90-Pol (secret)	Netaji Subhas Chandra Bose - disappearance regarding - Sh. Samar Guha. MP's letter forwarded by the President.
✓ 7.	870/11/P 10/91-Pol (secret)	-do-

\* Regarding F.Nos.2(64)78-PM Annexure to S.No.38 and 2(64)80-PM(Annexure) - Photo copy of the main files have been made available to the Commission vide letter No.915/11 C 2 2000-Pol dated 4 7 2000.

889

12

11

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1

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21



22

8. 870/11/P/16/92-Pol  
(confidential)

Netaji Subhas Chandra Bose -  
disappearance of papers regarding.

23

9. 870/11/P/10/93-Pol Vol.I&II  
(secret)

Disappearance of Netaji Subhas  
Chandra Bose return of the ashes of  
Shri Netaji Subhash Chandra Bose  
from Japan to India.

24

10. 870/11/P/11/95-Pol  
(secret)

Disappearance of Netaji Subhas  
Chandra Bose.

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Extracts from W.P. No. 8215 (W) 2008 filed  
in the Calcutta High Court by Subhash Chandra  
Basu + Anr vs. UOI and others.

14.1. Be it mentioned here that another Writ Petitioner was filed in this Hon'ble Court by another lawyer challenging arbitrary decision of rejection of Mukherjee Commission Report dated 17.05.2006 and the Action Taken Report (ATR) of Central Government. The said Writ Petition is still pending for final adjudication.

14.2. In spite of consistent demand from the public at large and filing of said Writ Petition against the said rejection, the Central Government did not disclose any reason for such rejection of Mukherjee Commission Report and the reason best known to them only.

15. That very recently by the order of Central Information Officer some of the 'Secret' and 'Top Secret' file or documents or records relating to alleged Netaji's disappearance or death and Treasurer of Indian National Army (I.N.A) and conferment of Bharat Ratna Award on Netaji posthumously have been kept open to the Public and it has becoming accessible to the public now. As a result of such order it has got new dimension or broader spectrum and a bright horizon in the filed of inquiry into alleged disappearance or death of Netaji have been unveiled or divulged in as much as such documents were completely out of reach to the Mukherjee Commission and other when the same was conducting. Therefore, the Mukherjee Commission, if appointed further, shall be able to answer the points (d) of the terms of reference of earlier appointment

which were unanswered by the commission previously for which Mukherjee Commission is required to be reappointed in the above fact and circumstances. The said news of the Information Commissioner were published in different News Papers such as Bartaman and Ananda Bazar Patrika dated 20.02.2008 and 27.03.2008 and Bartaman dated 27.03.2008.

The xerox copies of the said news papers reports cutting are enclosed herewith and marked as Annexure - P/-6 collectively to the writ petitioner.

16. That it is pertinent to mention here that the petitioner No.1 herein also filed another Writ Petition being W.P.No. 27541(W) of 2006 in this Hon'ble Court for stopping all sorts of expenditure incurred by the Government of India for upkeep and maintenance of Renkoji Temple in Japan where alleged ashes of Netaji Subhas Chandra Bose are being kept. In the said Writ Petition the Hon'ble Division Bench by order dated 15.02.2008 imposed cost of Rs.1700/- (100 G.M.) upon the Union of India for not filing the Affidavit-in-opposition in time in spite of earlier two directions in this regard.

16.1. The Central Government ultimately affirmed the Affidavit-in-opposition in W.P. No.27541 (W) of 2006 dated 5<sup>th</sup> of March, 2008 wherein the Principal Officer of the Respondents Shri Naresh Jaiswal,

PARAWISE COMMENTS TO WP NO.8215(W)/2008

Para 15.

The allegation of the petitioners is denied and disputed to the effect that the relevant documents or records relating to alleged Netaji's disappearance were not accessible to the Justice Mukherjee Commission of Inquiry. It is humbly submitted that JMCI only after examining 131 witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits submitted its report on 8<sup>th</sup> November, 2005. In respect of 'Secret' and 'Top Secret' file/documents or records it may be stated that these records relate to the appointment of Inquiry Committee on the death of Shri Subhash Chandra Bose refer to the award of Bharat Ratna award (Posthumously) on Netaji and as such, these do not contain any material which have not been made available to the Commission earlier.

**Most Immediate**  
**By Special Messenger**

No.12014/6/2008-Cdn.  
Government of India  
Ministry of Home Affairs  
IS- II Division

\*\*\*

Lok Nayak Bhavan, 9<sup>th</sup> floor, 'C' Wing,  
Room No.8, New Delhi,

Dated the 15<sup>th</sup> December, 2010

**Office Memorandum**

**Sub: WP No. 8215(W)/08 filed by Shri Subhash Chandra Basu and Ors Vs. Union of India & Ors.**

3/5

The undersigned is directed to refer to PMO I.D No.1249196/ PMO/2009-Pol.1 dated 19.3.2008. The Writ Petition No.8215(W)/08 has been filed by Shri Subhash Chandra Basu & others Vs Union of India. A copy of the Writ Petition is enclosed. As may be seen besides Ministry of Home Affairs, Principal Secretary of PM, Ministry of Parliamentary Affairs and Ministry of Foreign Affairs have been made Respondents to this Writ Petition. Ministry of Home Affairs prepared the para-wise comments and sent the same to Additional Govt. Counsel, Ministry of Law Justice, Branch Secretariat, Kolkata for preparing the Affidavit.

2. The case came up for hearing on 19-11-2010 and the case has been adjourned for final hearing on 13<sup>th</sup> Jan 2011. The draft Affidavit received has been modified and edited by this Ministry. A copy of the Affidavit is being sent to PMO for suggesting any edition / deletion.

3. PMO is requested to kindly arrange to furnish the comments by 24<sup>th</sup> Dec'2010 positively. It may also be confirmed whether the PMO may like to file a separate Affidavit and if so, the status may also be conveyed to this Ministry.

**Enclo : As above.**

**(K. Muralidharan)**  
**Deputy Secretary to the Govt. of India**  
**Tel: 24617196**

**Shri Ashish Gupta,**  
**Director,**  
**Prime Minister's Office**  
**South Block, New Delhi.**

*Dir(AA)*

*19/12*

*Papers pl.*

*Pol.*

*16/12*

*PPS at [3/5] pl.*  
*20/12*  
*Dir(AA)*

1615913

DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. NO. 8215 (W) OF 2008

Subject matter relating to :

“PUBLIC INTEREST LITIGATION”

Under Group - IX, Head \_\_\_\_, of the  
Classification List.

CAUSE TITLE

SRI SUBHASH CHANDRA BASU & ANR.  
..... PETITIONER

-VERSUS-

UNION OF INDIA & ORS.

..... RESPONDENTS

ON-RECORD

SUBHASH CHANDRA BASU  
Petitioner-in-Person  
Bar Association Room No.12  
High Court, Calcutta.

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DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. No. 8215 (W) of 2008

IN THE MATTER OF :

SRI SUBHASH CHANDRA BASU &  
ANR.

..... PETITIONERS

-VERSUS-

THE UNION OF INDIA & ORS.

..... RESPONDENTS

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Sl. No.	Particulars of Documents	Annexure	Pages
1.	List of Dates		
2.	Points of Law involved		
3.	Writ Petition with Affidavit		
4.	Xerox Copy of the Order dated 04.08.1997 reported in AIR 1997 SC 3019.	"P-1"	
5.	Xerox Copy of the Order dated 30.04.1998 reported in 1999 Calcutta 9.	"P-2"	
6.	Xerox copy of the Notification No.S.O. 339(E) dated 14.05.1999 for appointment of Mukherjee Commission.	"P-3"	
7.	Xerox copy of the finding and/or conclusion of Mukherjee Commission's Report dated 07.11.2005.	"P-4"	
8.	Xerox copy of the Order of rejection of the conclusion/finding of Mukherjee Commission's report dated 17.05.2006.	"P-5"	
9.	Xerox copy of the news papers reports cutting dated 20.02.2008 and 27.03.2008. collectively.	"P-6" Collect	
10.	Xerox copy of the Order dated 15.02.2005 passed in W.P. No.27541 (W) of 2006 by the Hon'ble Division Bench, High Court, Calcutta.	"P-7"	
11.	Xerox copy of the representation dated 11.03.2008 sent by the petitioners.	"P-8"	

DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W.P. No. 8215 (W) of 2008

SRI SUBHASH CHANDRA BASU & ANR.

..... PETITIONERS

-VERSUS-

THE UNION OF INDIA & ORS.

..... RESPONDENTS

LIST OF DATES

<u>Sl. No.</u>	<u>Date</u>	<u>Events</u>
01.	23.01.1897	: Netaji Subhas Chandra Bose was born.
02.	18.08.1945	: Netaji allegedly died in plane crash in Taihoku.
03.	05.04.1956	: Shah Nawaz Khan Committee was appointed Vide Notification No.F-30(26)FEA/55 to inquire into alleged disappearance and/or death of Netaji Subhas Chandra Bose in 1945.
04.	11.07.1970	: Khosla Inquiry Commission was constituted Vide Notification No.25/14/70-Poll- to enquire into the alleged disappearance and/or death of Netaji in 1945.
05.	03.09.1974	: Khosla Inquiry Commission's report was laid on the table of parliament (Lok Sabha).
06.	28.08.1978	: The then Prime Minister Morarji Desai made the statement on the floor of parliament that the earlier conclusion reports of Shah Nawaz Committee and Khosla Commission of Inquiry are not decisive.



(ii)

07.	1993	:	Writ Petition being C.O. No.6720 of 1993 was filed in the High Court, Calcutta challenging the press communiqué for conferment of Bharat Ratna Award on Netaji Subhas Chandra Bose posthumously.
08.	1994	:	The said Writ Petition was transferred as Transfer Case (C) No.7 of 1994 to the Hon'ble Supreme Court of India.
09.	04.08.1997	:	The Writ Petition was disposed of with a direction to cancel the said Press-Communiqué for conferment of Bharat Ratna Award of Netaji Subhas Chandra Bose posthumously.
10.	1998	:	A Writ Petition being W.P. No.281 of 1998 was further filed before this Hon'ble Court seeking for a direction for constituting a Commission of Inquiry to inquire into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.
11.	30.04.1998	:	The said Writ Petition was disposed of with a direction upon the Union of India to constitute Commission of Inquiry to inquire into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.
12.	28.12.1998	:	A unanimous resolution adopted in West Bengal Legislative Assembly demanding for Constituting a Commission of Inquiry into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.

(iii)

13.	14.05.1999	:	Mukherjee Commission was appointed Vide Notification No.S.O. 339 (E3) by virtue of order of the Hon'ble Divisional Bench, High Court, Calcutta as a special case to inquire into alleged death or disappearance of Netaji Subhas Chandra Bose in 1945.
14.	07.11.2005	:	Mukherjee Commission's Report was concluded.
15.	08.11.2005	:	Mukherjee Commission's Report was submitted before the Central Government.
16.	17.05.2006	:	Mukherjee Commission's Report and the Action Taken Report (A.T.R.) were table before the Parliament by the Central Government and rejected the said Report.
17.	2006	:	A Writ Petition being W.P. No.27541 (W) of 2006 was filed by the petitioner No.1 for stopping all sorts of expenditure for upkeep and maintenance of alleged ashes of Netaji kept in Renkoji Temple in Japan.
18.	20.02.2008 27.03.2008	:	News published in Bartaman and Andabazar Patrika relating to 29 Nos. of Secret and Top Secret files of Netaji's death and I.N.S. Treasurer exposed to public by the order of Central Information Commission.
19.	11.03.2008	:	The representations were sent to different concerned authorities seeking for reappointment of Mukherjee Commission.

DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W.P. No. (W) of 2008

SRI SUBHASH CHANDRA BASU & ANR. .... PETITIONERS

-VERSUS-

THE UNION OF INDIA & ORS. .... RESPONDENTS

POINTS OF LAW

1. Whether the Central Government has got any right to unilaterally cancel or reject the Mukherjee Commission report dated 18.05.2006 when the Commission was constituted by the direction of the Writ Court under high Prerogative Writ of the Hon'ble Division Bench, High Court, Calcutta and when the name of Chairman of Commission was selected by the then Chief Justice of the Hon'ble Supreme Court of India ?.
2. Whether for greater Public Interest the reappointment or reopening of Mukherjee Commission is required for completion of inquiry in view of earlier terms of reference of appointment under clause No.2(d), (e) and for publication of News touching Netaji's alleged death or disappearance in 1945 ?.
3. Whether it is necessary to complete or cover the most vital left out points of the earlier terms of reference of appointment No.2(d), (e) and for publication of News of Netaji's alleged death ?

4. Whether the Commission is entitled to get all sorts of classified documents and files relating to Netaji's alleged death or disappearance in 1945 for the purpose of proper inquiry in the matter of Great Public Importance ?
5. Whether in any view Mukherjee Commission is required to be reappointment or reopening in order to remove controversy and/or to bring an end regarding Netaji alleged death or disappearance in 1945 as alleged ?
6. Whether after appointment Mukherjee Commission in 1999 the earlier. Committees report in 1956 and the Khosla Commissioner's report 1974 have automatically become invalid and/or redundant?
7. Whether ever, after the then Prime Minister's statement in the Lok Sabha in 1978 the value or wait-age of earlier committee's report and commission's report had completely lost or became null and void in the eye of law ?
8. Whether the non-supply of document/file/record relating to alleged death or disappearance of Netaji in 1945 before the Commission had caused or resulted the Commission not to give answer in respect clause No.(d) of the terms of reference of appointment of Mukherjee Commission in 1999 ?
9. Whether the Central Government earlier stand of the Committee's and Commission's report are contradictory to the opinion Commission for the third time for the same matter in the year; 1999 ?

(26)

DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
(APPELLATE SIDE)

W.P. NO. (W) OF 2008.

IN THE MATTER OF :

An application under Article 226 of  
the Constitution of India;

-And-

IN THE MATTER OF :

A writ or writs in the nature of  
Mandamus;

-And-

IN THE MATTER OF :

A writ or writs in the nature of  
Certiorari;

-And-

IN THE MATTER OF :

Re-appointment or re-opening of  
Mukherjee Commission for

completion of Inquiry into the matter of alleged disappearance and/or death of Netaji Subhas Chandra Bose in 1945 and/or continue further enquiry to find out the date of death of Netaji Subhas Chandra Bose, if he has died, and how, where and when, in earlier terms of reference of appointment under clause No. "2.(d) - Whether he has died in any other manner at any other place and, if so, when and how," of the said earlier Commission of Inquiry appointed by the Government of India Vide Notification No.S.O.339(E) dated 14.05.1999;

-And-

**IN THE MATTER OF :**

The Evidence Act, 1872;

-And-

IN THE MATTER OF :

The Public Records Act, 1993;

-And-

IN THE MATTER OF :

Violation of fundamental rights enshrined under Article 14, 19(1) of the Constitution of India;

-And-

IN THE MATTER OF :

The Right to Information Act, 2005;

-And-

IN THE MATTER OF :

Non-Consideration of the representation dated 11.03.2008 sent by the petitioner to the concerned authorities;

-And-

IN THE MATTER OF :

1. SRI SUBHASH CHANDRA BASU,  
Son of Late Surendra Nath Basu,

residing at 86, Sadar Boxi Lane,  
Post Office, Police Station and  
District - Howrah, Pin - 711101;

2. **SRI PANKAJ HALDER,**

son of Sri Late Arabinda Halder,  
residing at Village - Mathurapur,  
Post Office and Police Station -  
Mathurapur, District - South 24-  
Parganas.

... PETITIONERS.

-Versus-

1. **UNION OF INDIA,**

service through the Secretary,  
Ministry of Home Affairs,  
Government of India, North Block,  
New Delhi - 110001;

2. **PRINCIPAL SECRETARY,**

Government of India, Office of Prime  
Minister at 7, Race Course Road,  
New Delhi - 110003;



3. SECRETARY,

Ministry of Foreign Affairs,  
Government of India, South Block,  
New Delhi - 110001.

4. SECRETARY,

Ministry of Parliament Affairs,  
Government of India, New Delhi-  
110001.

