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915/11/C/2/2006 fol

47

फाइल सं०
File No.

खण्ड
Volume

IV

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

Political

अनुभाग/प्रभाग

SECTION/DIVISION

टिप्पणियां/पत्राचार

NOTES/CORRESPONDENCE

116567

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
Court Case
CAN No. 2133 of 2008 in WP No 2754/2008
→ Sh. AK Sanguli vs vs VOREON - Letter
from spec. AK Sanguli & Subhas Chandra Sen
Rey Disappearance of Netaji S.C. Box.

CONTENTS			
Notes		Correspondence	
From	To	From	To
1	10	1	226

पिछले हवाले
Previous References

बाद के हवाले
Later References



915/11/C/2/08 WP 8215
915/11/C/11/09 WP 8215

11/AS(Su)/15
7.10.15

u/m

Internal

Subject: CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

The matter was discussed at the meeting convened by the Secretary to PM today with the Secretary, D/o Legal Affairs, Secretary, M/o Parliamentary Affairs, Joint Secretary (Internal Security), M/o Home Affairs and Joint Secretary (CNV), M/o External Affairs.

2. After discussion, it was agreed that the Home Ministry would act as the nodal Ministry for PMO as well as the other Ministries impleaded as respondents and file affidavits on behalf of all. The Government Counsel may also be advised accordingly to correspond with the Home Ministry only regarding the matter. The Home Ministry would make a reference to the Law Ministry for obtaining the advice of the Attorney General of India regarding the case and for securing the services of a more senior counsel for representing the Government in the case.

3. If approved, the above would be communicated to the Home Ministry, under intimation to the other three Ministries concerned.

(Amit Agrawal)

1.9.08

JS(M)

Sanjay Mitra
2/9

Secy to PM

319

JS(M)

sm
3/9

Dri(AA)

p-11/v

Internal

Shri Ashim Kumar Ganguly and Shri Subhash Chandra Basu vide their letter dated 27.09.2006 (F/A) had written to the Prime Minister regarding death of Netaji Subhash Chandra Bose. Along with other points, they had raised the issue of

- i) Government of India (GOI) not accepted the reports made by Netaji Enquiry Commission namely Justice Monoj Mukherjee Commission set up by GOI. The Commission was set up on the orders of High Court of Calcutta passed in the case of Ashim Kumar Ganguly Vs Union of India & others (W.P. no. 1805/1997) and also following an unanimous motion adopted by West Bengal Assembly on 24.12.1998.
- ii) Though the report was not accepted by GOI but the same was placed before the Parliament for discussion.
- iii) The Terms of Reference of the Commission was to find out the clue of mysterious disappearance of Netaji and/ or unearth whether Netaji died in alleged plane crash that took place at Taihoku (now Taipei) in Taiwan (formerly Formosa) on August 18, 1945 and also to find out whether the alleged ashes kept in the Renkoji Temple in Tokyo, Japan as that of Netaji.
- iv) The earlier two Commissions set up GOI (namely Shah Nawaz Inquiry Committee in 1956 and Khosla Commission in 1970), failed to achieve the credence of public at large. Further, the reports were also cancelled by the then Prime Minister (Shri Morarji Desai).
- v) GOI on earlier occasion made an attempt to award posthumous 'Bharatratna' to Netaji and further attempt was made to bring the alleged ashes of Netaji without formal declaration of death of Netaji. The purported attempts were ultimately abandoned due to filing a Writ Petition in the Supreme Court of India challenging such arbitrary, whimsical and irrational decision of the Government. Till date the GOI had neither declared the date of death of Netaji nor abandoned the wasteful expenditure of Government exchequer for maintaining the temple at Renkoji in Japan to keep the alleged ashes of Netaji. This decision for bearing the cost for such maintenance is nothing but national wastage of public money from exchequer for which the Government is questionable before the public at large with regard to unwarranted and undesirable expenditure.

Monday

12:30

Secy to PM

Secy M & J
Rel. Adviser

AS, MHA dealing with this.
In(vv), JS(P), D(AA) & JS(M)

- 2/m
- vi) Justice Mukherjee Commission had opined that the ashes kept in the Renkoji Temple in Japan is not of Netaji.
 - vii) They had requested the Government to immediately stop the expenditure for the maintenance of the so called ashes kept in the Renkoji temple at Japan and inform the applicants forthwith the reason for such rejection and/ or non-acceptance of report of Mukherjee Commission with in 10 days failing which they will have no other alternative except to knock at the door of justice.

2. Shri Tarun Kumar Ghosh, Advocate, High Court, Calcutta vide his letter dated January 8, 2007 (F/B) had written to the Additional Government Counsel, Ministry of Law & Justice with a copy endorsed to the Principal Secretary to PM stating/ requesting the following:

“W.P. no.27541(W) of 2006 was filed by Shri Ashim Ganguly & another (Petitioners) against Union of India & Others (Respondents) regarding Prohibition for bearing the Respondents nos. 1 to 4 for incurring any amount of public money from public exchequer for preservation and reservation and/ or maintenance of Henkoji Temple, Japan allegedly keeping the ashes of Netaji allegedly died on 18.08.1945 till the disposal of this writ petition.

Request was also made to arrange to furnish brief history along with parawise comments to the writ petition immediately so that an affidavit-in-opposition be prepared on behalf of Government and the said opposition be affirmed by the competent official of the concerned department after vetting the same in time in compliance with the order of Hon'ble Court in the matter”.

3. Shri Tarun Kumar Ghosh, Advocate, High Court, Calcutta vide his letter dated June 6, 2007 (F/C) had again written to Additional Government Counsel, Ministry of Law & Justice with a copy endorsed to the Principal Secretary to PM inviting reference to his earlier communication and further requesting to provide requisite inputs so that opposition may be filed in compliance with the order dated 5.06.2007.

4. The letter of Shri Ghosh dated June 6, 2007 was forwarded to Secretary, Department of Legal Affairs for action as appropriate vide this Office ID dated June 15, 2007 (F/D).

3/12

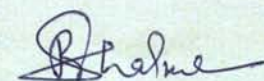
5. Department of Legal Affairs vide its letter dated June 20, 2007 had informed this Office that the said letter forwarded to Joint Secretary & GC, Nizam Place, Kolkata for taking up the matter with concerned Department for protecting the interest of the Government of India.

6. Ministry of Home Affairs vide its letter dated August 19, 2008 (F/E) has informed that Court had taken adverse notice of delay in filing reply against the main Writ Petition and requested that comments in the matter related to this Office may be forwarded on most urgent basis.

7. Ministry of Home Affairs again vide its letter dated August 21, 2008 has sent the following papers

- Shri S. Bhattacharyya, Additional Govt. Counsel, Department of Legal Affairs letter dated July 30, 2007 addressed to Under Secretary, MHA and a copy endorsed to this Office regarding immediate necessary action to furnish parawise comments and brief history of the case, so that Affidavit in Opposition may be filed and interest of Government of India is protected.
- Copy of supplementary Affidavit on behalf of the Petitioners, etc.

Submitted please.



(Rajesh Sharma)
SO (Political)
August 29, 2008

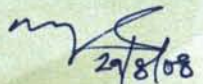
Director (AA), The Writ Petition impleads Pri. Secy., PMO as respondent no. 2. Other respondents are MHA, MEA, M/o Parl. Affrs and Netaji Research Bureau, Kolkata. The original petition and several other papers ~~do~~ could not be located in the office, although addressed to this office. Earlier correspondence has been handled by Dir (VV) on the M/o Law & Justice side in our office.

2. The relieves sought are stoppage of expenditure on the Kenkeji Temple in Japan for Netaji's alleged ashes, its shifting or Netaji Research Bureau, tabling the report of the Justice Mukherjee Commission of Inquiry on Netaji's alleged death/disappearance before MPs for debate, furnishing certified copy of the report, and conditional orders in regard to these.

3. None concern PMO directly, apparently. A file relating to Kenkeji Temple remains and their shifting is, however, linked, which has been handled on the MEA side in PMO.

4. In view of the above, the matter is perhaps best handled on the MEA side.

58 (M)


29/8/08

Internal

Subject: CAN No. 2133 of 2008 in WP No. 27541 (W) of 2006 – Shri Ashim Kumar Ganguly & ors. Versus Union of India & Ors.