..... RESPONDENTS

To

The Hon'ble Surinder Singh Nijjar, Chief Justice and His Companion  
Justices of this Hon'ble Court;

The humble petition of the  
petitioners above-named;

**MOST RESPECTFULLY SHEWETH :**

1. That the petitioners are the citizens of India having their permanent residences mentioned in the Cause Title.
2. That the petitioner is No.1, is the lawyer of this Hon'ble High Court and he is the social worker and involved in different social and other

activities in the district of Howrah. Furthermore, the Petitioner No.1 along with another petitioner filed a Writ Petition before the Hon'ble Supreme Court of India concerning the entire civic rights and pollution matter of Howrah against the State of West Bengal and Howrah Municipal Corporation for not discharging their bounden duties and/or providing civil amenities to the people of Howrah. The Writ petition being Writ Petition (Civil) No.380 of 1995 was finally disposed of on 16.04.1996 with a direction to the Hon'ble the then Chief Justice of the High Court, Calcutta to constitute a Bench to hear all the matter of the said Writ Petition including other pollution and environment matter of the West Bengal. By virtue of the order of the Hon'ble Supreme Court of India, the Environmental Bench, which is popularly known as Green Bench, was constituted. Beside above, the petitioner No.1 as co-petitioner filed other Public Interest Litigations concerning Calcutta Maidan, Victoria Memorail Hall, Shibpur Botanical Garden, Transport and Howrah Hat and other under the name and style of an organization as "Howrah Ganatantrik Nagarik Samity", which is a non-party organization of the citizens of Howrah.

So for as the petitioner No.2 is concerned, he is also a practicing advocate of this Hon'ble High Court, and he is envolved in different social works and other philanthropic activities in the area of Mathurapur and adjoining area.

3. That the petitioner states that after mysterious disappearance of Netaji Subhas Chandra Bose in 1945 he has not come back, or was not found him thereafter on the Indian soil. The people of India is ~~inter~~ indebted to him for his great role and gallant deeds of Azad Hind Fouz (I.N.A.) for Indian Independence. The Indian Independence had been snatched away from British Raj after a lot of scarifies and shedding of much blood of Indian People. As soon as the name of Netaji is heard, the Indian People not only bow down their heads with great respect from the core of their hearts where they had left their vacant place to enthrone none else Netaji but also their inquisitive mind, want to know the ultimate fate of their beloved leader great National Hero having international name and fame. In respose to carion call and to unchain the motherland from the course of dependence Netaji came out of his Elgin Road's House on 17.01.1941 by throwing dust in the eyes of British Police and sprung into the struggle for Indian freedom. His relentless efforts and mysterious journey from India to Japan and launching movement for Indian freedom therefrom and formation of Azad Hind Fouz for Indian movement and his love and patriotism for India their dedication and their march to Delhi have become baland and/or mith to the people of Indian. Though Netaji and His Azad Hind Fouz could not bring the Indian Independence, but due to his movement the Himalayan

foundation of the British Raj had been shaken and had quicken the Britishers to leave India and/or to transfer the power to the Indians. Therefore, Netaji has become the concerned for all and not simply confined to particular family, or region or geographic limit. Furthermore, the movement of Netaji and his Azad Hind Fouz were not only for Indian Independence but also for the struggle for Indo-Pack sub-continent and thus, the people of the Indo-Pack sub-continent still remember Netaji, their National Hero or their beloved leader of Independence with great respect. The people have enthroned him in their core of hearts due to his insurmountable patriotism, love for the motherland, unparalleled and towering personality, which made him so dear and near to the people at large of our country. It may not be out of place to mention here that the people of the aforesaid region are indebted to Netaji for independence. His movement for independence still encourages the freedom-lovers of the different parts of the world. Therefore, being Indians the petitioners consider it as ~~one~~ one of their solemn duty to find out their National Hero and to unearth the place of death, if he has died, and where and how has died and unless the said uppermost question is resolved and/or divulged to all, the people of India and the petitioners shall be constrained to do their endeavor or efforts to unearth the hidden truth behind the said mysterious disappearance or alleged death of Netaji Subhas Chandra

Bose. The petitioners as citizens and lawyers consider it as their rights to know about their National Hero and the aforesaid question and the authorities are duty bound to appraise the people of India as to the real truth behind it and to put a permanent end to the said controversy.

4. That since after alleged disappearance of Netaji Subhas Chandra Bose in 1945, he did not come back to the Indian soil, and since there was an uproar and resentment over the news of alleged death of Netaji in Plane Crash in Taihoku, Japan and since the said issue had stricken again and again the minds of the people and the then Prime Minister Jaharlal Neharu and His Ministry, ultimately a three members Inquiry Committee vide its Notification No.F-30(26)FEA/55 dated April 5, 1956 was appointed by the Government of India. The majority report, which held that Netaji died in the aforesaid plane crash, was accepted by the Government of India. The said Committee was constituted under the Chairmanship of Shah Nawaz Khan, Parliamentary Secretary to the Ministry of Transport and Railway, and Shri Suresh Chandra Bose, elder brother of Netaji Subhas Chandra Bose and Shri S.N. Maitra, I.C.S., Chief Commissioner, Andaman and Nicobar Islands, as its members. After considering the evidence collected by the Committee, two of them (Shri Shah Nawaz Khan and Sri S.N. Maitra) came to the conclusion that

Netaji had died in the aforesaid plane crash. Shri Suresh Chandra Bose, the other member and elder brother of Netaji, submitted a dissentient report stating that there had been no plane crash involving Netaji's death. The majority report was accepted by the Government of India.

5. That the said majority view of that Committee, however, did not satisfy the public in general and several members of the Parliament in particular, who raised a demand for fresh Inquiry into the matter. Under the circumstances, the Government of India, in exercise its powers under The Commissions of Inquiry Act, 1952 constituted an Inquiry Commission Vide its Notification No.25/14/70-Poll. dated 11.07.1970 headed by Shri G.D. Khosla, Retired Chief Justice of Punjab High Court. The Commission was asked to inquire into all the facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945. That commission examined some of the witness including Shri Shas Nawaz Khan and Shri Suresh Chandra Bose. That commission came to the conclusion that Netaji had succumbed to his injuries sustained in the plane crash at Taihoku and that his ashes had been taken to Tokyo. The findings of the Kholsa Commission also did not end the controversy surrounding Netaji's death. Several important people and personalities including some members of Netaji's family, Sri Samar Guha, Ex-MP and others did not accept the findings of the Khosla Commission. Since then, there had been a wide spread feeling amongst

the people that the issue or truth about Netaji's alleged disappearance/death still remained unsolved and there was a consistent demand for another inquiry into the matter. Therefore, the findings of Khosla Commission could not bring the end of controversy surroundings Netaji's death.

6. That thereafter the Report (1974) of Khosla Commission of Inquiry into the disappearance of Netaji Subhash Chandra Bose laid on the Table of the Parliament (Lok Sabha) on 03.09.1974 and in reply thereto Sri Morarji Deasi, the then Prime Minister of India, made the following statements on the floor on 28.08.1978 which were recorded at Page 455 and 456<sup>b</sup> parliamentary proceedings :-

"There have been two enquiries into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18<sup>th</sup> August, 1945 at Taihoku air-field during his air-journey to Manchuria, one by a Committee presided over by Maj. General Shah Nawaz Khan and the second by a one-man Committee (sic) of enquiry headed by Shri G.D. Khosla, retired Judge of the Punjab High Court. The majority report of the first committee and Shri Khosla held the report of the death as true. Since then, reasonable doubts have been cast on the correctness of the conclusions reached in the two reports and various important contradictions in the testimony of

witnesses have been noticed, some further contemporary officials documentary records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive.”

7. That thereafter a Writ Petition being C.O. No.6720 of 1993 was filed by one of the lawyer in the High Court, Calcutta and the same was transferred to the Hon'ble Supreme Court of India, as Transfer case (C) NO. 7 of 1994 challenging the press communiqué of Government of India for conferment of Bharat Ratna Award on Netaji Subhas Chandra Bose posthumously and the Hon'ble Supreme <sup>Court</sup> by order dated 04.08.1997, which was later on reported in AIR 1997 Supreme Court, 3019 (Union of India- Versus - Bijan Ghosh), cancelled the said Press Communiqué as the Union of India by affidavit stated that no further steps were taken for conferment of Bharat Ratna Award on Netaji Subhas Chandra Bose. The Union of India, thus, retreated from their stand as to the death of Netaji and/or conferment of Bharat Ratna Award posthumously.

The Xerox copy of the said order dated 04.08.1997, which was later on reported in AIR 1997 SC 3019, is enclosed herewith and marked as Annexure -P/-1 to the Writ Petition.



8. That thereafter another Writ Petition being W.P. No. 281 of 1998 (Rudra Jyoti Bhattacharya - Versus - Union of India.), which was latter on reported in AIR 1999 CALCUTTA 9, was filed in the Hon'ble High Court, Calcutta seeking for direction upon the Government of India to Constitute a commission of Inquiry to launch a vigorous inquiry into the alleged disappearances or death of Netaji Subhas Chandra Bose and by order dated 30.04.1998 the Hon'ble Division Bench presided over by the Hon'ble Justice Prabha Shankar Mishra, the Chief Justice and the Hon'ble Justice B. Bhattacharya issuing high prerogative Writ directed the Union of India to launch an in-depth inquiry on the following points by appointing a commission of Inquiry as a Special case for the purpose of putting a permanent end to the controversy:-

- a) Whether Netaji Subhas Chandra Bose is dead or alive;
- b) if he is dead, whether he died in the place crash, as alleged;
- c) Whether the ashes in the Japanese Temple are ashes of Netaji;
- d) Whether he has died in any other manner at any other place and if so, when and how;
- e) If he is alive, in respect of his whereabouts,

The Xerox copy of the order dated 30.04.1998, which was reported in AIR 1999 CALCUTTA 9 is enclosed herewith and marked as Annexure -P/-2 to the petition.

9. That thereafter by a unanimous resolution adopted by the West Bengal legislative Assembly on 28.12.1998 demanded that the Government of India should make necessary arrangement for availability of records and documents in and outside India so that the scholars and people could have access them and also constitute a fresh inquiry commission to remove the controversy and/or mystery regarding the whereabouts of Netaji Subhas Chandra Bose.

10. That after the said unanimous resolution, the Government of India was of the opinion that it was necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance namely, the disappearance of Netaji Subhas Chandra Bose in 1945 and the Central Government by Notification No. S.O. 339 (E3) dated 14.05.1999, thus, appointed a one-man Commission of Inquiry consisting of Mr. Justice M.K. Mukherjee, a retired Judge of the Hon'ble Supreme Court of India and this Commission shall enquiry into the all facts and circumstances relating to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including :-

- a) Whether Netaji Subhas Chandra Bose is dead or alive;
- b) If he is dead, whether he died in the place crash, as alleged;

- 40
- c) Whether the ashes in the Japanese Temple are ashes of Netaji;
  - d) Whether he has died in any other manner at any other place and if so, when and how;
  - e) If he is alive, in respect of his whereabouts,

The Xerox copy of the said Notification No. S.O. 339(E) dated 14.05.1999 is enclosed herewith and marked as Annexure - P-3 to the Writ Petition.

11. That the said Commission of Inquiry shall also examine the manner in which the exercise of scrutiny of publication touching the question of death or otherwise of Netaji can be undertaken by the Central Government in the circumstances.

12. That Mukherjee Commission had examined 131 Nos. of Witnesses and enclosed 308 Nos. of Exhibited documents to the Report and had gone through other related documents or records and visited various probable place of death in India and abroad such as (i) Death in Red Fort, (ii) Death in plane crash; (iii) Death in Dehradun; (iv) Death in Sheopukalan and (v) Death in Faizabad and also visited different foreign Countries and ultimately came to the following conclusion and/or finding on 07.11.2005:-

- a) Netaji Subhas Chandra Bose is dead;

- b) He did not die in Plane crash as alleged;
- c) The ashes in Japanese Temple are not of Netaji;
- d) In absence of any clinching evidence a positive answer can not be given and;
- e) Answer already given in (a) above;

12.1. In the matter of publication touching upon the death of or otherwise of Netaji, Mukherjee Commission opined/suggested that the Central Government can proceed on the basis that he is dead but did not die in the Plane crash as alleged. The said report was submitted before the Government of India on 08.11.2005.

The Xerox copy of the finding and/or conclusion of Mukherjee Commission's Report dated 07.11.2005 is enclosed herewith and marked as Annexure - P/-4 to the Writ Petition.

13. That Mukherjee Commission report was tabled in the Parliament on 17.05.2006 and the Central Government had rejected the finding of Commission on 17.05.2006 without assigning any reason for rejection. For the Mukherjee Commission for a period of 6 years 7 months from 14.05.1999 to 07.11.2005, a huge public money was spent from the public exchequer. Since the matter <sup>is</sup> involved in great public importance and since the Commission was appointed to unearth the truth of alleged disappearance and/or death of our National Hero and beloved leader

Netaji Subhas Chandra Bose, the people of India never raise any question over such expenditure, rather they are wholeheartedly and eagerly waited for a suitable and reasonable answer and/or conclusion of the said above issues or quires in terms of reference No. 2(d) of the said Commission but Mukherjee Commission in its finding dated 07.11.2005 failed to make any firm and/or concrete finding as to where, when and how Netaji has died. As a result of such finding the said controversy as to alleged disappearance or death of Netaji in 1945 did not bring its permanent end and still surviving and/or subsisting.

The Xerox copy of the order of rejection dated 17.05.2006, which was collected from the website, is enclosed herewith and marked as Annexure P/-5 to the Writ Petition.

14. That the said controversy surrounding alleged disappearance and/or death of Netaji Subhas Chandra Bose could not bring an end and said controversy rather increased and remain unsolved when the Mukherjee Commission report tabled before the Parliament on 17.05.2006 and the Central Government by the Action Taken Report (ATR) rejected the said report without assigning any reason. The Central Government remained silent quite for a long time as to the reason for such cancellation of Mukherjee Commission's report on 17.05.2006 although there was constant and/or insisting demand from the public at large to know the reason of such cancellation or rejection.

14.1. Be it mentioned here that another Writ Petitioner was filed in this Hon'ble Court by another lawyer challenging arbitrary decision of rejection of Mukherjee Commission Report dated 17.05.2006 and the Action Taken Report (ATR) of Central Government. The said Writ Petition is still pending for final adjudication.

14.2. In spite of consistent demand from the public at large and filing of said Writ Petition against the said rejection, the Central Government did not disclose any reason for such rejection of Mukherjee Commission Report and the reason best known to them only.

15. That very recently by the order of Central Information Officer some of the 'Secret' and 'Top Secret' file or documents or records relating to alleged Netaji's disappearance or death and Treasurer of Indian National Army (I.N.A) and conferment of Bharat Ratna Award on Netaji posthumously have been kept open to the Public and it has becoming accessible to the public now. As a result of such order it has got new dimension or broader spectrum and a bright horizon in the filed of inquiry into alleged disappearance or death of Netaji have been unveiled or divulged in as much as such documents were completely out of reach to the Mukherjee Commission and other when the same was conducting. Therefore, the Mukherjee Commission, if appointed further, shall be able to answer the points (d) of the terms of reference of earlier appointment

which were unanswered by the commission previously for which Mukherjee Commission is required to be reappointed in the above fact and circumstances. The said news of the Information Commissioner were published in different News Papers such as Bartaman and Ananda Bazar Patrika dated 20.02.2008 and 27.03.2008 and Bartaman dated 27.03.2008.

The xerox copies of the said news papers reports cutting are enclosed herewith and marked as Annexure - P/-6 collectively to the writ petitioner.

16. That it is pertinent to mention here that the petitioner No.1 herein also filed another Writ Petition being W.P.No. 27541(W) of 2006 in this Hon'ble Court for stopping all sorts of expenditure incurred by the Government of India for upkeep and maintenance of Renkoji Temple in Japan where alleged ashes of Netaji Subhas Chandra Bose are being kept. In the said Writ Petition the Hon'ble Division Bench by order dated 15.02.2008 imposed cost of Rs.1700/- (100 G.M.) upon the Union of India for not filing the Affidavit-in-opposition in time in spite of earlier two directions in this regard.