MHA, *vide* letter dated 19.8.09 [FR] addressed jointly to MEA, MoD and PMO, has forwarded copy of an application moved in the Calcutta High Court in the case indicated under the subject cited above for addition of the nine applicants as parties to the case concerning various issues related to Netaji Subhas Chandra Bose's disappearance. The application states that the applicants have voluntarily engaged themselves in research work on Netaji for more than last 25 years and that they had earlier petitioned the Calcutta High Court under writ jurisdiction for the setting up of a Commission of Inquiry on Netaji's disappearance, which led the Court to direct the Government of India to set up such a Commission, which was set up under Justice Mukherjee. The applicants have submitted that they have researched the matter and collected information which will enable the Court to adjudicate and settle all questions involved in the writ application.

2. MHA has sought paragraph-wise comments immediately / most urgently, so that affidavit on behalf of Government of India may be filed.

3. The original petition impleaded Principal Secretary, PMO, as Respondent no. 2. The relieves sought were stoppage of expenditure on the Renkoji Temple in Japan for Netaji's alleged ashes, its shifting or Netaji Research Bureau, Tabling of the report of the Justice Mukherjee Commission of Inquiry on Netaji's alleged death / disappearance before MPs for debate, furnishing certified copy of the reports, and conditional orders in regard to these. The matter was discussed at a meeting convened by the then Secretary to PM on 1.9.08 with Secretaries / representatives from the D/o Legal Affairs, M/o Parliamentary Affairs, MHA and MEA. After discussion, it was agreed, *inter alia*, that the Home Ministry would act as the nodal Ministry for PMO as well as the other Ministries impleaded as respondents and would file affidavits on behalf of all.

4. In view of the above, no comments from this office appear to be called for.

5. It is proposed that MHA may be requested to take appropriate action for filing appropriate affidavit on behalf of all respondents, as decided at the meeting held in PMO on 1.9.08, in consultation with any other Ministries / Departments concerned. In case clarification / comments regarding any

particular aspect relating to PMO is felt necessary, MHA could specifically identify and refer the same to us.

(Amit Agrawal)
25.8.09

Saijaymitre
26/8

JS(M)

~~Secy to PM~~ 2 broad
29/8/09

~~Principal Secy~~

~~Atty~~
29/8

~~Secy to PM~~
31/8

~~JS(M)~~

Di(AA)

SM
31/8

7/12

Internal

Sub: CAN No.2133 of 2008 in W P No. 27541(W) of 2006 – Shri Ashim Kumar Ganguly & ors versus Union of India & Ors.

This office has received a communication from Ministry of Home Affairs enclosing therewith for addition of 9 more members as party in the aforesaid writ petition being W. P. No.27541(W) of 2006. Para-wise comments have been sought on the petition.

2. As the earlier copy received in this regard was not legible with respect to PMO's part, so a request was made to Ministry of Home Affairs to provide a legible copy of the same. The copy of the relevant part has been received.

3. While the substantive points raised in the ^{instant} extent petition have already been dealt in the earlier notes, only two points referred in the fresh communication are related to PMO file no. 23(11)/56-57-PM/NGO [the contents of the file was declassified with the approval of Principal Secretary to PM] and PMO file no. 800/6/C/1/90 Pol.

X | 4. If approved, the above referred files may be provided to Ministry of Home Affairs to draft an appropriate affidavit in the matter.

R Sharma

(Rajesh Sharma)

September 11, 2009

Director (AA)

The instant petition does not deal with prayers in the writ petition and is for impleading of additional persons (petitioners). Comments on the two files mentioned in the petitions do not, therefore, appear to be necessary. As the files are declassified, para-4 is proposed.

JS(M)

[Signature]
11/9/09

Sanjay Mittal
11/9

Secy to PM

R Bond
11/9/09

Principal Secretary

[Signature]
11/9

SM
14/9
[Signature]
80 (Pal. 14/9)

8/2

Note for briefing and/or decision

Joint Secretary, MHA vide her letter dated 13.5.2013 [FR] addressed to the Joint Secretary (Coordination), MEA has stated that a PIL has been filed in the High Court of New Delhi by Shri Prashant Paliwal praying that directions be issued to the Union of India to bring back the ashes of late Shri Subhash Chandra Bose from a museum in Germany for submerging the same into holy river Ganga and also to the top of Himalayas as in case of other national leaders for whom it has been done like Pandit Nehru, Mrs. Indira Gandhi etc. The PIL is to be listed on 15.5.2013.

2. In this connection, MHA, while mentioning that the Central Govt. Counsel has requested that the stand of the Union of India be intimated, has requested MEA for an update in the matter so that it is brought to the notice of the Court for dismissal of the PIL at the admission stage.

3. A copy of MHA's letter mentioned at paragraph 1 above has been endorsed to the PMO for comments.

4. The matter has been examined with reference to the contents of file No.915/11/C/2/2006-POL (Vol. I to IV) regarding the mortal remains of Netaji Subhash Chandra Bose and the brief on the PIL furnished by MEA to MHA [F/A]. Such examination indicates that:

- (i) The Govt. of India had set up three Committees/Commissions on the question of the alleged disappearance of Netaji Subhash Chandra Bose.
- (ii) The first Committee also known as Shah Nawaz Committee had concluded by a majority decision that Netaji died in the plane crash at Taihoku, Formosa (now Taiwan) on 18th August, 1945 and that his ashes were taken to Tokyo and preserved in the Renkoji Temple there. The Govt. of India accepted the majority report.
- (iii) The second Commission under the chairmanship of Justice G.D. Khosla also came to the conclusion that Netaji died in the plane crash at Taihoku on 18.8.1945 and the ashes preserved in the Renkoji Temple, Tokyo (Japan).
- (iv) In pursuance of the directions of the Division Bench of the Calcutta High Court dated 30.4.1998, Govt. of India had set up a Commission of Inquiry consisting of Justice M.K. Mukherjee to inquire into all facts and circumstances relating to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent developments connected therewith. The findings of the Justice Mukherjee Commission of Inquiry with reference to its Terms of Reference were as under:

Sl.No.	Terms of Reference	Conclusion of the Commission
A.	Whether Netaji Subhash Chandra Bose is dead or alive,	Netaji Subhash Chandra 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 are not of Netaji
D.	Whether he has died in any other manner at any other place, 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 column (A) above

(v) The Govt. of India did not accept the conclusions of the Justice Mukherjee Commission of Inquiry. The report of the Commission of Inquiry was placed before both the Houses of Parliament along with the action taken report on 17.5.2006. The relevant portion of the said ATR read as follows "Netaji did not die in the plane crash; and The ashes in the Renkoji Temple were not of Netaji."

(vi) However, as per the findings of the Report accepted by the Govt. of India the ashes of Netaji Subhash Chandra Bose are lying at Renkoji Temple in Tokyo (Japan) [cf para 4 (ii) & (iii) above].

Comments:

5. In view of the above, it is proposed that the following inputs may be conveyed to MHA in response to their request at paragraph 3 above:

"The PMO has no comments to offer in the matter. MHA is requested to handle the matter after obtaining comments from MEA."

6. Submitted please.

7. The information contained in para-4 should be available with MHA and/or MEA. We may not offer any comment. (Rajeev Topno) 14.5.2013

JS(S)

JS(J) *James Ashraf*
15.5.2013

Prd Secy

JS
15/5/13

JS

James Ashraf
16/5/13

JS(S)
Dir(A)

SN
16.05

SN
16/5

SN
17/5
P-3

SN
14.05.2013

10/11
Internal

This is regarding a PIL filed in the Delhi High Court by Shri Prashant Paliwal praying for the issue of direction to the Union of India to bring back the ashes of Netaji Subhash Chandra Bose from Japan.


2. It may be mentioned here that MHA's previous request for inputs on the PIL had been examined on Pg.8-9/N and it was decided not to offer any comments.

3. Now, MHA vide its letter dated 22.5.2013 has enclosed a copy of an e-mail from the Central Govt. Counsel requesting to inform as to which is the relevant Ministry competent to bring back the ashes of Netaji Subhash Chandra Bose from Japan. MHA has sought inputs on this point from this office as well as from the Joint Secretary (CNV), MEA [FR].