16.1. The Central Government ultimately affirmed the Affidavit-in-opposition in W.P. No.27541 (W) of 2006 dated 5<sup>th</sup> of March, 2008 wherein the Principal Officer of the Respondents Shri Naresh Jaiswal,

without mentioning the name of department to which he was attached swore the affidavit and the said official stated in paragraph No. 8 and 9 of the said Affidavit as follows:-

"8. With regard to the statement made in paragraphs 8 of the writ petition, it is submitted that the report of the Justice Mukherjee Commission was examined thoroughly and it was observed that Commission's inquiry was inconclusive in many ways, unable to provide a definitive finding on several issues and at variance with ~~past well accepted inquiry Commission's finding on several issues~~ and at variance with ~~past well accepted inquiry Commission's findings~~ in some critical areas: It is further submitted that Justice Mukherjee Commission did not provide any finding on point at Sub-para (d) of terms of reference mentioned in reply to para 6 above. Thus, Government of India did not find it possible to accept the findings of the Justice Mukherjee Commission that a) Netaji did not die in the plane crash; and b) the ashes in the Renkoji Temple were not of Netaji and it has accordingly been reflected in the Action Taken Report laid before the House of Parliament."

"9. With regard to the statement made in paragraphs 9 of the writ petition, it is reiterated that Government of India was not able to accept the report of the Justice Mukherjee Commission



inasmuch as the inquiry was found to be inconclusive in many ways and it had not been able to provide definite findings on several issues as mentioned in reply to Para 8 above. It is further submitted that though the Justice Mukherjee Commission concluded that Netaji was dead but he did not die in plane crash, the Commission did not answer the point (d) of terms of reference which required the Commission to find out "Whether he has died in any other manner at any other place and, if so, when and how. The commission on point(d) only said that in the absence of any clinching evidence a positive answer cannot be given. It is denied that Government of India had any control and supervision on the working of earlier Committee and Commission. It is submitted that the earlier Committee and Commission inquired into the matter independently and came out with their own independent findings. It is submitted that like the Justice Mukherjee Commission, Khosla Commission was also appointed under the Commissions of Inquiry Act, 1952. It is further submitted that although Shah Nawaz Committee could not visit Formosa as India had no diplomatic relations with that country at that time, Khosla Commission visited Taiwan (formerly known as Formosa) in connection with the inquiry and this has been recorded in chapter Eight of its report".

16.2. From the statements made by the Official of the Respondents in the above Paragraphs No. 8 and 9 of the said Affidavit-in-opposition, it is evident that for the first reason the Government of India did not find it possible to accept the finding the Justice Mukherjee Commission Report since the inquiry was inconclusive in many ways and did not provide any finding on the point of sub-para (d) of the terms of reference of Commission and further Mukherjee Commission did not answer the point (d) of terms of reference which required the Commission to find out whether he has died in any other manner at any other place and if so, when and how. The Commission on point(d) only said in absence of any clinching evidence a positive answer can not be given.

16.3. From the statements of the said Affidavit-in-Opposition it revealed that the Mukherjee Commission's report was rejected by the Central Government because of second reason that it was at variance with past well accepted inquiry commission's findings on several issued and at variance with past well accepted inquiry commission's findings in some critical areas. This second reason is not sustainable for holding Mukherjee Commission to enquire same earlier matter for the third time.

✓ 16.4 The Central Government has come with one of the reasons for rejection of Mukherjee Commission report dated 17.05.2006 is that said report did not answer of clause (d) of the terms of reference of the

appointment but from the commission report dated 07.11.2005 it revealed that commission was not assisted or rendered co-operation by supplying materials records or files relating to alleged death or disappearance of Netaji before the commission. The commission called for the files being File No.12(226)/56-PM (investigation into the circumstances leading to the death of Subhas Chandra Bose) from the (1) Cabinet Secretariat, (2) Intelligence Bureau and (3) Research and Analysis Wing but none of the said departments supplied any file/document/record concerning Netaji's alleged death or disappearance in 1945 though the Director of Prime Minister's Office by letter dated 04.07.2000 (as per Mukherjee Commission's report) asserted that the "File No.12(226)/56-PM which contained agenda paper/cabinet decision regarding-investigation into the circumstances leading to the death of Shri Subhas Chandra Bose was destroyed in 1972 in course of routine review/weeding of old record **since records of cabinet proceeding are kept permanently in Cabinet Secretariat from where they may be procured**". There was shifting of responsibilities from one department to another department but no records/file/document was ultimately transmitted before Mukherjee Commission and even the contemporary record/file/document based on which the then Prime Minister Morarji Desai made the statements in Lok Sabha in 1978 that earlier

committee's and commission's report were not decisive were not supplied or transmitted to the Commission. Therefore, the Mukherjee Commission failed to answer under clause (d) of the terms of reference of appointment in 1999. The said difficulty has been removed and bright possibilities to access and availability of record have been reopened by the order of Central Information Commissioner.

✓ 16.5 Since the Central Government was not earlier directed to make all assistance to the Commission by supplying all files/documents/records including "Secret" and "Top-Secret" file at the time of Commission's inquiry, the Central Government withheld all documents/file/records relating to alleged death or disappearance of Netaji in 1945 before the Commission under the garb or veil of security of the nation and that to without filing any affidavit claiming privilege under section 123 and 162 of the Evidence Act, 1872. Therefore, all such documents are required to be produced before this Hon'ble Court and also before Commission in case of reopening or reappointing of the said commission.

the petitioners  
 ✓ Since, did not annex voluminous Mukherjee Commission report to the writ petition, the petitioners crave leave to produce the relevant portion of the said report before this Hon'ble Court at the time of hearing if the Hon'ble Court so desire.

The Xerox copy of the said order dated 15.02.2005 passed in W.P. No.27541 (W) of 2006 in enclosed herewith and marked as Annexure P/-7 to the Petition.

17. That the suggestion or decision of the Mukherjee Commission with regards to publication touching upon the death of or otherwise of Netaji is that the Central Government can proceed on ~~to~~ <sup>the</sup> basis that Netaji is dead but did not die in Plane Crash. This suggestion and/or decision might have not been accepted by the Central Government in view of stand taken by the said Government in respect of term of reference Point No.2(d) of the appointment of Mukherjee Commission and as a result such wrong publication of death, place and how died shall be continued ~~which~~ <sup>shall</sup> not only cause serious repercussion in the sentiment or minds of the public and this unwarranted situation can not be allowed to prolong any further.

18. That the petitioners sent representation dated 11.03.2008 addressed to different concerned authorities of Central Government and sought for reappointment or reopening of the Mukherjee Commission for competition of inquiry into disappearance and/or alleged death of Netaji Subhas Chandra Bose in 1945 but till date no reply is discernible from their end or any of the concerned authorities.

The Xerox copy of the said representation dated 11.03.2008 is enclosed herewith and marked as Annexure - P/- 8 to the Writ Petition.

19. That being aggrieved by and dissatisfied with the inaction and/or absolute silence to act upon the representation dated 11.03.2008 sent by

the petitioners for reappointing Mukherjee Commission to unearth the truth behind disappearance and/or alleged death of Netaji Subhas Chandra Bose, the petitioners beg to move this Writ Petition on the following amongst other:

GROUNDS

- I. For that Mukherjee Commission was appointed on 14.05.1999 by the Central Government to make a Vigorous Inquiry into the alleged death or disappearance of Netaji in 1945 in terms of reference of appointment of the said commission but after submission of report on 07.11.2005 nothing was found as to date of death and how, when and where he has died if he is dead;
  
- II. For that Mukherjee Commission suggested as to publication touching the alleged death or disappearance of Netaji that the Central Government can proceed on the basis that Netaji has died but not in plane crash and such presumption and/or assumption of alleged death instead of bringing the controversy into an end, it remain or left never ending among the public at large;
  
- III. For that the Central Government did not accept the report of Mukherjee Commission since commission did not answer the point No.(d) of the terms of reference of appointment dated 14.05.1999,

for which the said commission is required to be reappointed to complete the commission to answer the left out point No.(d) and (e) and with regard to such publication;

- IV. For that order of rejection of the Mukherjee Commission Report on 17.05.2006 by Central Government is absolutely bad in law and liable to be set aside;
- V. For that since Mukherjee Commission was constituted by the direction of the Writ Court under High prerogative writ issued by the Hon'ble Division Bench of the Hon'ble High, Calcutta as a special case, and the name of the Chairman of the commission was selected by the then Chief Justice of the Hon'ble Supreme Court of India, the Central Government has got no right to unilaterally cancel or reject the findings of the commission;
- VI. For that the earlier committee and commission were constituted at the instance of Central Government but Mukherjee Commission was constituted by judicial intervention and thus, it has got<sup>a</sup> special wait-age but also having a peculiarity in respect of formation over which the Central Government can not exercise his absolute power to reject it;
- VII. For that after submission of said report the Central Government can lay the report with Action Taken Report (A.T.R.) before the

parliament expressing their opinion whether the Government desire to act upon the report or not but the Central Government in no circumstance can reject the report of said commission in any manner whatsoever; thus, the rejection order is de hors in the eye of law; and to be set aside or quashed;

VIII. For that considering the matter of great public importance Mukherjee Commission was constituted to bring an end of controversy relating to alleged death or disappearance of Netaji in 1945 and huge money was spent for the same, it is, thus, required to complete commission in respect of left out points such<sup>as</sup> No.(d) and (e) and publication of news of alleged death of Netaji, in terms of reference forthwith;

IX. For that since it is the great public importance, the wrong publication of news of alleged death of Netaji should not be continued and such continuation shall carry a wrong message to the new generation and public at large;

X. For that since Netaji is not confined to any particular family, or region and since he is our Great National Hero of Independence and beloved leader of our motherland or country, everybody including the petitioners have got right to set right the commission and to have judicial intervention for the same;



- XI. For that the Mukherjee Commissioner failed to answer under Clause (d) and (e) of the terms of reference due to non supply of documents/files and/or records by the Central Government before Mukherjee Commission for which the interference of the Writ court is necessary;
- XII. For that the Central Government by virtue of provision under Section 3(4) of the Commission of Inquiry Act, 1952, the Central Government can not exercise arbitrary and whimsical power to reject the report and exercise of such unfettered power is wholly illegal and without jurisdiction too;
- XIII. For that by rejection of Mukherjee Commission report arbitrarily the Central Government has violated the fundamental rights enshrined under Article 14 and 19(1) of the Constitution of India;
- XIV. For that the reasons of rejection of Mukherjee Commission report have been supplied in connection with another Writ Petition being W.P. No.27541 (W) of 2006 in Paragraph No.8 and 9 of the Affidavit-in-Opposition affirmed on 5<sup>th</sup> March, 2008 by a principal officer of the respondent after a long time of its submission and thus, it is afterthought and suffers from gross illegality;
- XV. For that when the Central Government in spite of earlier committee's and commission's reports held conclusive and well

accepted, was of the opinion that Commission for the third time necessary in 1999 for the same matter and in such situation the Central Government can not embrace or clutch the earlier reports after holding Mukherjee Commission;

XVI. For that in any view of the above matter the rejection of Mukherjee Commission Report is not in accordance with law and reappointment<sup>of</sup> commission to complete the left out terms of reference point No.(d), (e) and suggestion for publication<sup>of</sup> news touching Netaji's alleged death and place of death has become inevitable for greater public importance;

20. That the Central Government can not reject the Mukherjee Commission on 17.05.2006 when the Central Government felt that third commission is necessary and the commission was appointed on 14.05.1999 for the following reasons which were expressly stated in the Appointment vide Notification No.S.O.339 (E) dated 14.05.1994 issued by the Central Government of India, Ministry of Home Affairs :-

"And Whereas the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance, namely in disappearance of Netaji Subhas Chandra Bose in 1945".

21. That it is pertinent to mention here that the appointment of said Commission stemmed from the order/direction made by the Hon'ble High Court at Calcutta on a public interest litigation and a unanimous resolution passed by the West Bengal Legislative Assembly for aforesaid reasons the Central Government has got no right to unilaterally reject the Commission's report on 17.05.2006.

✓ 22. That it is further stated that after statements of the then Prime Minister Monarji Desai made on 28.08.1978 on the floor of the Parliament (Lok Sabha), which were recorded at Page No.455 and 56 of the Parliamentary Proceeding (as per Mukherjee Commission Report), the earlier Committee's and Commission's Reports had become redundant and stood cancel and in spite of such position the Central Government can not embrace or clutch now the earlier Committee's and Commission's report.

23. That it is submitted that when the people of India once had spent huge money for the period from 14.05.1999 to 08.11.2000 for Commission to find out the real truth of alleged disappearance and/or death of their National Hero Netaji Subhas Chandra Bose, the said people for the second time shall not hesitate to spend further money to put a permanent end of the said controversy for which the judicial intervention of the Hon'ble Court is inevitable and earnestly sought.

24. That it is further stated that Mukherjee Commission in its report mentioned about the visits of different foreign countries and stated the nature of information and/or documents collected therefrom but unfortunately all achieves (except six) were not visited by the Mukherjee Commission since within very short time visit for the period from September 20 to September 30, 2005 to Russian Federation and collection therefrom became impossible or impracticable and because the complete Inquiry could not be done in Russian Federation, and thus, Russian rest part of Inquiry in other achieves is further needed.

25. That it is further submitted that an interim order is required relating to publication of news of alleged death of Netaji in 1945 or met with an accident in plane crash in Taihoku and unless such interim order is granted the said wrong publication of Netaji's death shall be continued and till clinching evidence as to death and place of death of Netaji is forthcoming the said wrong publication is required to be discontinued forthwith.

26. That since Mukherjee Commission was constituted by issuing a direction under high prerogative Writ, dated 31.04.1998, and the name of the Chairman of the Commission was selected by the then Chief Justice of the Hon'ble Supreme Court of India and since the said

Commission was constituted as a special case as of great public importance, the sovereign parliament, <sup>or the Central Government</sup> can not unilaterally cancel or reject the Mukherjee Commission report dated 17.05.2006 whereas the earlier Committee and Commission were constituted at the instance of Central Government. Therefore, such rejection is absolutely illegal and not in accordance with law and liable to be set aside.

27. That it is further stated that as per provision under section 3(4) of the Commission of Inquiry Act, 1952 the Central Government has only authority either to act upon report of Commission or not but in no case reject the said report. The object of rejection of said Mukherjee Commission report is absolutely illegal and political motivation and against the said provision of law.

28. That the fundamental rights of the petitioner guaranteed under Article 14 and 19(1) of the Constitution of India have <sup>been</sup> violated due to arbitrary rejection of Mukherjee Commission's report on 17.05.2006.

29. That there is no speedy, efficacious, legal alternative remedy save and except reliefs under Writ jurisdiction.

30. That the records are located outside original civil jurisdiction of this Hon'ble Court and direction be given to produce and/or transmit all relevant records at the time of hearing and render justice to the petitioners.

31. That the petition is made on good faith to secure the ends of justice.

Under the above facts and circumstances it is prayed that your Lordship may be graciously pleased to issue -

a) a Writ or Writs in the nature of Mandamus commanding the respondents concerned and each of them to reappoint or reopen the Mukherjee Commission to complete and/or conduct further enquiry into the alleged death or disappearance of Netaji Subhas Chandra Bose in 1945 in terms of earlier reference point No.(d), (e) and suggestion for publication of news touching Netaji's alleged death for greater public importance forthwith; and further direction be given upon the respondent to supply all documents

or file relating to alleged Netaji's death or disappearance in 1945, or thereafter before the commission for completion of enquiry in order to bring an end of controversy;

b) a Writ or Writs in the nature of Certiorari directing the concerned respondents and each of them to transmit and produce all relevant documents relating to Netaji's alleged death or disappearance including the order of rejection dated 17.05.2006 by the Central Government being Annexure "P-5" to the petition before this Hon'ble Court and before the commission in case of reopening or reappointment and after perusing the record and going through petition quashed the order of rejection of Mukherjee Commission's dated 17.05.2006 and render conscionable justice to the petitioners;

c) A Rule NISI in terms of the prayer aforesaid;

d) An interim order be passed to stop or restraining the respondents from publication of all news touching the alleged death or disappearance of Netaji Subhas Chandra Basu in 1945 till disposal of this writ application;

e) And pass such other or further Order or Orders, direction or directions, Writ or Writs as Your Lordship may deem fit and proper.

And your petitioners, as in duty bound shall ever pray.



AFFIDAVIT

I, **Sri Pankaj Halder**, son of Sri Late Arabinda Halder, aged about 32 years, by faith Hindu, by occupation Advocate, residing at Village - Mathurapur, Post Office and Police Station - Mathurapur, District - South 24-Parganas, do hereby solemnly affirm and say as follows :-

1. That I am the writ petitioner of the instant case and as such I am well acquainted with the facts and circumstances of the case.
2. That the statement made in paragraph Nos. 1, 2, 8, 10, 16(P), 18, 27 to 31, are true to my knowledge, those made in paragraphs Nos. 3 to 7, 11 to 16(P), 20 to 22, are true to my information derived from record, which I verily believe to be true and the rest of my respectful submission before the Hon'ble Court.

Prepared in my office

*Pankaj Halder*  
 Advocate.  
 Petitioner in Person

Solemnly affirmed before me on  
 this the 28<sup>th</sup> day of April, 2008.

*Sri Pankaj Halder*  
 Deponent is known to me  
*Sd/- N.K. Ghosh*  
 Clerk to : Mr.  
 Advocate

*Sd/-*  
 Commissioner.

forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on All India Radio besides being shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes."

3. More than seven months have elapsed since the directions were issued. Through these petitions, Dr. Singhvi, the learned Amicus Curiae, who had assisted the Court in the main petition, seeks a direction, calling upon the Director General of Police and the Home Secretary of every State/Union Territory to report to this Court compliance of the above directions and the steps taken by the All India Radio and the National Network of Doordarshan for broadcasting the requirements.

4. We direct the Registry to send a copy of this application, together with a copy of this order to respondents 1 to 31 to have the report/reports from the Director General of Police and the Home Secretary of the concerned State/Union Territory, sent to this Court regarding the compliance of the above directions concerning arrestees. The report shall indicate in a tabular form as to which of the "requirements" has been carried out and in what manner, as also which are the "requirements" which still remain to be carried out and the steps being taken for carrying out those.

5. Report shall also be obtained from the Directors of All India Radio and Doordarshan regarding broadcasts made.

6. The notice on respondents 1 to 31, in addition, may also be served through the standing counsel of the respective States/Union Territories

in the Supreme Court. After the reports are received, copies of the same shall be furnished to the Advocate on Record for Dr. Singhvi, Ms. Suruchi Agrawal, Advocate.

7. The reports shall be submitted to this court in the terms, indicated above, within six weeks from today. The matters shall be put up on board for monitoring, after seven weeks.

Order accordingly.

AIR 1997 SUPREME COURT 3019

(From : Calcutta)\*

Mrs. SUJATA V. MANOHAR AND  
G. B. PATTANAIK, JJ.

Spl. Leave Petn. (C) No. 628 of 1994 with  
Transferred Case (C) No. 7 of 1994, D/- 4-8-1997.

Union of India. Petitioner v. Bijan Ghosh and  
others, Respondents.

(A) Constitution of India, Arts. 18, 136 — Award of decorations by President — Press communique announcing conferment of award of Bharat Ratna Posthumously on Netaji Bose — Unhappiness expressed by members of public and members of Netaji's family at such announcement — Govt. of India in deference to sentiments expressed not proceeding further to confer award and treating the matter as closed — Objection to word 'posthumously' used in press communique therefore not considered — Press communique declared as cancelled.

(Para 6)

(B) Constitution of India, Art. 18 — Notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No. 1 Pres./55 Cls. 1, 8, 10 — Bharat Ratna, Padma Vibhushan, Padma Bhushan etc. — Award of — Annulment of — Procedure.

In order to confer the award of Bharat Ratna it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipient maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of

\*C. O. No. 6720 of 1993, D/- 6-12-1993 (Cal.)  
HO/HO/S629/97/VVG/CSL

the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India.

(Para 6)

Altaf Ahmad, Addl. Solicitor General. B. Parthasarathi, Hemant Sharma, P. Parmeswaran, Advocates with him for Petitioner: In person for the Respondent. F. S. Nariman, M. N. Krishnamani, Sr. Advocates, Rudra Bhattacharjee, (Subhash Sharma), Advocates for Ms. Sarla Chandra, Advocate with them for Respondents. V. P. Saini, In-person for Respondent.

**ORDER :—** The proceedings which are before us have arisen out of a press communique which was issued from the Rashtrapati Bhawan, New Delhi and was published on 23rd of January, 1992. It is to the following effect :—

"The President is pleased to confer the award of Bharat Ratna posthumously on Shri Subhash Chandra Bose."

On reading this press communique the sentiments of many people were hurt. The petitioner filed a writ petition in the Calcutta High Court praying, inter alia to recall, rescind cancel and revoke the 'Bharat Ratna' purported to be conferred on Netaji Subhas Chandra Bose posthumously by the press communique dated 22nd January, 1992 and forbear from handing over to any person or persons, institution or institutions any document or insignia or symbol containing the impugned 'Bharat Ratna' or any communication bearing reference thereto for acceptance or preservation or display or for any other purpose. The petitioner also prayed for a direction that respondents 1 and 2 declare full particulars of the whereabouts of Netaji Subhas Chandra Bose from 18th of August, 1945 till date on the basis of records and information at their disposal de hors the reports and findings of the Netaji Inquiry Committee 1956 and the Netaji Inquiry Commission, 1970, and to institute a proper investigation into such whereabouts with a view to locating him, if alive, and bringing him to India with due honour and dignity and if he is found to have died, to furnish full particulars of his stay from 18th August, 1945 onwards and his subsequent death and the place and manner of disposal of his mortal remains. There are various reliefs prayed for which are connected with these reliefs.

2. The petitioner has taken strong exception to the use of the word 'posthumously' in the press communique and has submitted that the Government of India has not officially accepted the alleged report of the death of Netaji Subhas Chandra Bose in an air-crash in Taiwan on 18th of August, 1945. Without any specific report of the death of Netaji Subhas Chandra Bose being accepted by the Government of India, it cannot and should not confer on him any title with the description 'posthumously'. In this connection elaborate averments have been made about the Netaji Inquiry Committee, 1956 which was then constituted and the report of this Committee as also the Netaji Inquiry Commission, 1970 constituted under the Commissions of Inquiry Act, 1952. It is contended that a further inquiry should be held in this connection and in the absence of such an inquiry the award should not be conferred posthumously.

3. The petitioner has also raised another objection to the conferment of Bharat Ratna on Netaji Subhas Chandra Bose. It is contended that an award or a title has its own limitations. When a personality is higher and greater than any award or title, conferring of such honour on that person becomes ridiculous and it becomes an act of "carelessness" to classify such a person as an equal of others who have already been awarded such title or who may be awarded such a title in future.

4. It seems that the family members of Netaji Subhas Chandra Bose also conveyed to the Government of India their unhappiness at the announcement and expressed their unwillingness to accept such an award.

5. In view of the sentiments expressed by the members of public and the family members of Netaji Subhas Chandra Bose in connection with the press communication, the Government of India did not proceed further in the matter. In their affidavit which is filed in these proceedings, they have stated that the matter was treated as closed. The original petitioners have expressed their anguish at this statement made on affidavit by the Government of India and have submitted that the award/press communication should be withdrawn.

6. We have heard the original petitioners and the learned advocates appearing on behalf of some

of the petitioners. In order to clarify the position, Mr. Altaf Ahmad, learned Additional Solicitor General has drawn our attention to notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No. 1 Pres. 55 setting out the Statutes and Rules relating to the awards of Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padmashri. It sets out, inter alia, as follows :—

“1. The decoration shall be conferred by the President of India by a Sanad under his hand and seal.

8. The names of the persons, upon whom the decoration is conferred, shall be published in the Gazette of India and a register of all such recipients shall be maintained under the direction of the President.

10. The President may cancel and annul the award of the decoration to any person and thereupon his name shall be erased from the Register and he shall be required to surrender the decoration and the Sanad. But it shall be competent for the President to restore the decoration and Sanad and to withdraw the orders of cancellation and annulment. The notice of cancellation or restoration in every case shall be published in the Gazette of India.”

In order to confer the award of Bharat Ratna, it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipients maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India. It is pointed out by the Additional Solicitor General that the award has to be conferred by first publishing the name of the recipient in the Gazette of India and entering it in the register of recipients. In the present case, only an announcement was made by the press communication which was issued. In deference to the sentiments expressed by the public and by the members of the family of Netaji Subhas Chandra Bose, the Government of India did not proceed further to confer the

award and hence the name was not published in the Gazette of India, nor was it entered in the register of recipients, nor was any decoration conferred by the President by a Sanad under his hand and seal. That is why the affidavit filed on behalf of the Union of India states that the matter was closed in the sense that no further steps were taken for conferment of Bharat Ratna on Netaji Subhas Chandra Bose. Since the award has not in fact been conferred, the question of cancellation or annulment of the award under Clause 10 does not arise. Looking to the Statutes and Rules relating to the award, inter alia, of Bharat Ratna, the position as explained by the Union of India appears to be correct. In deference to the feelings so eloquently expressed in these proceedings and which were no doubt, conveyed to the Union of India, the award was, in fact, not conferred and the proposal was dropped. We need not, therefore, go into the question whether the word 'posthumously' has been justifiably used in the press communique or the wider question whether there is enough material available for reaching the conclusion that Netaji Subhas Chandra Bose died either in the air-crash of 18th August, 1945 or at any time thereafter. This is a wider issue on which undoubtedly in future as in the past, there will be divergent views. The real controversy in these proceedings relates to the press communique. Since no further steps have been taken pursuant to the press communique and the matter is treated as closed, we declare that the press communique should be treated as cancelled. With this declaration nothing further survives and the various petitions either transferred from the Calcutta High Court or filed in this Court stand disposed of.

Order accordingly.

**AIR 1997 SUPREME COURT 3021**

K. RAMASWAMY AND D. P. WADHWA, JJ.\*  
Writ Petn. (C) No. 824 of 1988 with  
Writ Petn. (Cri.) Nos. 745-54 of 1990,  
D/- 9-7-1997.

Gaurav Jain, Petitioner v. Union of India and others, Respondents.

**(A) Constitution of India, Art. 32 — Public**

\*The judgments are printed in the order in which they are given in the Certified Copy ... Ed.

contract, and the tenant cannot claim that his tenancy is governed by the contract and not by the Rent Act.

30. Lastly, we are also of the view that clause (v) of the disputed document (Exhibit No. ) clearly comes within the ambit of Section 3(1)(k) of the West Bengal Premises Tenancy Act, 1956, the question of service of notice under section 13(6) of the West Bengal Premises Tenancy Act, 1956 of the plaintiff also does not arise at all.

31. We, therefore, concur with the findings of the learned trial Judge and the appeal, accordingly, stands dismissed without any order as to costs.

32. The prayer for stay of operation of the order as made by Mr. Sadhan Roychowdhury, learned Advocate for the appellant, however, is refused.

A. B. MUKHERJEE, J. :- 33. I agree.

Appeal dismissed.

#### AIR 1999 CALCUTTA 9

PRABHA SHANKER MISHRA, C.J. AND B. BHATTACHARYA, J.

Rudra Jyoti Bhattacharjee and another, Petitioners v. Union of India and others, Respondents.

W.P. No. 281 of 1998, D/- 30-4-1998.

**Constitution of India, Arts. 226, 19(1) — Public interest litigation — Death of Netaji Subhashchandra Bose — No conclusive proof — Publications concerning his freedom struggle and death — Likelihood of being defamatory and causing public disturbance — Appropriate directions issued to Govt. of India.**

In instant public interest litigation the petitioner has stated and in doing so he has only echoed and joined a multitude of Indians that for his gallant deeds for independence of India, Netaji Subhashchandra Bose is recognised as one of the greatest National leaders of international importance; his mysterious disappearance on and from August 1945 is still wreaking and agitating the minds of the citizens of India and the story which was once floated that he died in the alleged plane crash on 18th August, 1945 at Tai Hoku in Japan is not accepted by the Indians. It was not possible

for the Govt. of India to take any action at the present on the suggestion of Gen. Fujiwara of Japan to bring the ashes said to be of Netaji lying at Renkoji Temple to India. Some publications in respect of which mention is made by the petitioners according to them are per se defamatory to the National Hero Subhas Chandra Bose. One of the most cherished rights of the Indians is the freedom of speech and expression, yet it is important that this right is not exercised to disturb public order or cause incitement to offence or defamation.

(Paras 4, 5, 19)

It was felt that there is a need to give a fresh look to such publications and proscribe such books or such portion of the books which spelt one way or the other on the subject of the death of Netaji Subhas Chandra Bose's pre-independence activities in respect of which the Government of India is yet to complete enquiry. All fresh or new publications, shall also need a similar scrutiny and all such scrutiny shall be made keeping in view Art. 19(1)(a) read with Art. 19(2) of the Constitution of India.

(Para 19)

For the reasons aforementioned, directions as follows were issued :— (1) The Govt. of India shall launch a vigorous enquiry in accordance with law by appointing, if necessary, a Commission of Enquiry as a special case for the purpose of giving an end to the controversy (a) whether Netaji Shbhas Chandra Bose is dead or alive; (b) if he is dead whether he died in the plane crash, as alleged; (c) whether the ashes in the Japanese temple are ashes of Netaji; (d) whether he has died in any other manner at any other place and, if so, when and how; (e) if he is alive, in respect of his whereabouts. (2) The Govt. shall take the people of India in confidence. (3) The Govt. shall at appropriate level examine/scrutinise all publications pertaining to the matter as above and proscribe, if necessary, all such publications which appear to touch the question of death or otherwise of Netaji if the same has the effect of disturbing the public order and causing incitement of violence. (4) The Govt., if so advised, shall inform all publication Houses to take its prior permission before any publication on the subject above is made and before granting such permission scrutinise in the manner as indicated above.

(Para 20)

Cases Referred : Chronological Paras  
W.P. No. 1805 of 1997, D/- 7-4-1998 (Cal) 7, 8  
AIR 1997 SC 3019 : 1998 WBLR (SC) 9 : 1997  
AIR SCW 3052 7, 11

Rudra Jyoti Bhattacharjee in person; M. B. Sarkar, Sr. Advocate, for Respondents.

**PRABHA SHANKER MISHRA, C.J.** :— It is difficult for us to pick up the threads to have any well-knit statement of fact from the contents of the instant petition yet, after our several attempts and after hearing the petitioner in person and the learned Advocate representing the respondents Nos. 1 to 4, we have been able to gather some bits from here and some bits from there to have some comprehension of the narration in the petition.

2. The Asiatic Society, Calcutta is impleaded as one of the respondents. We do not, however, find any reason why any prerogative order and/or direction be issued or made against the Society. Since, in our view, the Society is not a necessary party, we are not persuaded to issue any notice to it, name of the 5th respondent is accordingly delated and expunged.

3. Alleged mysterious disappearance of Netaji Subhas Chandra Bose, according to the petitioner requires direction inter alia, to the respondents herein (1) to classify and disclose all documents relating to Netaji Subhas Chandra Bose including the Indian National Army; (2) to make a categorical statement whether name of Netaji was and still is in the list of war criminals drawn up after the Second World War and issue a press communique to the said effect; (3) not to allow any agency or publisher or any person to publish the story of the death of Netaji Subhas Chandra Bose in the alleged plane crash on 18-8-1945; (4) to disclose the stand of the Government of India regarding Netaji Subhas Chandra Bose if he is found on Indian soil — "whether Government of India will welcome him or hand over him to the allied forces for trial as war criminal and make a press communique to that effect" and (5) to produce and or transmit all the records, files and documents as mentioned in Annexure 'F' to the petition about disappearance of Netaji Subhas Chandra Bose since August 18, 1945 and subsequent thereto.

4. Petitioner has stated and in doing so he has only echoed and joined a multitude of Indians

that for his gallant deeds for independence of India, Netaji is recognised as one of the greatest national leaders of international importance that his mysterious disappearance on and from August 1945 is still wreaking and agitating the minds of the citizens of India and that the story which was once floated that he died in the alleged plane crash on 18th August, 1945 at Tai Hoku in Japan is not accepted by the Indians.