4. It is relevant to mention here that on an earlier occasion, a W.P. No.2754/2006-Shri Ashim Kumar Ganguly and Ors. Vs. Union of India & Ors. had been filed in the High Court of Calcutta seeking reliefs in terms of stoppage of expenditure on the Renkoji Temple in Japan for Netaji's alleged ashes, its shifting to Netaji Research Bureau, tabling of the report of the Justice Mukherjee Commission of Inquiry on Netaji's alleged death/ disappearance before MPs for debate, furnishing certified copy of the reports and conditional orders in regard to these. This has been discussed in a meeting in the PMO wherein, it was agreed that "*the Home Ministry would act as the nodal Ministry of PMO as well as the other Ministries impleaded as respondents and file affidavits on behalf of all. The Government Counsel may also be advised accordingly to correspond with the Home Ministry only regarding the matter.*" [Pg.4/N].

5. The instant letter of MHA relates to provision of inputs regarding which is the competent Ministry to deal with the issue of bringing back the ashes of Netaji Subhash Chandra Bose from Japan. It appears, *prima facie*, that MEA would be the Ministry concerned with this specific matter/issue. As this letter has also been addressed to that Ministry, we may consider conveying to MHA that we have no inputs to offer on this issue.

6. Submitted please.


(Rajeev Topno)
26.5.2013

JS(S)

SLA
28.05

JS(J) O.R.

Javed Anjum
31.5.2013

Di/(7)

10 th 23/5

Boj

SPEED POST WITH A/D.

From: SRI ASHIM KUMAR GANGULY
90, A.K.Mukherjee Road,
3rd floor, Kolkata - 700090
-And- Ph:2531-1861

SRI SUBHASH CHANDRA BASU
86, Sadar Boxi Lane,
Howrah - 711101.

Ph:2640-1217

To

Date: 27.09.2006.

1. The Hon'ble Prime Minister,
Government of India, Office of Prime Minister,
7, Race Course Road, New Delhi - 110003
- ✓ 2. The Hon'ble Minister of Foreign Affairs,
Government of India, New Delhi;
3. The Hon'ble Minister for Home Affairs,
Government of India, New Delhi;
4. The Hon'ble Minister of Parliamentary Affairs,
Government of India, New Delhi;

S i r (S),

With deep sense of regards being the responsible citizens we felt it necessitated to put forth the following points for your immediate intervention so as to bring the people of India into confidence into the question of alleged death of the National Hero Netaji Subhas Chandra Bose and put an end to the same:-

1. It is a matter of great ^{penitential} that the Government of India has not accepted the reports made by the Netaji Enquiry Commission namely Justice Monoj Mukherjee Commission set up by the Government of India and placed the report before parliament for discussion at great length.
2. The apathetic attitude of the Government of India in not accepting the report and placing the same before the Parliament has widely been circulated in the leading News papers in the country and also echoed the same through the Electronics media, which made furore in the mind and sentiment of the public at large throughout the breadth and length of our country.
3. It will not be exaggeration to enunciate that the Justice Monoj Mukherjee Commission was set up by the Solemn order of the Hon'ble High Court at Calcutta passed in the case of Ashim Kumar Ganguly - Vs - Union of India and Ors. being W.P.No.1805 of 1997 and also following an unanimous motion adopted on 24.12.1998 by the West Bengal Legislative Assembly, Government of West Bengal, and then the Chief Justice of the Hon'ble Supreme Court of India selected name of Hon'ble Justice Monoj Kumar Mukherjee(Retired) of the Hon'ble Supreme Court of India and ultimately it was constituted in 1999.

contd....2

4. As per the terms of reference the Commission was constituted to find out the clue of misterious disappearance of Netaji Subhas Chandra Bose and/or unearh whether Netaji Subhas Chandra Bose died in alleged Plane crash that took place at Taihoku (now Taipei) in Taiwan(formerly Formosa) on 18th August, 1945 and also to find out whether the alleged ashes kept in the Renkoji Temple in Tokyo, Japan as that of Netaji Subhas Chandra Bose or not.

5. Can it not be emphatically demanded that it is the duty of all citizens to know the cause of death and/or place of death if it really hapens of such national leader and hero unlike Subhas Chandra Bose. The doubts have concretised in the minds of all Indians about such alleged reporting of death news of Netaji Subhash Chandra Bose and also alleged ashes staked in the Renkoji Temple since the earlier two attempts made by the Government of India to find out the aforesaid queries by setting up Shah Nawaz Inquiry Committee in 1956 and by Khosla Commission in 1970 which failed to achieve the credence of the public at large. Furthermore, the then Hon'ble Prime Minister Morarji Desai on August, 1978 declined to accept the said two earlier Committee and Commissions' report on Netaji Subhas Chandra Bose and cancelled the same while sitting in the Parliament.

6. Therefore, considering the above facts the Hon'ble Mukherjee Commission was constituted through the judicial intervention and its sanctity and realiability are much more than that of the earlier two Committee and Commission in this regard and thus, the people of India have eaged to accept the findings of Mukherjee Commission in as much as it was based on evidence and it will also reflect the complete light and clear vision and/or complete light in the matter of alleged demise of Netaji Subhas Chandra Bose, the National Leader of the country having national regard all over the country and Crowned with international honour over the world.

7. In this context the above undesired action of the Government of India rejecting the report of Mukherjee Commission is really shocking and heart-breaking for the people of India. The Government of India has ignored the strong public sentiments over the long cherished reserved issue, which is rared up or nurished

by the Government of India. It may cause volcanic eruption in future if such ignorance is continued. It is, therefore, necessary that the Government of India should raise to the occasion and to give proper regard to the sentiment of the people of the country.

8. It is further stated that the citizen has a right to know the reason of such unreasonable rejection of report of Mukherjee Commission and also not placing the same before the parliament for wide discussion is a drastic attempt of the Government to turn a deaf ear to the rights enshrined under Article 19 of the Constitution of India and the said right has been consolidated and codified by the Parliament of our country enacting the Right to Information Act, 2005 and therefore, under the above Constitutional provision and under the said codified Act the people are entitled to know the real reason for such hostile rejection of report. Therefore, the people want to know the reason of such rejection. The apathetic attitude of the Government has strengthened the doubts and causes serious consequences in the minds of the people at large.

9. It is further stated that the Government of India in earlier occasion made attempt to award posthumous "Bharatratna" to Netaji Subhas Chandra Bose and further attempt was made to bring the alleged ashes of Netaji Subhas Chandra Bose without any formal declaration of death of Netaji. The purported attempts were ultimately abandoned due to filing a Writ petition in the Hon'ble Supreme Court of India challenging such arbitrary, whimsical and irrational decision of the Government of India. Till date the Government of India has neither declared the date of death of Netaji Subhas Chandra Bose nor abandoned the wasteful expenditure of Government exchequer for maintaining the temple at Renkoji ~~Temple~~ in Japan to keep the alleged ashes of Netaji Subhas Chandra Bose. This decision for bearing the cost for such maintenance is nothing but national wastage of public money from exchequer for which the Government is questionable before the public at large with regard to such unwarranted and undesirable expenditure. Moreover, it is an absolute non-democratic decision of the democratic ^{Govt. of the} country where the more than 60% people live below the poverty line. Thus, it is required to be immediately stopped the said expenditure for the interest of the nation. The exordium in this regard is totally unsustainable and not praiseworthy.

9. The people of this country share a common view that Netaji

Subhash Chandra Bose would be given honour much from the core of hearts if any real attempt is made to find out the clue of alleged death of Netaji Subhash Chandra Bose and immediately if the said expenditure is discontinued and no attempt be made to maintain the said temple cost unless there was/is a formal declaration of death to that effect. The report of the Justice Mukherjee Commission opined that the ashes kept in the Renkoji Temple in Japan is not of Netaji Subhas Chandra Bose.

Under the above facts and circumstances you are requested to immediately stop the expenditure for the maintenance of the so-called ashes kept in the Renkoji Temple at Japan and inform the applicants forthwith the reason for such rejection and/or non-acceptance of report of Mukherjee Commission within 10 days failing which the undersigned will have no other alternative except to knock at the door of the temple of justice for seeking appropriate roder from the Hon'ble Court.

An early reply to the context of the instant appeal will be appreciated and also may restrain the hands of the undersigned to move further.

Yours faithfully,

Ashim Kumar Ganguly

1. (Ashim Kumar Ganguly)

Subhash Chandra Basu

2. (Subhash Chandra Basu)

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

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10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009

Visiting Hours : 6 P.M. to 9 P.M.

By Hand
Through Special Messenger

The 08th January, 2007.

To
The Additional Government Counsel
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
4, Kiron Shankar Roy Road,
Kolkata - 700 001.

Your Ref. File No. 1204/Home/06/III dt. 21.12.06.

Re : W. P. No: 27541 (W) of 2006
Sri Ashim Ganguly & Anr. Petitioners.
-Vs-
Union of India & Ors. Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta)

Dear Sir,

This is to inform you that the above writ petition was listed in the cause list dated 22.12.2006 of Their Lordships The Hon'ble Mr. V. S. Sirpurkar and The Hon'ble Justice Arun Kumar Mitra and placed for hearing on 22.12.2006 when I appeared on your behalf. The matter was heard and after hearing the Ld. Advocates for the respective parties Their Lordships directed to be placed the matter again for hearing after ensuing x-mass vacation. Accordingly, the matter was again listed in the cause list dated 05.01.2007 of Their Lordships and placed for hearing on 05.01.2007 itself when I appeared on your behalf before Their Lordships. The matter was heard at length and after hearing the Ld. Advocates for the respective parties Their Lordships were pleased to direct to file the affidavit-in-opposition in the matter within 3(three) weeks from the date.

It is pertinent to mention here that the subject matter of the above writ petition, inter alia,

"Prohibition forbearing the Respondents nos. 1 to 4 from incurring any amount of public money from public Exchequer for preservation and reservation and/or maintenance of Henkoji Temple, Japan allegedly keeping the ashes of Netaji allegedly died on 18.08.1945 till the disposal of this writ petition."

Pri. Secy. to PM
Dy. No. 49/P/07
Date..... 16/1/07

Contd..... P/9.

320/05m/197
17/1

109/DSCA/6/07
25/1/07

915/11C/2/06-1
805/111C/1/05-2

10
2

15

Arin
35(M) 15/1

DS(A)
SM
17/1

Papers P.
17/1

17/1

P-3
17/1

08/01/2007

824 D/LA/10

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No. 2

High Court, Calcutta

Ph: Bar Association: 2248-5579/3190

Fax No: (033) 2248-2313

E-mail : barasohc@cal.cmc.net.in

:: 2 ::

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009

Visiting Hours : 6 P.M. to 9 P.M.

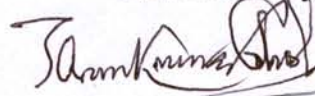
The 08th January, 2007.

In this context, it is therefore requested you to kindly arrange to furnish brief history along with parawise comments to the writ petition immediately so that I can prepare affidavit-in-opposition on your behalf and the said opposition be affirmed by the competent official of the concerned department after vetting the same in time in compliance with the order of this Hon'ble Court in the matter.

Please do the needful.

Thanking You.

Yours faithfully,



(~~TARUN KUMAR GHOSH~~)

Advocate.

08/01/2007

Copy to :

1. The Principal Secretary,
Office of the Prime Minister, Govt. of India,
7, Race Course Road, New Delhi.
2. The Director,
Netaji Research Bureau,
38/2, Lala Lajpat Roy Road, Kol-20.

110001

Regd with A/D Post

For information and necessary action.

Political Section

We have no disc. pts reg. 'F R'. However
a note from ~~the~~ MEA relating to this matter
at F/11(R) placed below

~~all at 11~~
22/1

7

~~DS(A)~~

May pl. see on the MEA side
for further processing.

22/1

DS(A)

Discussed with DS(R). N. J. a.

25/1

Rel. 1/2
25/1

Tarun Kumar Ghosh

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Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 009.

Visiting Hours : 6 p.m. to 9 p.m.

Most Urgent

By Hand

Through Special Messenger

The 06th June, 2007.

To
The Additional Government Counsel,
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.

Your Ref. File No. 1204/Home/06/III dt. 21.12.06.

Re : W. P. No: 27541 (W) of 2006

Sri Ashim Ganguly & Anr.Petitioners.

-Vs-

Union of India & Ors.Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta)

Attention : Mr. G. S. Makkar, Jr. Central Govt. Advocate,
Ministry of Law & Justice.

Dear Madam,

Kindly refer to my letter dated 08th January, 2007 by which I brought to your notice about outcome of hearing on 05.01.2007. It was also brought to your notice that the Affidavit-in-Opposition is necessary to be filed within 3(three) weeks from the date. In this context, it is pertinent to mention here that I have failed to receive any sorts of communication from your end till date.

However, I would like to place it on your record that the matter was listed in the cause list dated 05th June, 2007 of Their Lordships The Hon'ble Justice Mr. S. S. Nijjar, Chief Justice and The Hon'ble Justice Kalyan Jyoti Sengupta and taken up for hearing when I appeared on your behalf before Their Lordships. The matter was heard and after hearing the respective parties, I prayed for extension of time in filing Affidavit-in-Opposition in the matter. After hearing, Their Lordships have been pleased to grant such prayer directing to file Affidavit-in-Opposition within 3(three) weeks.

It is, therefore, requested you to kindly take necessary and appropriate steps so that opposition may be filed in compliance with the order dated 05.06.2007 for protecting your interest.

Please do the needful and apprise me accordingly.

Thanking You.

Yours faithfully,

Tarun Kumar Ghosh

(TARUN KUMAR GHOSH)

Advocate.

06.06.2007

Copies to : Regd. With A/D Post.

1. The Principal Secretary,
Office of the Prime Minister, Govt. of India,
7, Race Course Road, New Delhi.
 2. The Director,
Netaji Research Bureau, 38/2, Lala Lajpat Roy Road, Kol-20.
- For information and necessary action.

Room No. 20, Lawyers Chamber, Supreme Court Compound, New Delhi - 110 001

4456-6/1000

3433/15/24/07

1198/Dir/07

1546/DIR(V)/467

JS(M)

4/6

Dir(D)

What is this?

12/6

JS/A

Admn

Pol. Sec.

*33/11/11
Secy, DLA*

Recent papers with you.
As desired by you here.

✓

✓

P-3

Pol.

We may forward this
to D/O Legal Affairs, if approved.

by
14/6

by

Dinakaran

cc WOP

P-1
14/6

19

46/C

PRIME MINISTER'S OFFICE
[Political Section]

South Block, New Delhi – 110 011

Subject: W.P. No. 275411(W) of 2006 filed by Shri Ashim Ganguly & Anr. Vs. UOI & Ors in the Calcutta High Court.

Enclosed please find, for action as appropriate, copy of letter dated 6.6.07, endorsed to the Principal Secretary to the Prime Minister by Shri Tarun Kumar Ghosh, Advocate, Calcutta High Court, on the above subject.

(Handwritten mark)

(V. Vidyavathi)
Director

(Handwritten mark)

Secretary, Department of Legal Affairs

PMO ID no. 835/11/C/1/2007-Pol

Dated: 15.6.2007

90/543

4604/07/12
18/6

(Handwritten signature)
15-6

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No. 2

High Court, Calcutta

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Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 069.

Visiting Hours : 6 p.m. to 9 p.m.

Most Urgent

By Hand

Through Special Messenger

The 06th June, 2007.

To
The Additional Government Counsel,
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.

Your Ref. File No. 1204/Home/06/III dt. 21.12.06.

Re : W. P. No: 27541 (W) of 2006

Sri Ashim Ganguly & Anr.Petitioners.

-Vs-

Union of India & Ors.Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta)

Attention : Mr. G. S. Makkar, Jr. Central Govt. Advocate,
Ministry of Law & Justice.

Dear Madam,

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It is, therefore, requested you to kindly take necessary and appropriate steps so that opposition may be filed in compliance with the order dated 05.06.2007 for protecting your interest.

Please do the needful and apprise me accordingly.

Thanking You.

Copy to : Regd. With A/D Post.

1. The Principal Secretary,
Office of the Prime Minister, Govt. of India,
7, Race Course Road, New Delhi.
2. The Director,
Netaji Research Bureau, 38/2, Lala Lajpat Roy Road, Kol-20.

For information and necessary action.

Yours faithfully,

(TARUN KUMAR GHOSH)

Advocate.

06.06.2007

46/C

11

PRIME MINISTER'S OFFICE
[Political Section]

4 South Block, New Delhi – 110 011

Subject: W.P. No. 275411(W) of 2006 filed by Shri Ashim Ganguly & Anr. Vs. UOI & Ors in the Calcutta High Court.

Enclosed please find, for action as appropriate, copy of letter dated 6.6.07, endorsed to the Principal Secretary to the Prime Minister by Shri Tarun Kumar Ghosh, Advocate, Calcutta High Court, on the above subject.