5. One British Intelligence Officer allegedly informed one Amrik Singh Gill, who was awaiting execution of death sentence, on 19th August, 1945 that Netaji died in an aircrash on 18th August, 1945. Gill published the said information in a magazine of Netaji Centre Publication at Kuala Lumpur. The same was reprinted in Jayshree, a Bengali magazine, in its Azad Hind Golden Jubilee number in October, 1993. Delhi Radio on 21st August, 1945 made the announcement that Netaji died in an aircrash on 18th August, 1945 (Ref., "A Springing Tiger" by Hue Toy, a Military Intelligence Officer of British Army). Quite a few publications and information to the above effect followed and when the controversy thickened and mystery deepened, the Government of India constituted Netaji Enquiry Committee in the year 1956 with Sri Shahnwaz Khan as the President and Sri Suresh Chandra Bose and Sri S. N. Moitra as Members. This was followed by appointment of of a Commission of Enquiry in the year 1970. Netaji Enquiry Committee as well as the Commission of Enquiry submitted their reports. On 28th August, 1978, however, the then Prime Minister of India made a statement at the floor of the Lok Sabha that, "Shah Nawaz Committee and Khosla Commission hold the report of Netaji Subhas Chandra Bose's death following a plane crash as true. Since then reasonable doubts have been cast on the correctness of the two reports and various important contradictions in the testimony of the witnesses have been noticed. Some further contemporary official records have also become available. In the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive". According to the petitioner, the above statement of the then Prime Minister of India was virtually a simultaneous burial of the Netaji Enquiry Committee and Enquiry Commission reports. However, on 11th April, 1979 the then Minister of State for Home

airs made a statement on the Lok Sabha in reply to a question that was raised on the request of General Fujiwara of Japan for bringing the cremated ashes of Netaji from Renkoji Temple to India. "In the light of reasonable doubts cast on the correctness of the conclusions reached in two jury reports on the death of Netaji Subhas Chandra Bose, the Government finds it difficult to accept that the earlier conclusions are decisive. It will, therefore, not be possible to take any action at the present on the suggestion of General Fujiwara to bring the ashes". According to the petitioner waxing and waning attitude and behaviour of the Government of India and other responsible persons have almost betrayed the sign of precipitating and perpetuating the myth of the death of Netaji Subhas Chandra Bose in the alleged plane crash as reality without there being any serious effort to establish by hard and genuine evidence.

6. The petition with the facts as above, however, is littered with the statement that the then Government of India (British) after the Second World War declared Netaji a war criminal and allowing the independence and almost simultaneously to India's taking a seat/place in the United Nations Organisation ratified and agreed that war criminals of friendly countries would be delivered by the country holding them: thus agreeing that India would deliver all war criminals of the Second World War to the Government of Great Britain, and since Subhas Chandra Bose was declared a war criminal by the Great Britain and India ratified and agreed to do so, it still holds Subhas Chandra Bose as War Criminal. The petitioner, in short, in this behalf has been agitating and asking — Does Government of India still hold Subhas Chandra Bose as a War Criminal and thus does it behove the Government to treat Subhas shabbily as above, who while alive as well as in death is the embodiment of the ideals and images of a true Indian for all fellow Indians.

7. We have summarised above the material facts upon which the petitioner has sought for the reliefs as indicated above and omitted to mention particulars of information in any detail with respect to either statements or works about the death of Netaji as alleged and the mysterious disappearance, or on the Government of India even unwittingly as alleged, still holding that Netaji is a war criminal. Narration of the facts,

however, shall remain inconclusive if we do not refer to a recent case (W.P. No. 1805 of 1997) which has been disposed of by a Bench of this Court on 7th April, 1998. The said petition was filed as vox populi when newspapers like the Bartaman in its publication of 23rd August, 1997 and the Anandabazar in its publication of 27th August, 1997 published/reported that the then Defence Minister had stated that he would bring the ashes of Sri Subhas Chandra Bose from Renkoji Temple of Japan. After referring to the judgment of the Supreme Court in Union of India v. Bijon Ghosh, 1998 WBLR (SC) 9 : (AIR 1997 SC 3019) and the publications aforementioned, this Court in its judgment in the said case has stated as follows (at Page 3021 of AIR) :—

"When the Government of India intended to honour him by conferring the Bharat Ratna Award and used in Press communique the expression 'posthumously', a petition under Article 226 of the Constitution of India was moved and against an interlocutory order therein a Special Leave Petition was preferred before the Supreme Court ..... We have no manner of doubt that a responsible Government of the people of India will do nothing which would undermine the stature and image of Netaji Subhas Chandra Bose. Except in such proceedings in which any legal presumption is available, for purposes as the acceptance of ashes as that of Netaji Subhas Chandra Bose, it is not possible to accept that he died on 18-8-1945 or at any time thereafter unless there is conclusive evidence. Any ashes of a dead person in the absence of such evidence cannot be accepted as that of Netaji by the people of India. It would be difficult to accept that the Defence Minister of the country has made a statement of such consequences without verification of the facts, yet responsible newspapers like Bartaman, Ananda Bazar have so reported and the petitioner has moved this Court as he is, as stated, alarmed that the Government of India has intended to accept the factum of the death of Subhas Chandra Bose in the shape of ashes which are allegedly stacked and kept at Renkoji Temple, Japan. Before closing the proceedings, however, in view of the assurance that nothing of the sort is likely to be done by the Government of India, we are inclined to order that before accepting the ashes which are allegedly kept at the

Renkoji Temple, Japan as that of Netaji Subhas Chandra Bose, the Government of India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at the Renkoji Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence."

8. Thus, on the questions of death of Netaji, that he died in the plane crash, that his ashes are kept at Renkoji Temple of Japan, that Government of India is almost accepting that Netaji has died and that his ashes are being brought to India, in our view, are fully answered by the judgment in W.P. No. 1805 of 1997 dated 7th April, 1998. What needs, however, to be clarified for all concerned to bear in mind that Government of India did realise that full facts and evidence were required to be gathered from every person and place and it appointed first the Enquiry Committee and next Enquiry Commission. After the reports of the Committee and the Commission were submitted, the then Prime Minister made categorical statement in the Lok Sabha that since the reports, reasonable doubts have been cast on their correctness, various important contradictions are noticed in the testimony of the witnesses and further contemporary official documentary reports have become available, "in the light of those doubts and contradictions and those records, Government find it difficult to accept that the earlier conclusions are decisive

9. Official stand of the Government as expressed in the Lok Sabha on 28-8-1978 is reiterated on 11-4-1979 by the then Minister for State of Home Affairs. Two deviations/aberrations, however, occurred first when Government of India intended to honour Sri Subhas Chandra Bose by conferring 'Bharat Ratna' Award and as used in the Press Communique the expression posthumously and secondly recount by Defence Minister of the country made a statement that Government of India intended to accept the factum of death of Subhas Chandra Bose and bringing the ashes which are stacked and kept at Renkoji Temple in Japan.

10. British quit India and the country got its independence but with Dominion Status in the British Empire on 15th August, 1947. The people of India, however, resolved to constitute it into a Republic and their Constituent Assembly on 26th day of November, 1949 adopted, enacted and

gave to the People the Constitution of India, to be effective on and from 26th of January, 1950. On 15th of August, 1947, India, indeed, achieved Independence and inherited the British sovereignty as well as British legacy. When the people, however, adopted the Constitution and established the Republic, India unshackled itself from the yoke of past to start afresh with the goal of justice, Social, Economic and Political, Liberty of thought, expression belief, faith and worship, Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation and guaranteed Equality of law and equality before law to all persons and freedoms of speech and expression, assembly peaceably and without arms, of association of Union and of movement freely throughout the territory of India and to reside and settle at any part of the territory of India. Article 13 of the Constitution declared laws inconsistent with or in derogation of the Fundamental Rights in Part III of the Constitution void and inhibited the State from making any law which took away or abridged the rights conferred by Part III.

11. The status Netaji Subhas enjoys in the Indian Republic is that of a person who is a Bharat Ratna. He enjoys a greater status in the hearts and minds of the people of India than a mere title which the Government bound by the rules of procedure intended to confer upon him. The expression 'posthumously' in the Communique of the Government of India when Bharat Ratna was to be conferred indeed was a sad and irresponsible act at some executive level of the Government which caused wide-spread resentment and as noticed by the Supreme Court in Union of India v. Bijon Ghosh, AIR 1997 SC 3019 (supra), "in deference to the feelings so eloquently expressed in this proceedings and which have no doubt conveyed to the Union of India, the award was in fact not conferred and the proposal was dropped". Another aberrative act caused the filing of W.P. No. 1805 of 1997 and this Court has ordered, "before closing the proceedings, however, in view of the assurance that nothing of the sort is likely to be done by the Government of India we are inclined to order that before accepting the ashes which are allegedly kept at the Renkoji Temple at Japan as that of Netaji Subhas Chandra Bose, the Government of



India shall obtain full particulars and evidence and satisfy itself about the genuineness of the claim that the ashes kept at Renkoji Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence."

12. The two aberrations are outside the Lok Sabha, true, one which carried the expression 'posthumously' was a Communique of the Government of India which is deference to the popular feeling was withdrawn but the other, that is to say the statement of the Defence Minister in respect of the ashes of Netaji was neither a statement in any of the Houses of Parliament nor in any Communique of the Government of India. That was out and out a statement most unwittingly made by the Defence Minister of the country. The Official stand of the Government of India, thus, is that notwithstanding the reports of the Enquiry Committee and the Commission of Enquiry aforementioned, there are doubts as to the death of Netaji in the manner as reports indicated and that there was/is a need to have further probe and enquiry to conclusively establish that Netaji has died, that he died in the plane crash, as alleged, and that his ashes are lying in some temple in Japan. With such specific stand when the Government has informed the Parliament more than once as above and no further enquiry or probe has yet been held, it is beyond imagination that Government of India without further or fresh enquiry and/or probe would accept the factum of death of Netaji Subhas and/or of the alleged air-crash death and/or the ashes being kept at a temple in Japan.

13. Learned Counsel for the respondents has categorically assured the Court that Government of India has maintained and is maintaining even now that a further/fresh enquiry/probe is required and the information that Netaji died in the plane-crash on August 18, 1945 is full of loopholes, contradictions and therefore inconclusive.

14. It is difficult to perceive why the petitioner has been harping on Netaji being a war criminal for the Indian Republic and its people as declared by the British Government in year 1945 or in year 1946. True people of India fought along with the British against Japan, German and Italy but they continued their war of Independence against them until they quit India on 15th of August 1947. For British, one who stood against

their oppressive acts was a criminal. For Indians, he was a freedom fighter. For British, who supported their war efforts friends and allies. For India all who stood against aggression and subjugation were friends.

15. Netaji Subhas Chandra Bose had launched his own war for Independence of India, formed Indian National Army (I.N.A.) marched ahead to free the people of India from subjugation and reached Indian territory of the Andamans and Kohima, Manipur. His was an army of Indians, for the Indians and for the Independence of India. Such a hero however when India achieved its independence was mysteriously missing. It (India) has been waiting to welcome its Hero. He has, however, not been found yet.

16. People in India are not going, it is clear from the aforementioned events, to accept that their hero who led the first national Army is dead unless they are convinced after seeing conclusive evidence in this regard. Who then will call Netaji a war criminal? Any Indian public except a traitor, a person who does not have the deference and love for the country and its heroes alone can do so. We do not have any hesitation in concluding that the statements in documents which are lying archives which are to the effect that Netaji is a war criminal and all persons who have been saying such a thing are relics of the British Raj. The petitioner shall be well advised to disabuse himself of even remotest/faintest idea that the people of India, and the Government of India since it is the Government of the People of India, can ever in dreams would think of Netaji as a war criminal or a traitor. As we understand sane and understanding people in Great Britain too take him as one of the ablest sons of India and one of the most loved by the People of India. We see thus no reason why any Rule be issued to declassify and disclose all documents relating to Netaji Subhas Chandra Bose including Indian National Army until such inquiry as is derived is held. Declassification and disclosure of the contents of sensitive documents cannot be insisted upon unless one is satisfied that such disclosure would not be against the interest of the sovereignty and integrity of India, the Security of the States, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court or defamation or would not cause incitement to an offence (see Article 19 of the

Constitution) and if made would not harm the public interest. In the instant case we have reasons to believe, any such disclosure would not help the cause of the public at all.

17. We see absolutely no reason for any statement from the respondents whether Netaji Subhas Chandra Bose is still in the list of war criminals drawn after the Second World War. As we have indicated above, no one much less people of India, would allow any person to treat Netaji as a war criminal. For Indians Netaji is one of the great patriots.

18. It is difficult similarly to imagine how any Indian would think that Netaji would not be welcome on the Indian soil when Indians hold him amongst the best a few sons of India. The petitioner, as we have observed earlier, has been ill-advised to seek any disclosure from the Government of India or such information whether government of India would welcome him or hand him over to the Allied Forces for trial as war criminal. Such misconceived ideas, instead of helping the cause, as we have observed above, would cause dissensions and resentments and unnecessary bickerings. We are inclined however to take notice of one aspect of the matter: There has been no positive attempt it seems after the statement by the Prime Minister in the year 1978 and by the Minister of State for Home Affairs in 1979 that the findings in the reports of Netaji Enquiry Committee and Commission of Enquiry were not conclusive and decisive for any further or fresh enquiry and no serious effort in this behalf has been made. It seems lapses have occurred from time to time and public at large is dissatisfied. It is, therefore, necessary that respondents are told that their silence may not be appreciated in the matter and they for obvious reasons, as indicated above, should proceed in some effective manner to enquire into the circumstances of the death, whether Netaji has died and if he is alive where is he, with due despatch. Various publications some saying Netaji has died, some saying — No, he has not, some accepting the plane crash story, some not accepting it, some suggesting that the ashes in the temple in Japan are that of Netaji and others not accepting, some believing, and seriously, that Netaji is still alive and is available in some part of the world cause confusion and sometimes irritation and anger in public. No publication which

would affect the friendly relations with foreign States, public order, the sovereignty and integrity of India, cause defamation or incitement to an offence should be permitted. We have reasons to think that such irresponsible publications do sometimes affect public order and cause incitement to violence.

19. Some publications in respect of which mention is made by the petitioners which are per se defamatory to the National Hero Subhas Chandra Bose. One of the most cherished rights of the Indians is the freedom of speech and expression, yet it is important that this right is not exercised to disturb public order or cause incitement to offence or defamation. We have not, however seen such publications as a whole except such excerpts which are quoted by the petitioner for forming any conclusive opinion that books already published need to be proscribed. Yet we are satisfied that there is a need to give a fresh look to such publications and proscribe such books or such portion of the books which spent one way or the other on the subject of the death of Netaji Subhas Chandra Bose's pre-independent activities in respect of which the Government of India is yet to complete enquiry. All fresh or new publications, in our view, shall also need a similar scrutiny and all such scrutiny shall be made keeping in view Article 19(1)(a) read with Article 19(2) of the Constitution of India and the observations made above.

20. For the reasons aforementioned, we are inclined to direct as follows :-

(1) Respondents shall launch a vigorous enquiry in accordance with law by appointing, if necessary, a Commission of Enquiry as a special case for the purpose of giving an end to the controversy

(a) whether Netaji Subhas Chandra Bose is dead or alive;

(b) if he is dead whether he died in the plane crash, as alleged;

(c) whether the ashes in the Japanese temple are ashes of Netaji;

(d) whether he has died in any other manner at any other place and, if so, when and how;

(e) if he is alive, in respect of his whereabouts;

(2) The respondents shall follow for the said purpose the directions of this Court given in W.P. No. 1805 of 1997 namely, to take the people of

India in confidence:

(3) Respondents shall at appropriate level examine/scrutinise all publications pertaining to the matter as above and proscribe, if necessary, all such publications which appear to touch the question of death or otherwise of Netaji if the same has the effect of disturbing the public order and causing incitement of violence;

(4) Respondents, if so advised, shall inform all Publication Houses to take its prior permission before any publication on the subject above is made and before granting such permission scrutinise in the manner as indicated above

21. This disposes of the writ application.

B. BHATTACHARYA, J. :— 22. I agree.

Order accordingly.

**AIR 1999 CALCUTTA 15**

BHAGABATI PROSAD BANERJEE

AND RONOJIT KUMAR MITRA, JJ.