(V. Vidyavathi)
Director 

Secretary, Department of Legal Affairs

PMO ID no. 835/11/C/1/2007-Pol

Dated: 15.6.2007

12

(S) / R

Court Case
Most Immediate
By Special Messenger

No.12014/12/08-Cdn.
Government of India
Ministry of Home Affairs

Lok Nayak Bhavan, 9th floor, 'C' Wing.
Room No.8, New Delhi, dt.19.8.08

To

1. The Joint Secretary (CNV),
Ministry of External Affairs
South Block, New Delhi.
2. The Secretary,
Ministry of Defence,
South Block, New Delhi.
3. Secretary to PM,
PMO, South Block,
New Delhi.

Subject: CAN No.2133 of 2008 in Writ Petition No.2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

Sir,

I am directed to enclose herewith a copy of the further affidavit filed by the Ld. Advocate Miss Debjani Ghosal in the above mentioned case, for comments on the paragraphs which concern your Ministry/Office.

2. As the Hon'ble Court has already taken adverse notice of delay in filing reply against the Main Writ Petition, it is requested that comments of your Ministry/Office may please be forwarded ON MOST URGENT BASIS.

Yours faithf

(Signature)

(AMAR CHAND)

UNDER SECRETARY TO THE GOVT. OF INDIA

Tel: 24610466

Handwritten note

19/8

JS(M)

Urgent.

On file.

sm 19/8

Dir (AA)

Papers pl.

20/8

(Signature) 20/8

File/keep below name (Signature) 20/8

1126146 19.8

Div (AA)

Tarun Kumar Ghosh

Advocate,
High Court, Calcutta.

Bar Association

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High Court, Calcutta

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Fax No. (033) 2248-2313

E-mail : tarun@cal.cny.net.in

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Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street

1st floor, Kolkata - 700 009

Visiting Hours : 10.30 am to 2.30 pm

103

By Hand
Through Special Messenger

The 14th July, 2008.

To
The Additional Government Counsel,
Ministry of Law & Justice,
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.

Your Ref. File No. : 1204/Home/06/III dt. 21.12.2006 and
1204/Home/06/III/1824 dt. 30.07.2007

Re : **W. P. No: 27541 (W) of 2006**
Sri Ashim Ganguly & Anr.Petitioners.
-Vs-
Union of India & Ors.Respondents.

(The matter is pending in the Hon'ble High Court, Calcutta)

Attention : **Mr. G. S. Makkar, Jr. Central Govt. Advocate,**
Ministry of Law & Justice.

Dear Sir,

Kindly refer to my letter dated 18th March, 2008 addressed to Mr. S. P. Malhotra, Deputy Secretary to the Govt. of India, Ministry of Home Affairs, 35, Division, Cdn Section, 9th floor, Room No. 2, Lok Nayak Bhawan, Khan Market, New Delhi - 110003 and a copy of the said letter forwarded to the Additional Government Counsel, Ministry of Law & Justice, Department of Legal Affairs, Branch Secretariat, 11, Strand Road, Kolkata - 700 001 about affidavit-in-opposition to this case.

However, the matter was listed in the daily supplementary list dated 11th July, 2008 of Their Lordships The Hon'ble Mr. Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice Pinaki Chandra Ghose under the head "Hearing" and placed for hearing before Their Lordships on 11.07.2008 itself.

I myself along with Ld. Sr. Counsel Mr. R. N. Das appeared on your behalf at the time of its call and filed affidavit-in-opposition dated 05th March, 2008. The matter was heard and after hearing the Ld. Advocates for the respective parties an application for addition of parties filed by the Ld. Advocate Miss Debgan Das was allowed. Their Lordships directed that the matter will be placed for further hearing after 2(two) weeks.

Contd. ...

Handwritten notes:
15/7/08
14/07/08
S. P. Malhotra
PP
S. P. Malhotra

Signature and date:
14/07/08

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3199

Fax No. (033) 2248-2313

E-mail : tarungho@calcutta.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10- A, Dr. Kaetick Bose Street,

1st floor, Kolkata - 700 009

Visiting Hours : 6 p.m. to 9 p.m.

:: 2 ::

The 14th July, 2008

In view of the matter, I am of the view that opposition is necessary to be filed on or before the next date of hearing against the contents of application for addition of parties file by the I.d. Advocate Miss Debjani Ghosal.

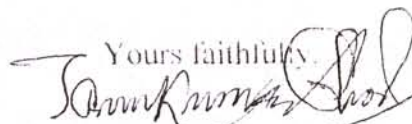
I am enclosing herewith a copy of application for addition of parties being CAN No. 2133 of 2008 for your consideration.

This is for your record and doing the needful.

Thanking You.

Encls: as stated above.

Yours faithfully,



(TARUN KUMAR GHOSH)

Advocate.

14. 07. 2008

115
KOLKATA
DISTRICT-HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

CAN NO. 2133 OF 2008

W.P. NO. 27541 (W) OF 2006

IN THE MATTER OF

1 An application for addition of parties

IN THE MATTER OF

Sri Ashim Kumar Ganguly & Anr

.....PETITIONERS

Verus

The Union of India and Ors

.....RESPONDENTS

2

IN THE MATTER OF

1. Sri Surajit Dasgupta, son of Late

Jatindra Mohan Dasgupta, by

occupation business, resident of

25/1, Guruprasad Chowdhury Lane,

P.S. Amherst Street, Kolkata-700 006

2. Shri Keshav Bhattacharjee, Advocate

son of *Late Basudev Bhattacharjee*

Bhattacharjee, Bar Association, Room

No. 4, High Court Calcutta;

3. Sri Nandalal Chakraborty, by

occupation, Head of the Department

of Political Science, Presidency

College, resident of 559/1, Dakshin

3

Dari Road, P.S. lake Town, Kolkata-

700 048

4. Dr. Madhusudan Pal, by occupation

Assistant Professor, Calcutta Medical

College Hospital, resident of A/5/2,

Sharabani Abashan, Salt Lake, Sec-

III, Kolkata-700 009.

5. Sri Tarun Kumar Mukherjee son of

Late Gobindalal Mukherjee, resident

1, Brindaban Mullick 1st Lane,

1st Street, Kolkata

6. Late a tjit I gupta Late

Jafindra Mohan Dasgupta, resident of

14

25/1 Guruprosad Chowdhury Lane,
P.S.- Amherst Street, Kolkata-700
006.

7. Sri Kusal Sankar Chowdhury son of
Chowdhury, resident of 32 B, Justice
Manmatha Mukherjee Row, P.S. -
Amherst Street, Kolkata-700 009.

8. Shri Siddheswar Bhattacharjee,
resident of Hatepara " Matri Bhavan",
P.O. Krishnnagar, Pin Code- 741 104,
District- Nadia

9. Shri Sunil Krishna Gupta, resident of
38, Vidyasagar Street, P.S.-Amherst
Street, Kolkata-700 009

.....APPLICANTS

To the Hon'ble Surrinder Singh Nijjar, the Chief Justice and his
Companion of Justices of the said Hon'ble Court

The humble petition of the above-named

Petitioners

Most Respectfully Sheweth

1. The Applicants are citizen of India and a part of the public of India.

The Applicants on several occasions have also espoused cause of the people in representative capacity on the subject "Netaji Subhas Chandra Bose", as described herein below. The people at large from all corner of the country including West Bengal have encouraged and requested the applicants to espouse the cause on the subject "Netaji Subhas Chandra Bose" to prevent mischievous role played by the respondent/Government of India and others in unleashing misformation about Netaji Subhas Chandra Bose, as such the Applicants are moving the instant application for addition of parties.

6

2. The Applicants ~~have voluntarily~~ have voluntarily engaged themselves in research work on Netaji Subhas Chandra Bose for more than last 25 years at their cost and sacrifice,. The applicants moved before the Hon'ble Supreme Court of India, under Article 32 of the Constitution of India, challenging the conferment of the "Posthumous Bharat Ratna" award to Netaji Subhas Chandra Bose. The Division Bench consisting of the Hon'ble Justice Sujata. V . Monohar and the Hon'ble Justice G.B.Pattanaik upon hearing at length cancelled the said "posthumous" award.

The applicants also filed a Writ Petition, as a Public Interest Litigation through one of their associate before the Hon'ble Calcutta High Court, being W.P. No. 281 of 1998 praying interalia for direction to set up a Commission of Inquiry to give a clinching findings on the mysterious disappearance of Netaji Subhas Chandra Bose. The Hon'ble Division Bench consisting of the Hon'ble Chief Justice Prabha Sankar Mishra (as his Lordship then was) and the Hon'ble Justice Bhaskar

7

Bhattacharyya directed the Government of India to set up an Inquiry Commission to give clinching findings on the mysterious disappearance of Netaji Subhas Chandra Bose. The Government of India was compelled to set up such Inquiry Commission by appointing a retired judge of the Hon'ble Supreme Court of India Sri Manoj Kumar Mukherjee as Chairman of the Commission

3. The applicants moved before the Justice Mukherjee Commission of Inquiry on the mysterious disappearance of Netaji Subhas Chandra Bose and have submitted volume of documents, which have been obtained from National Archives as well as from foreign countries which are authentic and genuine. He said commission has also relied upon the statements of the documents filed by the applicants, with much evidence which were admitted by the Government of India.

4. That the applicants are working with an object inter alia to preach, promote and propagate the great humanistic ideals, thoughts and sacrifice of Netaji Subhas Chandra Bose in the making of modern India among the people at large and also to eradicate misinformation campaign for distortion of history.

5. The applicants have sufficient interest in the subject matter, as they have carried out extensive research work on the subject matter of mysterious disappearance of Netaji Subhas Chandra Bose and came across several important secret documents which could unfold the mystery of Netaji's disappearance.

6. The only misleading document^{...} to establish the alleged death of Netaji Subhas Chandra Bose is Death certificate and cremation permit in Japanese language which on translation appears to be a death certificate of one Ichiro Okuro

- 9 -

7. The Government of India till date never disclosed their stand that it has any record to establish that Netaji Subhas Chandra Bose died in the alleged aircrash on August 18, 1945 and the ashes kept in the Renkoji Temple are that of Netaji Subhas Chandra Bose. On the contrary, Learned Senior Counsel of the Government of India made an unambiguous submission before the Division bench of this Hon'ble court to the effect that;

" the Government of India has been maintained and is maintaining even now that a further /fresh enquiry /prove is required and the information that Netaji died in the plane crash on August 18, 1945 is full of loopholes ,contradictions and therefore inconclusive "

The above mentioned submissions of the Learned senior Counsel for the Government of India has been reported in AIR 1999 Calcutta-9

8. The documents and records in category marked as top secret records maintained by the Government of India reveals as follows:-

i) File No. 23(ii)/56-57 PM

A secret note of Shri M.O Mathai dated 2/12/1954 communicating to the Joint Secretary (AD), Government of India to the effect that ;

"A small amount of Rs. 200/- and odd was received by the Minister of External Affairs from our Embassy in Tokyo along with the ashes and other remains of the Late Shri Subhas Chandra Bose".

It is crystal clear that the ashes initially kept in the Renkoji Temple has been taken back to India, possibly the genuineness genuiness of the ashes was doubtful. The ashes now kept in the Renkoji Temple are not the alleged ashes of Netaji Subhas Chandra Bose.

ii) Parliament proceeding Records

The then Prime Minister Shri Moraji Desai on 28th August, 1978 on the floor of the Parliament declared that;

“ there have been two enquires into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku airfield during his air-journey to Manchuria, one by a committee presided over by Major-General Shah Nawaz Khan and the second by a one-man Commission of Inquiry 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 official 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

iii) File No. 800/6/C/1/90-Pol

A note of Meera Shankar, the Director of Prime Minister Office dated 23rd August 1990, on the proposal of Mr. Shanti Lal Patel a member of Parliament for bringing back the alleged ashes from Japan to India states in brief that

... however Shri S.C. Bose again wrote to Prime Minister Smt. Indira Gandhi saying that there was no convincing

proof that the so called ashes were genuine. In view of this, Government of India did not treat the findings as conclusive and did not bring back the ashes to India. The ashes have been lying in Japan since 1945. The Government of India provides an annual grant of maintenance of the temple"

iv) File No. 25/4/NGO/Vol-2(LW-KW]

The first Secretary, Indian Embassy Tokyo, T.N. Kaul in his note dated 28/7/1955 stated interalia,

"My impression is that while Government of India has accepted the fact of Netaji's death, we haven't necessarily accepted that the ashes in the Renkoji Temple are his ashes"

In the same letter said Shri T.N. Kaul raised an interesting question:-

"While we accept Netaji's Death, do we accept these ashes as the real ones"

v) File No.25/4/NGO/Vol-2(LW-KW):

Shri A.K. Damadaran, DIR of Finance, Government of India in his note dated 15/12/1966 stated :-

"Without in any way committing ourselves to the identity of the ashes, we could recompense the priest and the temple by some annual Grant which wouldn't be for the custody of ashes but as a reward for their non-standing loyalty to India"

Shri Damadaran in his said note further stated that:-

" Even if it finally transpires that the ashes aren't genuine, still this amount would in no-way be an excessive compensation"

vi) File No. 25/4/NGO/Vol-2(LW-KW)

An official note dated 16/12/1966 issued under the signature of Shri V. Doraiswami, Director (Finance), Government of India stated that: -

"But the ashes having not been pronounced genuine, one has to find justification for incurring the expenditure on their safe retention abroad...In any case if the purpose of the expenditure is not to be disclosed, which, I presume is the intention it can be made only from discretionary grants of this Ministry."

vii) File No. 25/4/NGO/Vol-2(LW-KW):

An official note dated 06/12/1973 issued by Shri P.K. Budhwar, Deputy Secretary, Ministry of External Affairs (East

Asia Division) stated referring to Muchizuki's statement that he was a stranger to the Late Netaji and people who brought the ashes was stranger to him: -

" A remark of this nature could throw doubt on the authenticity of these ashes & it is, therefore, for consideration whether we should continue making such payments in respect of an item whose authenticity would also appear to be in some doubt."

Viii) File No. G-12(3)/98-NGO

The above top secret file contents are top secret internal note on the subject "Return of Netaji 's ashes to India" under the signature of P.P. Shukla, Joint Secretary (P) dated 1st April, 1998 interalia to the effect that;

" The matter was discussed again in the Cabinet on 8 February 1995 and it was decided that the ashes would not

be brought back to India for the present but that the dependability of the arrangements in Japan should be examined. This was done and it was felt that we could raise our annual upkeep contribution from Y 600,000 to Y 1 million"

9. Applicants assert that the above-mentioned secret documents are maintained in secret files of the government of India and those files were produced before the Hon'ble Justice Mukherjee Commission of Inquiry. The applicants have gone through the contents of those files and taken note of.

10. The applicants state that the Official notes contained in those secret files reveals that the ashes kept in the Renkoji Temple are not genuine and the Government of India incurring huge fund from public Exchequer for an oblique purpose to mislead the people of the country, which is malafide, unfair and illegal, as

such, the Government of India should be prevented from incurring such expenditure from the public Exchequer.

11. The applicants submit that they have researched on the subject matter and collected above-mentioned information among many other which will enable this Hon'ble Court effectually and completely to adjudicate upon and settle all the questions involved in the writ application, as such, the applicants are necessary party to be added to the writ petition.

12. The applicants submit that they are very much interested in this subject matter involved in the writ petition being No. 27541 (W) of 2006 and intend to place all the relevant documents in connection with the subject matter involved in the said writ petition.

13. Unless the applicants are added as party to the writ petition being No. 27541(W) of 2006, the cause and purpose of the writ petition shall be prejudicially affected.

14. The instant application is made bonafide and for the interest of the justice.

Under the facts and circumstances stated above your applicants most humbly pray that your Lordships may graciously be pleased to allow this application for addition of parties by directing the petitioners to add the applicants as party

performa respondents in the writ
petition being W.P. No. 27541(W)
of 2006;

And such other or further order or
orders as to your Lordships may
seem fit and proper for the ends of
justice.

AFFIDAVIT

I surajit Dasgupta, son of Late Jatindra Mohan Dasgupta, aged about 51 years by occupation business, resident of 25/1, Guruprasad Chowdhury Lane, P.S. Amherst Street, Kolkata-700 006 do hereby solemnly affirm and say as follows;

1. That I am the petitioner no.1 and am well acquainted with the facts and circumstances of the case and also I have been duly authorized by the other petitioners to affirm this affidavit on their behalf, as such, I am competent to affirm this affidavit.

2. The statement made in paragraphs 1,2,3,4,5,6,7,8,9 and 10 are true to my knowledge based on the information derived from the records which I verily believe to be true and those made in paragraphs 11,12,13 and 14 are my humble submissions before this Hon'ble court.