Moulana Mufti Syed Md. Noorur Rehman Barkati and others, Petitioners v. State of West Bengal and others, Respondents.

W.P. No. 8146(W) of 1997, D/- 4-3-1998.

(A) Constitution of India, Art. 25 — Restrictions on use of microphone and loud speakers at time of giving Azan — No violation of right under Art. 25 is involved.

Imposition of restrictions on use of microphones and loud speakers at time of Azan is not violative of right under Art. 25.

(Para 25)

Azan is certainly an essential and integral part of Islam but use of microphone and loud-speakers are not an essential and an integral part. Microphone is a gift of technological ages, its adverse effect is well felt all over the world. It is not only a source of pollution but it is also a source which causes several health hazards. Traditionally and according to the religious order, Azan has to be given by the Imam or the person incharge of the Mosques through their own voice, this is sanctioned under the religious order. Azan is not a form of propagation but it is an essential and integral part of religion to meet at the prayer from a call being made through

GP/JP/C39/98/SNV/USA

Azan.

(Paras 25, 26, 27)

(B) Constitution of India, Arts. 14 and 19(1)(a) — Restrictions on use of microphone at time of Azan by authorities in West Bengal — Other States not imposing such restrictions — No discrimination results.

(Para 27)

(C) Environmental (Protection) Act (29 of 1986), S. 3 sound pollution — Citizens have right to be protected against excessive sound under Art. 19(1)(a) of the Constitution.

Constitution of India, Art. 19(1)(a).

(Para 27)

Cases Referred :	Chronological	Paras
1997 (2) Cal LJ 468		14, 18
(1996) 4 All ER 903 R v. Secy of State for Transport ex. p.		14
(1995-96) 100 Cal WN 617	1, 7, 8, 11	18
AIR 1989 SC 1933		18
AIR 1989 SC 436		18
AIR 1987 SC 1086		18
AIR 1983 SC 75 : 1983 Tax LR 2407		18
AIR 1961 SC 1402		25
AIR 1954 SC 282		25

Kalyan Bandopadhyay and Kishore Dutt, for Petitioners; Roy Choudhury, for Respondents. M. C. Das and Mukherjee, for Pollution Control Board.

BHAGABATI PROSAD BANERJEE, J. :— This matter was assigned by the Hon'ble Chief Justice before this Bench. The writ application has been filed by Moulana Mufti Syed. Md. Noorur Rehman Barkati, Imam and Khatib. Tipu Sultan Shahi Masjid, Dharamtala and Chairman Gharib Nawaz Educational and Charitable Society, Calcutta and eight others for a declaration that Rule 3 of the Environmental (Protection) Rules, 1986 vis a vis Schedule III of the said Rule do not apply in case of Mosques more particularly at the time of call of Azan from the Mosques and for the further declaration that Schedule III of the Environmental (Protection) Rules, 1986 is ultra vires Articles 14 and 25 of the Constitution. The petitioners also prayed for withdrawal of all conditions and restrictions which were notified by the Police and other authorities pursuant to the order passed in the case of Om Birangana Religious Society v. State, reported in 100 CWN 617.

"P/3"

GOVERNMENT OF INDIA  
MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 14.5.99

S.O.339(E) - Whereas the Shah Nawaz Khan Committee and the Khosla Commission of Inquiry appointed by the Government of India in April, 1956 and July, 1970 respectively to inquire into and to report to the Government of India on the circumstances concerning the departure of Netaji Subhas Chandra Bose from Bangkok about the 16<sup>th</sup> August, 1945, his reported death as a result of an aircraft accident, and subsequent developments connected therewith had come to the conclusion that Netaji Subhas Chandra Bose met his death in an air crash;

And, whereas there is a widespread feeling among the public that the issue of finding the truth about Netaji's death still remains;

And, whereas there has been a consistent demand for a further inquiry into the matter;

And, whereas the Calcutta High Court also directed the Government of India for a vigorous inquiry in accordance with Law, if necessary, by appointing a Commission of Inquiry for the purpose of giving an end to this controversy;

And, whereas a Motion was adopted on 24.12.1998 by the West Bengal Legislative Assembly wherein a demand has been made for a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhas Chandra Bose;

And, whereas the Central Government is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an in-depth inquiry into a definite matter of public importance, namely, the disappearance of Netaji Subhas Chandra Bose in 1945;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of Mr. Justice M.K. Mukherjee, a retired Judge of the Supreme Court of India.

2. The Commission shall inquire into all the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith including :-

- (a) whether Netaji Subhas Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

3. The Commission shall also examine the manner in which the exercise of Scrutiny of Publications touching upon the question of death or otherwise of Netaji can be undertaken by the Central Government in the circumstances.
4. The Commission shall submit its report to the Central Government as soon as possible but not later than six months from the date of publication of this notification.
5. The headquarters of the Commission shall be at New Delhi, and/or any other place as determined by the Commission.
6. The Central Government is of the opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all the provisions of sub-section (2), sub-section (3), sub-section (4) and sub-section (5) of section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952) should be made applicable to the said Commission and the Central Government in exercise of the powers conferred by sub-section (1) of the said section 5, hereby directs that all the provisions of the said sub-sections (2) to (5) of that section shall apply to the Commission.

Sd/-

(NIKHIL KUMAR)  
SPECIAL SECRETARY (ISP)

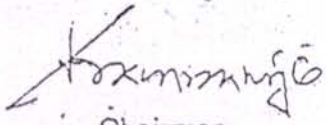
## Chapter Five

### Conclusions

5.1 In view of and in conformity with the preceding discussion the response of the Commission to the terms of reference, seriatim, is as follows :-

- (a) Netaji Subhas Chandra Bose is dead;
  - (b) He did not die in the plane crash, as alleged;
  - (c) The ashes in the Japanese temple are not of Netaji;
  - (d) In absence of any clinching evidence a positive answer cannot be given;
- and
- (e) Answer already given in (a) above.

5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view - consequent upon its above findings - that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged.

  
Chairman

Kolkata,  
November 07, 2005

# Mukherjee Commission

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The **Mukherjee Commission** refers to the one-man board of Mr. Justice Manoj Mukherjee , a retired judge of the Supreme Court of India which was instituted in 1999 to enquire into the controversy surrounding the reported death of Subhas Chandra Bose in 1945.

On April 30, 1998 that the High Court of Calcutta gave orders to the then BJP-led Government to "launch a vigorous inquiry as a special case for the purpose of giving an end to the controversy".<sup>[1]</sup>

The purpose of the commission was the ascertain the following:

1. Whether Netaji Subhas Chandra Bose is dead or alive;
2. If he is dead whether he died in the plane crash, as alleged;
3. Whether the ashes in the Japanese temple are ashes of Netaji;
4. Whether he has died in any other manner at any other place and, if so, when and how;
5. If he is alive, in respect of his whereabouts.

The commission is also the first to probe into the much publicized Soviet-connection. The basics of which are that Netaji Subhas Chandra Bose did indeed survive the end of the Second World War, and detained in a Siberian camp in the late 1940's. A former Russian General swore under oath to the commission that he had seen a true Soviet-cabinet paper detailing and discussing a "living" Subhas Chandra Bose, one year after his supposed death.

Many, however, feel that with a new Congress controlled government now in power, the commission's results may be undermined. Many conspiracies abound, and many contain specific details that are damaging to the Congress Party and Indian Prime Minister Jawaharlal Nehru.

Three researchers who helped find the declassified documents in the military archives of Paddolsk, Russia, Purabi Ray, Hari Vasudevan and Shobanlal Dutta Gupta, have also reported threats from unidentified persons upon their lives, if they did not stop their research. Many files and documents by the Union Home Ministry have been deemed a risk to national security and under Sections 123 and 124 of the Evidence Act and Article 74(2) of the Constitution of India, have not been disclosed to the commission.

The Mukherjee Commission is also not the first commission created to ascertain the death of Netaji Subhas Chandra Bose. The two previous commissions were the Shah



Newaz Commission (appointed by Jawaharlal Nehru) and The Khosla Commission respectively. The Khosla Commission, created by the government of Indira Gandhi (daughter of Jawaharlal Nehru), reported that all documents relating to Prime Minister Nehru and the reports of Netaji Subhas Chandra Bose were either missing or destroyed.

### **[edit] Govt of India rejects Mukherjee Commission report**

The Mukherjee Commission report was tabled in the Parliament of India on May 17, 2006. The report said that Netaji did not die in the alleged air crash of 1945 and the ashes at the Kenkoji temple are not his ashes. The report also did not comment on Netaji's alleged stay in Russia after 1945 and called for further investigation into the matter. However, the report said that Netaji could be presumed to be dead today.

The Govt of India has rejected the findings of the Commission, saying that it did not agree with the findings.

### **[edit] Mukherjee Commission report submitted**

The Death of Netaji remains a mystery. No one cooperated in the investigation and consequently the JMC of enquiry was forced to submit its unfinished work to the home minister Shivraj Patil. The main reason for this is the non-cooperation shown by the home ministry. The dissatisfaction caused resulted in Justice Mukherjee sending the report through his secretary rather than submit it in person.

During the whole tenure of the investigation, only one country, Taiwan has shown any real cooperation. Even the Govt of India refused to share some important intelligence files under the pretext of them being sensitive. The GoI will be tabling this report along with the ATR to the parliament. At the moment the home minister has passed on this 500 page report to the CS division of the ministry for scrutiny.

Subrata Bose, who was present in all the international trips made by the JMC has said that apart from Taiwan, no other country has shown any cooperation. On the basis of the information available from Taiwan it is now confirmed that no air-crash took place on 18th August 1945 which could have killed Netaji as previously propagated.

The commission had tried to uncover facts from trips to Japan, Taiwan and Britain. The UPA govt has permitted the commission to visit Russia. Bose said that Russia too did not cooperate in this investigation. Officials in Russia had said that files were present in the former KGB archives but the commission was not even allowed to visit the archives. The hostile posture of the British, Japanese and Indian governments is intriguing and seems to strongly point to an international conspiracy. In any case it is clear that Netaji Bose was seen in Russia in 1946. Lately American state department has sent information to the commission which corroborate the fact that no aircrash

took place in Taiwan. The request for intelligence papers from the Govt. of India elicited the official response that they cannot be opened as they are of a highly sensitive nature that may jeopardise international relations between India and some of its friend nations.

The JMC commission was formed by the former NDA Government to investigate the mystery surrounding Netaji's death at the end of world war II. The only kindness shown by the UPA Govt was to extend the commission's tenure by 6 months - from May 2005 to 1-11th November 2005. But the commission has now submitted its report to the Govt before the end date.

### [edit] External links

<http://www.rashtriyasahara.com/20051109/National.htm#2005110984>

INDians for Action - No. 1 site on the Netaji disappearance case

<http://www.indiansforaction.com>

Mission Netaji - Committed to find the truth behind the disappearance of Netaji

<http://www.missionnetaji.org>

Post Mukherjee Commission News Updates [http://www.geocities.com/ang\\_18\\_1945/](http://www.geocities.com/ang_18_1945/)

May 17th, 2006. Mukherjee Commission report made public by the Indian Government along with the Government's criticism.

## নেতাজি: প্রধানমন্ত্রীর দপ্তরকে ২৯টি গোপন ফাইলের তালিকা দিতে নির্দেশ তথ্য কমিশনের

নিজস্ব প্রতিনিধি, নয়াদিল্লি, ১৯ ফেব্রুয়ারি: নেতাজি সংক্রান্ত ২৯টি গোপন ফাইলের তালিকা ও নিবেদনাম (চাইটেল) আনামী ১০ দিনের মধ্যে জনসমক্ষে প্রকাশ করার জন্য প্রধানমন্ত্রীর দপ্তরকে (পি এম ও) নির্দেশ দিলেন কেন্দ্রীয় মুখ্য তথ্য কমিশনার ওয়াজাহাত হাবিবুল্লা। মুম্বাইয়ের 'আনন্দবানি' সংস্থা নিয়ে তথ্যসমৃদ্ধ এই ২৯টি ফাইল এখনও 'টপ সিক্রেট', 'কনফিডেন্সিয়াল' এবং 'সিক্রেট' মার্কায় হয়ে প্রধানমন্ত্রীর দপ্তরে রাখা রয়েছে। সোমবার রাতে কেন্দ্রীয় মুখ্য তথ্য কমিশনার হাবিবুল্লা এক লিখিত আদেশে বলে দিয়েছেন, পি এম ও'র ডিরেক্টর আমিত আগরওয়ালকে এই ২৯টি ফাইলের তালিকা আনামীর 'মিশন নেতাজি' সংগঠনের কর্মী অনুজ ধরের হাতে তুলে দিতে হবে। কারণ অনুজ ধরই 'মিশন নেতাজি' সংগঠনের তরফে গোপন ফাইলগুলির প্রকাশ চেয়ে তথ্য আনায় অধিকার আইন মোতাবেক কমিশনে পিটিশন দায়ের করেছিলেন।

৫৫শে ৮টি ফাইল জনসমক্ষে প্রকাশ হলে একটি নিবেদন রাতেই সবে সন্ধ্যায় সম্পর্ক হানি হবে বলে মনমোহন সিংয়ের দপ্তর আগেই কেন্দ্রীয় তথ্য কমিশনকে জানিয়েছিল। কেন্দ্রীয় মুখ্য তথ্য কমিশনার ওয়াজাহাত হাবিবুল্লা পি এম ও'র সেই ঘটনায় মেনে নিয়েছেন এবং আদি করা আবেদনটিতে বলেছেন, সংক্রান্ত ৮টি ফাইল সম্পর্কে আমরা প্রধানমন্ত্রীর দপ্তরের যুক্তি মেনে নিচ্ছি এবং ওই ফাইলগুলি প্রকাশ করার ব্যাপারে আমরা কিছু বলছি না। ফলে রহস্য থেকেই যাচ্ছে বলে ওয়াজাহাত হাবিবুল্লা মন্তব্য করেছেন।



প্রধানমন্ত্রীর দপ্তরকে নির্দেশ দিয়েছিল যে, ওই দপ্তরে রাখা নেতাজির আত্মজনি সংক্রান্ত গোপন ফাইলগুলির তালিকা ও বিবরণ মুখ বন্ধ থাকে ১৫ ফেব্রুয়ারি কমিশনের সামনে পেশ করতে হবে। সেইমতো গত শুক্রবার বিকালে নিদিষ্ট সময়ে পি এম ও'র পদস্থ আমলা বেঞ্চের সামনে তা পেশ করেন। হাবিবুল্লা ও বেঞ্চের বাকি কমিশনাররা গত শনি ও রবিবার সেগুলি বিস্তারিত খতিয়ে দেখেন। কমিশন সূত্রে জানা গেল, পি এম ও'র ওই মুখ বন্ধ থাকে মোট ৩০ টি ফাইলের তালিকা ও বিবরণ দিয়েছে। যার মধ্যে, ২টি ফাইল ইতিমধ্যেই 'উদ্বাস্থ্য' অর্থাৎ জনসমক্ষে প্রকাশ করা হয়ে গিয়েছে এবং ৩৩টি ফাইল এখনও গোপন রয়েছে বলে পি এম ও কমিশনকে জানিয়েছে।

পি এম ও থেকে পেশ করা খামটির বিধায়ক ভালো করে খতিয়ে দেখার পরে সোমবার রাতে জারি করা আদেশে মুখ্য তথ্য কমিশনার হাবিবুল্লা একথা জানিয়ে বলেছেন, 'প্রধানমন্ত্রীর দপ্তরে রাখা নেতাজি সংক্রান্ত ৩৩টি গোপন ফাইলের মধ্যে ৭টিতে 'টপ সিক্রেট', ৩টিতে 'কনফিডেন্সিয়াল' লেখা রয়েছে। বাকি ২৩টি ফাইল হল 'সিক্রেট' মার্কায়। এই ৩৩টি গোপন ফাইলের মধ্যে আবার ৪টি হল বিদেশি রাষ্ট্র সংক্রান্ত। তাই সেগুলিকে লুপ্ত দিয়ে বাকি ২৯টি ফাইলের তালিকা ও চাইটেলের বিবরণ আশু থেকে ১০ দিনের মধ্যে প্রধানমন্ত্রীর দপ্তরের ডিরেক্টর আমিত আগরওয়ালকে তুলে দিতে হবে পিটিশনার অনুজ ধরের হাতে। এছাড়া ইতিমধ্যেই প্রকাশিত ২টি ফাইলের তালিকা ও চাইটেলের পি এম ও'কে দিতে হবে।'