Prepared in my office

Sll
Advocate

Sll
Deponent is known and

identified by me

Sll
Advocate

Solemnly affirmed before me

On this *11th* day of March, 2008

COMMISSIONER

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Appellate Side

W.P. No 27541, of 2006

CAN 2133 of 2008

In the matter of:

An application under Article 226 of the
Constitution of India:

And

In the matter of:

An application for addition of parties

And

In the matter of:

Shri Ashim Kumar Ganguly & Ors

.....Petitioners

Versus

Union of India & Ors

.....Respondents

And

In the matter of

Shri Surajit Dasgupta and Ors

Applicants

APPLICATION

Miss Debjani Ghosal Advocate

Bar Association Room No.2

High Court, Calcutta

Room No. 20B,

10 Old Post Office Street,

6

Court Case
Most Immediate
By Special Messenger

No.12014/7/08-Cdn.
Government of India
Ministry of Home Affairs
.....

Lok Nayak Bhavan, 9th floor, 'C' Wing,
Room No.8, New Delhi, dt.21.8.08

To

Shri Amit Agarwal,
Director (PMO),
South Block,
New Delhi.

Subject: CAN No.2133 of 2008 in Writ Petition No.2754/2006 – Shri Ashim Kumar
Ganguly & Ors versus Union of India &Ors.

Sir,

With reference to your telephonic discussion with the undersigned today i.e
21.8.08 a complete set of the earlier papers in the case is enclosed herewith.

Yours faithfully,
Amar Chand

(AMAR CHAND)

UNDER SECRETARY TO THE GOVT. OF INDIA

Where are the earlier
papers sent to PMO by
Ministry/Court (enclosed)?
Urgently P.

So (Rel.)
*ppr. kela... to Binoy...
of Netaji S.C. B.K. ...*
24/8
hi
21/8
Sir (AM)

20 No. 6 (R)

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F.No.1204/Home//06-III/ 1820 234
Govt. of India
Ministry of Law and Justice
Deptt of Legal Affairs, Branch Secretariat,
11, Strand Road, 2nd floor, Kolkata-700 001

Dated the 30th July, 2007

To
The Under Secretary to the Govt. of India,
Ministry of Home Affairs, North Block,
NEW DELHI - 110 001



Sub: W.P.NO.27541 (W) of 2006
Ashim Kumar Ganguly & Anr. -vs- Union of India & Ors.

Sir,

This is to inform you that the above Writ Petition came up before the Hon'ble V.S. Sirpurkar, Chief Justice and the Hon'ble Justice Arun Kumar Mitra on 22.12.2006 when Their Lordships were pleased to adjourn the matter till 5th January, 2007. On 5th January, 2007, the matter again came up before Their Lordships when after hearing the respective parties, Their Lordships were pleased to direct to file the Affidavit in Opposition within three weeks. The said order was communicated to you vide our letter dated 19.1.2007. Shri Tarun Kumar Ghosh, Advocate, also communicated the said order vide his letter dated 8th January, 2007 to the Ministry of Law and Justice, Branch Secretariat, Kolkata and also to the Principal Secretary, Office of the Prime Minister, Govt. of India and Director, Netaji Research Bureau, Kolkata.

The matter again appeared before The Hon'ble Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice Kalyan Jyoti Sengupta on 5th June, 2007 when the Counsel for the Union of India prayed for the extension of time to file the Affidavit in Opposition, in the matter. After hearing, Their Lordships have been pleased to grant the said prayer directing to file the Affidavit in Opposition within three weeks. The said order was again communicated to you vide this office letter dated 10th June, 2007 and simultaneously the Counsel for Union of India, Shri Tarun Kumar Ghosh also communicated the said order to the Ministry of Law, Branch Secretariat, Kolkata and the Principal Secretary, Office of the Prime Minister, Govt. of India and also Director, Netaji Research Bureau, Kolkata. It was specifically mentioned by Shri Tarun Kumar Ghosh, Advocate, in his above mentioned letter that appropriate steps should be taken immediately so that opposition may be filed in compliance with the order dated 5th June,

14/08

318/2007/2007/2007/2007
16/08/07

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for protecting the interest of Govt. of India. In spite of such request, you have not furnished parawise comments and brief history of the case to this office to enable us to prepare Affidavit in Opposition for Union of India.

Please note that the time to file the Affidavit in Opposition, as granted by the Hon'ble Court, has already expired. You are, therefore, requested to take immediate necessary action to furnish parawise comments and brief history of the case to this office to enable us to draw Affidavit in Opposition and take necessary steps for filing the same before the Hon'ble Court so that interest of Govt. of India is protected.

Please treat this as most urgent.

Yours faithfully,

Sr 30/7/07

(S.Bhattacharyya)

Additional Govt. Counsel

Copy to:

1. Ms. V. Vidyavathi, Director, Prime Minister Office, Political Section, South Block, New Delhi - 110 001 - for information and necessary action.
2. Shri M.A. Khan Yusufi, Joint Secretary & Govt. Counsel, Ministry of Law and Justice, Deptt. of Legal Affairs, Shastri Bhavan, New Delhi-110 001 for information.
3. Shri R.N. Bandyopadhyay, Joint Secretary & Govt. Counsel, Ministry of Law and Justice, Branch Secretariat, Kolkata - w.e.f. his Note No. Misc/JS&GC/WN/07 Dated 16th July, 2007.
4. Shri Tarun Kumar Ghosh, Advocate, High Court Bar Association, Room No.2, Kolkata.- He is requested to pray for further time if the matter comes up for hearing.

(S.Bhattacharyya)

Additional Govt. Counsel

23018485

DISTRICT: HOWRAH.

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

IN THE MATTER OF;

W.P. No. 27541 (W) of 2006.

-And-

IN THE MATTER OF;

An application under Article 226
of the Constitution of India;

-And-

IN THE MATTER OF;

SRI ASHIM KUMAR GANGULY AND ANOTHER.
..... PETITIONERS.
-VERSUS-
UNION OF INDIA AND OTHERS.
..... RESPONDENTS.

SUPPLEMENTARY AFFIDAVIT ON BEHALF OF THE PETITIONERS;

I, SUEHASH CHANDRA BASU, Son of Late Surendra Nath Basu,
aged about 42 years, by religion Hindu, by profession - Lawyer,
residing at 86, Sadar Buxi Lane, Post Office, Police Station and
District - Howrah, Pin Code : 711101, do hereby solemnly affirm
and declare as follows:-

1. That I am the petitioner No.2 of this instant Writ Petition
as such I am well conversant with the facts and circumstances of
this case.

Contd...2

(4)
18

2. That the petitioners filed this Writ Petition based on some laws and Factual aspects relating to earlier and present facts or events, which were adequately pleaded in the Writ Petition filed by the petitioners ^{concerning to stop} ~~relating to stoppage~~ of all expenditures for alleged maintenance and upkeeping the Renkoji Temple in Japan, where the alleged ashes of Netaji Subhas Chandra Bose allegedly claimed to have been kept. The petitioners inadvertently and for some other unavoidable reasons failed to annex those documents on the said factual aspect but the same are required to be enclosed for proper adjudication or arrive at final conclusion and/or better appraisal ^{of} factual aspect. Hence, the relevant documents are enclosed and/or relevant portion of some statements are quoted in the succeeding Paragraphs. It is further stated that by enclosing those documents or quoting some portion of the statement the petitioners do not want to change the earlier pleading or averments and thus, such enclosures or portion of the statements are required to support or supplement the earlier averments of pleadings and those are also for the ends of justice.

3. With reference to Paragraph No.2 and 3 of this Writ Petition the petitioners have made the averments that the Petitioner No.1 on the earlier occasion had filed a Writ Petition being W.P. No. 1805 of 1997 in this Hon'ble High Court challenging

the Government's arbitrary decision for bringing the alleged
0" / ashes of Netaji Subhash Chandra Bose from Renkoji Temple, Japan
0" / to ~~four~~ country and further sought for restraining the Government
from taking such step unless satisfied about the genuineness of
claim that the ashes kept at the Renkoji Temple of Japan are that
of Netaji Subhas Chandra Bose and unless to take the people of
India in confidence.

The xerox copy of the order dated 07.04.1998, which speaks
for itself, passed in W.P. No. 1805 of 1997 by the Hon'ble Justice
Prabha Shankar Mishra, the Chief Justice and the Hon'ble Justice
Barin Ghosh as their Lordship then were, is enclosed herewith
and marked as Annexure - P/5.