# নেতাজির স্ত্রী-কন্যার চিঠি সহ ২৯টি গোপন ফাইলের তালিকা প্রকাশ কেন্দ্রের

নয়াদিঘি, ২৬ মার্চ (পি টি আই): তথ্য জানার অধিকার আইনের জাতকলে পড়ে শেষ পর্যন্ত নেতাজির অসুধান সংক্রান্ত ২৯টি গোপন নথির তালিকা প্রকাশ করতে বাধ্য হল কেন্দ্রীয় সরকার। প্রধানমন্ত্রীর দফতরে কড়া নিরাপত্তায় থাকা একটি ভাস্টে রাখা এই নথিগুলির মধ্যে নেতাজি সুভাষচন্দ্র বসুর স্ত্রী এমিলি শেফেল এবং মেয়ে অনিতা বসু পাকফের সরকারকে লেখা চিঠিও রয়েছে বলে জানা গিয়েছে।

দিল্লির সংস্থা 'নিশান নেতাজি' আগেই প্রধানমন্ত্রীর দফতরের কাছে এই অপ্রকাশিত নথি সম্পর্কে জানতে চেয়েছিল। কিন্তু গোপন নথিগুলির

তালিকা কেন্দ্রীয় সরকার প্রকাশ করেনি। জানানো হয়েছিল, এর সঙ্গে দেশের সার্বভৌমত্ব এবং অন্য দেশের সঙ্গে ভারতের সম্পর্কের বিষয় জড়িয়ে রয়েছে। এরপরই বিষয়টি কেন্দ্রীয় তথ্য কমিশনের (সি আই সি) কাছে তুলে ধরা হয়। গত ৮ ফেব্রুয়ারি কমিশন প্রধানমন্ত্রীর দফতরকে অপ্রকাশিত ৩৩টি নথির মধ্যে ২৯টি নথির তালিকা



শিরোনাম সহ প্রকাশের নির্দেশ দেয়। নেতাজির স্ত্রী-কন্যার চিঠি ছাড়াও প্রধানমন্ত্রীর দফতরে এই সংক্রান্ত অন্য যেসব নথি-প্রমাণ রাখা আছে, সেগুলির মধ্যে রয়েছে নেতাজির তথাকথিত চিতাভস্ম সংক্রান্ত কাগজপত্রও। এমনকী নেতাজি যে ইন্ডিয়ান ন্যাশনাল আর্মি (আই এন এ) গঠন করেছিলেন, তার কোষাগার সংক্রান্ত নথি এবং তাঁকে 'মরণোত্তর' ভাষ্যে রত দেওয়ার

বিষয়ের 'পুলিসি পেপার'-এর উল্লেখও প্রকাশিত তালিকার মধ্যে রয়েছে। তবে বাকি চারটি নথির তালিকা মুখ্য তথ্য কমিশনার ওয়াজাত হাবিবুল্লাহ নিজেই প্রকাশ করতে নিষেধ করেছেন। তিনি জানিয়েছেন, এই চারটি নথির সঙ্গেই অন্য রাষ্ট্রের সংযোগ রয়েছে। কাজেই এগুলির কথা প্রকাশ করা যাবে না।

কমিশনের জারি করা নির্দেশনায় নেতাজি সংক্রান্ত ওই ২৯টি গোপন নথির মধ্যে সাতটিকে 'টপ সিক্রেট', তিনটিকে 'কনফিডেনশিয়াল' এবং বাকিগুলিকে 'সিক্রেট' বলে অভিহিত করা হয়েছে।

আনন্দবাজার পত্রিকা কলকাতা বৃহস্পতিবার ২৭ মার্চ ২০০৮

## আনন্দবাজার পত্রিকা

### নেতাজিকে নিয়ে গোপন নথি প্রকাশ

নয়াদিঘি, ২৬ মার্চ: 'তথ্য জানার অধিকার' আইনের দৌলতে নেতাজি সম্পর্কিত অত্যন্ত গুরুত্বপূর্ণ কিছু নথি প্রকাশ করতে বাধ্য হল সরকার। এত দিন এগুলি প্রধানমন্ত্রীর দফতরে চূড়াও নিরাপত্তার ঘেরাটোপে রাখা ছিল। এর মধ্যে তৎকালীন সরকারকে লেখা নেতাজির স্ত্রী ও কন্যার কয়েকটি চিঠিও আছে। আছে তাঁর অসুধান, 'চিতা ভস্ম' ও 'মরণোত্তর' ভারত রত্ন সম্মান নিয়ে তথ্যসম্বলিত কিছু নথিও। তবে, বৈদেশিক সম্পর্কে বিরূপ প্রভাব পড়তে পারে, এই মুক্তিতে প্রধানমন্ত্রীর দফতর আগে এগুলি প্রকাশ করতে অস্বীকার করেছিল।— পি টি আই



From : 1. SRI SUBHAS CHANDRA BASU  
Residing at- 86, Sadar Boxi Lane,  
P.O. Howrah, P.S. Howrah,  
Dist. Howrah, Pin - 711101.

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2. SRI PANKOJ HALDER  
Residing at- Village - Mathurapur,  
P.O. Mathurapur, P.S. Mathurapur,  
Dist. South 24-Parganas.

Date : 11.03.2008

To

1. The Hon'ble Minister for Home Affairs,  
Government of India,  
New Delhi - 110001.
2. The Hon'ble Minister of Foreign Affairs,  
Government of India,  
New Delhi.

Sir(s),

Sub : REAPPOINTMENT OF MUKHERJEE COMMISSION FOR  
COMPLETION OF INQUIRY INTO DISAPPEARANCE  
AND/OR ALLEGED DEATH OF NETAJI SUBHAS  
CHANDRA BOSE IN AUGUST, 1945.

With due reverence and submission, we would like to place before you the following facts for immediate consideration and necessary action :-

1. That with regard to mysterious disappearance of Netaji Subhas Chandra Bose first a three - member Inquiry committee, vide its Notification No.F-30(26) FEA/55 dated April 5, 1956, was appointed by the Government of India. The majority report which held that Netaji died in the aforesaid plane crash, was accepted by the Government of India.
2. That the said majority view of that committee, however, did not satisfy the public in general. There was further demand by the members of the Parliament to raise a voice for further enquiry into the matter. Then the Govt. of India vide Notification No. 25/14/70-Poll. 11.07.1970 constituted an Enquiry Commission headed by Shri G.D . Ghola, Retired Chief Justice of Punjab, High Court. The said Commission came to the conclusion that Netaji had succumbed to his injury sustained in the plane crash at Taihoku and that his ashes had been taken to Tokyo Japan. The findings of the Khosla Commission did not end the controversy surrounding Netaji's Death.
3. That thereafter a Writ Petition being W.P. No.281 of 1998 was filed in the Hon'ble High Court, Calcutta to launch a vigorous inquiry into the alleged disappearance/death of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of

*Subhas Chandra Basu*  
*Pankoj Halder*

Inquiry and by an order dated April 30, 1998 the Hon'ble Division Bench, High Court, Calcutta, directed the Union of India for conducting an in-depth enquiry by appointing a Commission of Inquiry for the purpose. of giving an end to the controversy.

- 4. That thereafter by a unanimous resolution adopted by the West Bengal Legislative Assembly on 24.12.1998 demanded that Government of India should make necessary arrangement for availability of records and documents in an outside India so that the scholars and people could have access to them and also constitute a fresh Inquiry Commission to remove the controversy and/or whereabouts of Netaji Subhas Chandra Bose.
- 5. That in the context, the Government of India appointed the one-man, Commissioner known as Mukherjee Commission by its Notification No.SO 339 (E) dated 14.05.1999. The said Commission shall inquire into the facts and circumstances related to the disappearance of Netaji Subhas Chandra Bose in 1945 and subsequent developments connected therewith includings :-

- (a) Whether Netaji Subhas Chandra Bose is dead or alive;
- (b) If he is died, whether he died in the Plane Crash, as alleged;
- (c) Whether the ashes in the Japanese Temple are ashes of Netaji;
- (d) Whether he has died in any other manner at any other place and, if so, when and how;
- (e) If he is alive, in respect of his whereabouts;

The Commission shall also examine the manner in which the exercise if security of publication touching upon the question or death of otherwise of Netaji can be undertaken by the Central Government in the circumstances.

- 6. That the Mukherjee Commission had examined 131 Nos. of Witnesses and perused 308 Nos. of Exhibits, and visited various probable places of death such as (i) Death in Red Fort, (ii) Death in Plane Crash, (iii) Death in Dehradun, (iv) Death in Sheopukalan and (v) Death in Faizabad, and also visited different foreign countries and ultimately came to the following conclusion/findings on 07.11.2005 :-

- (a) **Netaji** Subhas Chandra Bose is dead.
- (b) He did not die in Plane Crash as alleged.
- (c) The ashes in the Japanes Temple are not Netaji.
- (d) In absence of any clinching evidence a positive answer can not be given and,
- (e) Answer already given in (a) above;

*Subhash Chandra Bose*  
*Pamkashaldin*

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In the matter of publication touching upon the death of or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the Plane Crash, as alleged. The said report was submitted before the Government of India on 08.11.2005.

7. That the Mukherjee Commission report was tabled in Parliament on 17.05.2006 and Government of India rejected the findings of the Commission without assigning any reason for rejection. The commission lasts for about 6 years and 7 months from 14.05.1999 to 08.11.2005. A huge money from the public exchequer was spent for this purpose but Mukherjee Commissioner failed to make any finding when, where and how Netaji Subhas Chandra Bose died. Furthermore, the Commission made a presumption as to death of Netaji due to expiry of more than 108 years 9 months 9 days on 07.11.2005 (date of submission of report) since the date of birth of Netaji Subhas Chandra Bose was on 23.07.1897.
8. That the Mukherjee Commission suggested that as to publication touching the death of Netaji Subhas Chandra Bose, the Government of India can proceed on the basis that he is dead but not in the Plane crash, as alleged. The said controversy never ended rather after rejection of findings of Mukherjee Commission on 17.05.2006, the controversy has further ignited and encouraged. Though the object of the Commission was to make an end and to light on the points how, where and when Netaji Subhas Chandra Bose died.
9. That the Mukherjee Commission did not make any comment on Netaji alleged stay in Russia in 1945 and called for further investigation into the matter. As citizens of India we have every right to know about the date and place and reason of death of our national leader of the country.

Under the above facts and circumstances, you are requested to reappoint Mukherjee Commission to complete the Inquiry as per terms of reference into the disappearance and/or alleged death of Netaji Subhas Chandra Bose in August, 1945 and/or alleged stay in Soviet Russia.

Yours faithfully,

*Subhash Chandra Basu*  
(Subhash Chandra Basu)

*Pankaj Halder*

(Pankaj Halder)



DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT  
JURISDICTION  
APPELLATE SIDE

W.P. NO. 8215 (W) OF 2008

IN THE MATTER OF :

An application under Article 226 of  
the Constitution of India;

And

IN THE MATTER OF :

SRI SUBHASH CHANDRA BASU & ANR.

..... PETITIONERS

-VERSUS-

UNION OF INDIA & ORS.

.... RESPONDENTS

P E T I T I O N

ON-RECORD

SUBHASH CHANDRA BASU

Petitioner-in-Persons

Bar Association Room No.12

High Court, Calcutta

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

( APPELLATE SIDE )

W. P NO.8215(W) of 2008

IN THE MATTER OF :

An application under Article 226 of the  
Constitution of India;

- And -

IN THE MATTER OF :

A writ or writs in the nature of  
Mandamus;

-And-

IN THE MATTER OF ;

A writ or writs in the nature of Certiorari;

-And-

IN THE MATTER OF :

Re-appointment or re-opening of  
Mukherjee Commission for completion of  
Inquiry into the matter of alleged  
disappearance and / or death of Netaji  
Subhas Chandra Bose in 1945 and / or  
continue further enquiry to find out the  
date of death of Netaji Subhas Chandra

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Bose, if he has died, and how, where and when, in earlier terms of reference of appointment under clause No. "2(d)- Whether he has died in any other manner at any other place and, if so, when and how", of the said earlier Commission of Inquiry appointed by the Government of India Vide Notification No.S.O.339(E) dated 14.05.1999;

-And-

IN THE MATTER OF :

The Evidence Act, 1872;

IN THE MATTER OF :

The Public Records Act, 1993;

-And-

IN THE MATTER OF :

Violation of fundamental rights enshrined under Article 14, 19(1) of the Constitution of India;

-And-

IN THE MATTER OF :

The Right to Information Act, 2005;

-And-

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IN THE MATTER OF :

Non-Consideration of the representative dated 11.03.2008 sent by the petitioner to the concerned authorities;

-And-

IN THE MATTER OF :

1. SRI SUBHAS CHANDRA BASU,  
son of Late Surendra Nath Basu,  
residing at 86, Sadar Boxi Lane, Post  
Office, Police Station and District –  
Howrah, Pin-711101;

2. SRI PANKAJ HALDER, son of Sri  
Late Arabinda Halder, residing at Village-  
Mathurapur, Post Office and Police  
Station – Mathurapur, District – South 24  
Parganas

.....PETITIONERS.

-Versus-

1. UNION OF INDIA,  
Service through the Secretary, Ministry  
of Home Affairs, Government of India,  
North Block, New Delhi- 110001;

2. Principal Secretary,  
Government of India Office of Prime  
Minister at 7, Race Course Road, New  
Delhi-110003;

3. SECRETARY,  
Ministry of Foreign Affairs, Government  
of India, South Block, New Delhi -  
110001.

4. SECRETARY  
Ministry of Parliament Affairs,  
Government of India, New Delhi-  
110001.

....RESPONDENTS

AFFIDAVIT-IN-OPPOSITION ON BEHALF OF  
THE RESPONDENTS HEREIN ABOVE

I, L P Shrivastava, wife of Shri D K Shrivastava aged about 58 years, by occupation – Service under Government of India and presently posted in its office in New Delhi, residing at Delhi do hereby solemnly affirm and state as follows:

1. I am one of the officer dealing with this matter on behalf of the respondents and as such I am competent to swear this affidavit. In the capacity of Dealing Officer, I know the facts and circumstances of the case and the facts of the case are based on available records in my office. I

have been authorized to affirm this affidavit on behalf of all the respondents. 92

2. I have read a copy of the writ petition No.8215(W) of 2008 affirmed by the petitioners and filed in the Hon'ble High Court under Article 226 of the Constitution of India and have understood the contents of the same.

3. Before dealing with relevant paragraphs of the said writ petition, at the outset, I state that the instant petition is not maintainable under Article 226 of the Constitution of India.

3A. With reference to the averment made in paragraph No.1 & 2, I say that the petitioners are indeed learned Advocates practicing in this Hon'ble Court. The rest of the averments made in the paragraph under reply are matters of facts relating to writ petition filed before the Hon'ble Apex Court and other matters filed before this Hon'ble Court and save what appears from the records of the said cases, I do not have any comments and do not admit anything.

4. With regard to the statement made in paragraph 3 of the writ petition I state that:

(A) The disappearance of Netaji Subhas Chandra Bose has engaged the attention of the Government right from the beginning. The Government of India has, so far, appointed three Committees/Commissions to inquire into the alleged disappearance of Netaji Subhash Chandra Bose. The first one was a Committee, known as Shah Nawaz Committee, consisting of three members, appointed in

the year 1956. The Committee examined 67 witnesses.

Two members of the said Committee came to the conclusion that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18<sup>th</sup> August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The other member of the Committee submitted a dissenting report. The Government of India accepted the majority report.

(B) The second inquiry was a one-man Commission under Justice G.D. Khosla appointed in 1970. This Commission submitted its report in the year 1974 and this Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18<sup>th</sup> August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo are of Netaji.

(C) Subsequently, a writ petition was filed before the learned Division Bench of the Hon'ble Court of Calcutta. After hearing the learned Counsel appearing for the parties the Hon'ble Court of Calcutta by its order / judgement dated 30-04-1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji Subhas Chandra Bose in accordance with law by appointing a Commission of Inquiry. This was followed by a motion adopted by the West Bengal Legislative Assembly on December 24, 1998 demanding that the Government of India should make necessary

arrangements for availability of records and documents in and outside India so that the scholars and people could have access to them and also institute a fresh inquiry into the matter to remove the mystery regarding the whereabouts of Netaji Subhash Chandra Bose.

(D) Therefore, the Government of India appointed a Commission headed by Justice M.K. Mukherjee, into all the facts and circumstances related to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent developments connected therewith, including:-

- (a) whether Netaji Subhash Chandra Bose is dead or alive;
- (b) if he is dead, whether he died in the plane crash, as alleged;
- (c) whether the ashes in the Japanese temple are ashes of Netaji;
- (d) whether he has died in any other manner at any other place and, if so, when and how;
- (e) if he is alive, in respect of his whereabouts.

(E) The Justice Mukherjee Commission of Inquiry, (JMCI), submitted its Report on 8<sup>th</sup> November, 2005 on the following terms of references and concluded the following:-

S. No.	Terms of reference	Conclusion of the Commission
A.	whether Netaji Subhas	Netaji Subhas Chandra



	Chandra Bose is dead or alive;	Bose is dead;
B.	if he is dead, whether he died in the plane crash, as alleged	He did not die in the plane crash, as alleged
C.	Whether the ashes in the Japanese Temple are ashes of Netaji;	The ashes in the Japanese temple are not of Netaji;
D.	Whether he has died in any other manner at any other place and, if so, when and how;	In the absence of any clinching evidence a positive answer cannot be given;
E.	If he is alive, in respect of his whereabouts.	Answer already given in (A) above.

The Commission also observed as under:-

“5.1.1 As regards the ancillary query (vide paragraph 3 of the Notification) the Commission is of the view – consequent upon its above findings – that in undertaking the scrutiny of publications touching upon the question of death or otherwise of Netaji, the Central Government can proceed on the basis that he is dead but did not die in the plane crash, as alleged”.

(F) The report of the JMCI was examined in detail. It was found that the Commission's findings were inconclusive in many ways and it had not been able to provide definitive findings. The findings of the JMCI that Netaji did not die in the plane crash is based on non-availability of ‘clinching evidence’. Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament. They, therefore, relied on the oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in

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the plane crash on 18<sup>th</sup> August, 1945 and he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji Temple. The findings of Justice Mukherjee Commission of Inquiry, therefore, do not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the Doctors and staff of the Hospital where he was treated to severe and serious burn injuries sustained in the plane crash. The Government of India did not accept the conclusions of JMCI.

(G) The report of the JMCI was placed before both the Houses of Parliament along with the Action Taken Report (ATR) on 17<sup>th</sup> May, 2006 as per Section 3(4) of the Commissions of Inquiry Act, 1952. The relevant portion of the said ATR reads as follows:-

“2. The Government have examined the Report submitted by the Commission on 8<sup>th</sup> November, 2005 in detail and have not agreed with the findings that :-

- a) Netaji did not die in the plane crash; and
- b) The ashes in the Renkoji Temple were not of Netaji.

The Report was placed before the Houses of Parliament on 17-05-2006 as required under Sub-Section 4 of Section 3 of the Commissions of Inquiry Act, 1956”.

(H) It would be seen that the Government has accepted the majority reports of the Committees / Commissions and there

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are no good reasons or evidence to indicate that Netaji did not die in the plane crash on 18<sup>th</sup> August, 1945. Though the Mukherjee Commission worked for 6 years and 7 months, it could not find any proof that Netaji Subhash Chandra Bose died in any other manner. Therefore, there is no reason for the Government of India to accept that the earlier two findings were incorrect. Further, it is always open to the Government of India to accept or reject the recommendations/findings of a Commission. The Commissions of Inquiry Act, 1952 Sub-Section-4 of Section-3 provides that the report of the Commission along with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may be advised. No further directions were given by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds as mentioned at Para-4(G) above for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

5. With regard to the statement made in paragraphs 4,5 & 6 of the writ petition, I state that those are matters of record and save and except what

appears from the records all allegations contrary thereto or inconsistent therewith are emphatically denied and disputed by me.

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6. With regard to the statement in paragraph 7 of the writ petition, it is submitted that on recommendations of the Prime Minister, the President had approved the conferment of the award of Bharat Ratna, posthumously, on Netaji Subhash Chandra Bose. A press communiqué announcing the conferment of award was issued by the President's Secretariat on January 22, 1992. In the case of posthumous awards, the award has to be received by the next of kin (NOK) of the awardee. Mrs. Anita Pfaff, daughter of Netaji, who was contacted in this connection, expressed certain reservations on receiving the award as according to her such an honour should have been appropriate in the fifties and said that one cannot honour Netaji today by awarding the Bharat Ratna to him. She declined to receive the award. Apart from declining of the award by Netaji's daughter, some persons submitted a memorandum to the then President. However, it was considered that the conferment of Bharat Ratna on Netaji was only announced by the President's Secretariat through a press communiqué and was not notified in the gazette. The notification in the gazette is done when the award is actually conferred by the President during the presentation ceremony. Since the award was declined by the NOK, there was no presentation of the award and the award was not notified in the Gazette of India. It was decided with the approval of the Prime Minister and the President that no further action was necessary and the matter be treated as closed.

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6A. With reference to the allegations made in paragraphs 8, 9, 10, 11, 12 and 12.1 of the writ petition I say that the same are matters of record and save what appears from the records I do not admit anything.

7. With regard to the statement in Paragraph 13 of the writ petition, I deny that the Central Government had rejected the findings of the Justice Mukherjee Commission of Enquiry on 17.5.2006 without assigning any reasons. It is submitted that the report of JMCI has been thoroughly examined; but it was observed that the Commission's inquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is further submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they also relied on oral evidence of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18<sup>th</sup> August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple there. Justice Mukherjee Commission, therefore, does not conclusively disprove the plane crash story in the face of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for severe burn injuries sustained in the plane crash. Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry. Further, it is always open to the Government of India to accept or reject the recommendations/findings of a

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Commission. The Commissions of Inquiry Act, 1952 (Annexure-I) provides that the report of the Commission also with the ATR has to be placed before Parliament so that Parliament can take necessary action in the matter as it may deem appropriate. No action has been taken by Parliament and, therefore, it is prayed that the matter may be treated as closed. The decision of the Government does not suffer from arbitrariness as there are good grounds for the Government not to accept the report of JMCI. It is emphasized that the report and findings of the Commission of Inquiry are meant for information of the Government. The decision of the Government does not suffer from an illegality or arbitrariness.

7A. With reference to the allegations made in paragraphs 14, 14.1 and 14.2 of the writ application, I deny and dispute all such allegations as are contrary to or inconsistent with what have been stated herein or barring what are matters of record as if set out traversed and / or denied in seriatim.

8. With regard to the statement in paragraph 15 of the writ petition, I state that the relevant documents or records relating to alleged Netaji's disappearance were not accessible to the Justice Mukherjee Commission of Inquiry is denied and disputed. It is submitted that JMCI submitted its report on 8<sup>th</sup> November, 2005 after examining witnesses, visiting the U.K., Japan, Taiwan, Bangkok and Russian Federation and after going through 308 exhibits. In respect of 'Secret' and 'Top Secret' file/documents or records, it may be stated that these records relate to the appointment of Inquiry Committees on the death of Shri Subhash Chandra Bose, conferment of award of Bharat Ratna award (Posthumously) on Netaji, and

as such, these do not contain any material which are relevant. All relevant important documents were provided to the Commission save as aforesaid allegations contrary thereto or inconsistent therewith are emphatically denied and disputed by me.

9. With regard to the statement in paragraphs 16, 16.1, 16.2 and 16.3 of the writ petition, I deny all such allegations which are contrary to or inconsistent with what have been stated herein or barring what are matters of record I say that Shri Naresh Jaiswal was working in the Ministry of Home Affairs in the capacity of Section Officer at the time of filing that affidavit and was duly authorized by the Ministry to do so.

10. With regard to the statement in paragraph 16.4 of the writ petition, I state that records were not made available to the Commission is denied. In fact, in para 2.6 of its Report, the Commission itself has stated that out of 202 (two hundred and two) exhibits, authenticated copies of 26 (twenty six) exhibits and plain photocopies of 63 (sixty three) exhibits, aggregating 89 (eighty nine) exhibits only, were furnished by the Government of India to the Commission.

11. With regard to the statement in paragraph 16.5 of the writ petition, I state that all available records were produced before the Justice Mukherjee Commission and as such, there is no need to reappoint or reopen the JMCI or to set up any further Commission of Inquiry.

12. With regard to the statement in paragraph 17 of the writ petition, I state that the earlier two Committee/Commission namely Shah Nawaz Committee and Khosla Commission have stated that Netaji Subhash

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Chandra Bose died in the plane crash at Taihoku Airport on 18<sup>th</sup> August, 1945. It is also humbly submitted that Government of India also accepted the finding of the said Committee/Commission.

13. With regard to the statement in paragraph 18 of the writ petition, I state that the representation dated 11.3.2008 has not been received in the concerned Section/ Division of the Ministry of Home Affairs. In view of what has been stated in Para-7 above, there is no need for reappointment or reopening of the Mukherjee Commission and the present petition may be dismissed. I reserve my right to advance appropriate submission or submissions in this regard at the time of the hearing of the writ application.

14. With regard to the statement made in paragraph 19 of the writ petition and the Grounds taken therein in support of the writ petition, I deny and dispute each and every ground and submit that no case for re-opening or re-appointing of the Mukherjee Commission has been made out, and as such, the said writ petition is liable to be dismissed.

14A. With reference to the allegations made in paragraphs 20 & 21 of the writ petition, I deny and dispute all such allegations as are contrary to or inconsistent with what have been stated herein or barring what are matters of record as if set out traversed and / or denied in seriatim. I say that the Central Government after very careful consideration did not accept the Report submitted by Justice Mukherjee Commission.

14B. With reference to the allegations made in paragraph 22 of the writ petition, I submit that inspite of best efforts made by different departments



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of the Government no records could be found on the basis of which the then Hon'ble Prime Minister of India late Moraji Desai made the statement on the floor of Parliament on 28<sup>th</sup> August, 1978.

14C. With reference to the allegations made in paragraphs 23 and 24 of the writ petition I deny and dispute the same. I submit that Justice Mukherjee Commission had complete freedom to visit any country if wanted for the purpose of the enquiry or investigation. In fact the commission went to several places in India and abroad and conducted necessary enquiry and investigation within the country and outside India. After completion of their enquiry and investigation, Justice Mukherjee Commission submitted its Report. In the circumstances there is no need for further enquiry. Save as aforesaid all allegations contrary thereto or inconsistent therewith are denied and disputed by me.

15. With regard to the allegations made in paragraph 25 of the writ petition, I state that the Government of India has accepted the findings of the Shah Nawaz Committee and Khosla Commission. Both the Committee/Commission have concluded in their report that Netaji died in the plane crash at Taihoku on 18<sup>th</sup> August, 1945. Save as aforesaid all allegations contrary thereto or inconsistent therewith are denied and disputed by me.

16. With reference to the allegations made in paragraphs 26 & 27 of the writ petition, I deny and dispute the same. I particularly deny the allegation that "the object of rejection of said Justice Mukherjee Commission Report is absolutely illegal and against the said provision of law. I reserve my

right to advance appropriate submission or submissions in this regard at the time of the hearing the writ application.

16A. With regard to the statement in paragraph 28 of the writ petition, I state that the fundamental rights of the petitioners guaranteed under section 14 & 19(1) of the Constitution of the India have not been violated. The answering respondent respectfully submits that the report of Justice Mukherjee Commission of Enquiry was thoroughly examined; but it was observed that the Commission's Enquiry was inconclusive and it has not been able to provide definite findings. It is submitted that the Commission's finding that Netaji did not die in the plane crash are based on non-availability of 'clinching evidence'. It is submitted that Shah Nawaz Committee of 1956 and Khosla Commission of 1970 also encountered the same predicament and they, therefore, relied on oral evidences of the witnesses including those who were co-passengers of Netaji in the said ill-fated plane and came to the conclusion that Netaji died in the plane crash on 18<sup>th</sup> August, 1945 and that he was cremated in Taiwan Crematorium and his ashes were taken to Tokyo and preserved in the Renkoji temple. Justice Mukherjee Commission's, Report therefore, does not conclusively disprove the plane crash in the light of overwhelming oral evidence, particularly of those who were co-passengers of Netaji and also the doctors and staff of the Hospital where he was treated for third degree burn injuries sustained in the plane crash. It is submitted that Government of India, therefore, found it difficult to accept the conclusions of the Justice Mukherjee Commission of Inquiry.

16B. With reference to the allegations made in paragraphs 29 & 30 and 31 of the writ petition, I deny and dispute the same.

16C. I submit that the petitioners have failed to make out a case for re-opening or re-appointing Justice Mukherjee Commission. I further say that Justice Mukherjee Commission after thorough, protracted and painstaking efforts completed its enquiry/investigation and, thereafter, submitted its report. All out efforts were made by Justice Mukherjee Commission to unearth the truth. In the premises nothing further remains to be done in the instant case. In the facts ad circumstances of this case the present writ petition is liable to be dismissed.

17. The statement contained in paragraphs of the Affidavit-in-Opposition to the writ petition of the petitioners are true to my knowledge and derived from the available relevant records and rests are my respectful submission before this Hon'ble Court.

Prepared in my office

The deponent is known to me

Advocate

Clerk to

Solemnly affirmed before me on this day of 2010.

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DISTRICT : HOWRAH

IN THE HIGH COURT AT  
CALCUTTA  
CONSTITUTIONAL WRIT  
JURISDICTION  
(APPELLATE SIDE)

W.P NO.8215(W) OF :2008

IN THE MATTER OF :

An application under Article 226 of  
the Constitution of India;

-And-

IN THE MATTER OF :

SRI SUBHASH CHANDRA BASU &  
ANR

PETITIONERS

-Verus-

UNION OF INDIA & ORS

RESPONDENTS

AFFIDAVIT-IN-OPPOSITION ON  
BEHALF OF THE RESPONDENTS

Mr Tarun Kumar Ghosh  
Advocate  
Bar Association Room No.2,  
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1<sup>st</sup> Floor Kolkata – 700009  
Phone 2350-9128 & 2351-2988

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3. **Appointment of Commission-** (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if resolution in this behalf is passed by ([ Note : Subs. by Act 19 of 1990, sec 2, for certain words.] each House of Parliament or, as the case may be, the Legislature of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and with such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly.

Provided that where any such Commission has been appointed to inquire into any matter-

a. by the Central Government, no State Government shall, except with the approval of the Central Government, appoint another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning.

b. by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

2. The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one members, one of them may be appointed as the Chairman thereof.

3. [ Note: Ins by Act 79 of 1971, sec.5.] The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

4. The appropriate Government shall cause to be laid before ([ Note : Subs. by Act 19 of 1990, sec 2, for certain words.] each House of Parliament, or, as the case may be, the Legislature of the State), the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government [ Note: Sub section (5) and (6) omitted by Act 19 of 1990, sec. 2, which were inserted by Act 59 of 1993, sec. 2 ( w.e.f. 14-5-1986).

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**PRIME MINISTER'S OFFICE**  
[POLITICAL SECTION]

South Block, New Delhi – 110 101

**Subject: Writ Petition no. 8215(W)/2008 filed in Calcutta High Court in the Subhash Chandra Basu & Another Vs. Union of India & Others**

Reference is invited to Ministry of Home Affairs OM no. 12014/6/2008-Cdn. dated 15.12.2010, on the above subject.

2. The undersigned is directed to convey that this office has no comments to offer and to request Home Ministry to file affidavit for Government of India, in consultation with the other Ministries concerned, after due vetting.



(Amit Agrawal)  
Director  
Tel. 2301 2613  
Fax No. 23016857

Ministry of Home Affairs [Attn. Joint Secretary (IS-II), Smt. Rashmi Goel ]  
PMO ID no. 915/11/C/1/2009-Pol Dated: 24.12.2010

n.o.o.

Copy to:

Sr. PPS to Principal Secretary to PM

  
24/12

D.No - 1181