4. With reference to averments made in Paragraph No.3 of
this Writ Petition, the petitioners referred another Writ Petition
0" / being W.P. No. 281 of 1998, which was ~~also~~ decided on 30.04.1998
and it was reported in AIR 1999 Cal 9 (Rudra Jyoti Bhattacharjee -
0" / and rely upon
Versus- Union of India). The petitioner crave leave to refer the
0" / order dated 30.04.1998 ^{which is} and reported in AIR 1999 Cal 9 and want to
produce the said reported judgment at the time of hearing.

5. With reference to averments made in Paragraph No.4 of the
Writ Petition, the petitioners want to rely and refer the conten-
tion of appointment of Mukherjee Commission referred to as

Annexure - p/2 to the Writ Petition.

6. With reference to averments made in Paragraph No.5 of this Writ Petition concerning the Writ Petition, being Transfer Case (C) No. 7 of 1994 challenging therein the conferment of posthumous Bharat Raksha Award on Netaji Subhas Chandra Bose, the petitioners want to refer and rely upon the Judgment and Order of the Hon'ble Supreme Court of India in the said Writ Petition reported in the AIR 1997 SC 3019 (Union of India -Versus- Bijan Ghosh) at the time of hearing.

7. With reference to averments made in Paragraph No. 6 and 7 of this Writ Petition, ^{want to refer and rely upon the} the petitioners ^{"Conclusion",} Chapter Five, at Page No. 123 of the Mukherjee Commission Report submitted on 08.11.2005 before the Government of India, ^{which} is enclosed herewith and marked as Annexure - P/6.

8. With reference to averments made in Paragraph No.8 of this Writ Petition, the petitioners state that though they have earlier adequately pleaded as to ~~the~~ holding of Shri Shaw Nawaz Committee and Khosla Commission, now the petitioners further want to refer and rely upon, Chapter One, Preamble, Page 1 and 2 of ~~the~~ ^{dated 08.11.2005} the Mukherjee Commission Report, relating to earlier appointment of a three-member Inquiry Committee vide reference ~~May 20/26/26~~ No. P-30(26) FEA/56 dated April 5, 1956 headed by Shri Shaw Nawaz

114
121

of Khan as Chairman and the Inquiry Commission was constituted
vide Notification No. 25/14/70-Poll.11 dated July 11, 1970 headed
by Shri G.D.Khosla, retired Chief Justice of Punjab High Court,
which were asked to inquire into the facts relating to disappear-
ance of Netaji Subhas Chandra Bose and the Committee ^{report wherein} ~~formed~~ Suresh
^{submitted a dissentient report (report)} Chandra Bose and the Commission which laid on the table of the
House on 03.09.1974, come to the conclusion that Netaji Subhas
Chandra Bose died in plane crash in Tokyo, Japan.

The xerox copy of the Chapter One, Preamble, Page No. 1
and 2 of the Mukherjee Commission Report dated ^{08.11.2005} is enclosed here-
with and marked as Annexure - P/7.

The petitioners further want to refer and rely upon the
report of Mukherjee Commission as to the statements of the then
Prime Minister Shir Morarji Desai made on 28.08.1998 in the floor of
the Parliament reported therein in the said said Report under
heading (b) Its Limitation and Constraints (i) re: records/document
in Point No.2.5, Page No. 13 and 14 and it was held that the Govern-
ment find it difficult to accept that earlier conclusions are
decisive.

The xerox copy of the Page No. 13 and 14 of the said Mukher-
jee Commission Report wherein the said statements of the then
Prime Minister Morarji Desai are quoted, are enclosed herewith
and marked as Annexure -P/8. collectively.

255

Furthermore, with reference to averments made relating to
 the petitioners want to say that the same
 Action Taken Report (ATR) has been rejected on 17.05.2006 without
 assigning any ~~report~~ ^{reason} and without having any authority under the
 provisions of The Commission of Inquiry Act, 1952. The Government
 being the executing authority could either act upon the said report
 or not but in no circumstances, the Government is empowered to
 reject the Commission Report ~~submitted~~ on 17.05.2005 in as much as
 it was constituted under Judicial intervention. Such rejection of
 Action Taken Report (ATR) ~~xxx~~ is absolutely illegal and without any
 authority of law.

9. With reference to averments made in Paragraph No.9 of
 this Writ Petition, ^{the petitioners further state the facts} relating to Colonel Habibur Rahaman, who was
 the Co-passenger with Netaji Subhas Chandra Bose and he was present
 before Shah Nawaz Committee as Witness (SW-4) but neither he did
 appear before the Khosla Commission nor the the Government took
 any step to ensure ~~h~~ his appearance before the said Commission
 as such ~~xxx~~ he was not testified by the said Commission. Further-
 more, the said Committee and Commission never had gone to the place
 of alleged plane crash i.e. in Taihoku, Japan though the reports
 of the Committee and Commission were the main source or reason to
 believe and ^{low confidence and belief} of the Government of India and still want to
 and ~~believe~~
 cherish such belief.

10. With reference to averments made in Paragraph No.14 of this Writ Petition, the petitioners further state that the Government of India utterly violated the provisions of the Public Records Act, 1993, 'the records of disappearance of Netaji Subhas Chandra Bose has got great national and international importance as such it should be kept in proper manner in accordance with law but, however, such records relating to "Investigation into the circumstances leading to the death of Subhash Chandra Bose" was destroyed on 06.03.1972 (Ref. File No. 12(226)/56-PM of the Mukherjee Commission Report). The said act of destruction of such Records of National and International importance is antinational activities and vindictive attitude and by way of such conduct the whole nation are made befooled and kept under the dark for a long time, which is the contribution of the Central Government. The xerox copies of Page No. 10 & 11 of Mukherjee Commission report confirming the destruction of the said record of Netaji in 1972 are enclosed as Annexure - P/6.

11. With reference to averments made in other different Paragraph of this Writ Petition the petitioners state that since respondents concerned have not filed their affidavit-in-Opposition as yet though there was a direction for the same on 05.01.2007, the Hon'ble Court may proceed with this Writ Petition holding that the factual averments made therein deemed

to have been accepted by the Government of India. The petitioners crave leave to refer and rely upon some decisions on this points of such acceptance at the time of hearing.

12. The petitioners submit that this Supplementary Affidavit may be treated as part of Writ Petition and it may be heard alongwith the main Writ petition.

13. That the statements made in Paragraph No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, are true to my knowledge and the statements made in Paragraph No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, are true to my information derieved from the relevant records which I verily believe to be true and rest are my humble submission before this Hon'ble Court.

Subhash Chandra Basu

Prepared in my office.

The deponent is known to me.

Subhash Chandra Basu

Clerk to Mr.....

(Subhash Chandra Basu)
Petitioner-in-person.

Advocate.

Solemnly affirm before me
this 28th day of February,
2007.

COMMISSIONER OF OATH.

W.P. BENCH No 1805

OF 1997

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
~~Ordinary Original Jurisdiction~~
Original Side



12/05/97
131
Rajesh Kumar
3) o/o v 98
13/8

The Hon'ble The Chief Justice

And

The Hon'ble Justice

Barin Ghosh

President of the Union of India

In the Matter of : An application under Article 226 of the Constitution of India;

And

In the Matter of : Public Interest Litigation;

And

In the Matter of : A writ in the nature of Mandamus ;

And

In the Matter of : A writ in the nature of Certiorari ;

And

In the Matter of : Prohibition and/or any other such appropriate writ or writs, order or orders, direction or directions ;

And

In the Matter of : Investigation in connection with the ashes of Netaji Subhas Bose as declared and/or announced by the Govt. of India

And

In the Matter of : Inaction/non-action on the part of Govt. of India not having declared anything about the death of Netaji Subhas Chandra Bose before having taken any initiative to bring the ashes of Netaji Subhas Chandra Bose from Hencogi temple of Japan;

And

In the Matter of : Ashim Kumar Ganguly, son of Late Netaji Chandra Ganguly, residing at 23/A, Sib Krishna Da Lane, P.O. Kankurbachi, Calcutta- 700 054. Petitioner

2.

Versus

1) Govt. of India, service through Secretary, Ministry of Defence, New Delhi, (2) Govt. of West Bengal, service through Secretary, Home Department, Writers' Buildings, Calcutta-1 (3) Ministry of Human Research & Development having its office at New Delhi ; (4) Ministry of Home Affairs, Govt. of India, having its office at North Block, Central Secretariat, New Delhi- 4; (5) Ministry of External Affairs, service through the Secretary having its office at South Block, Central Secretariate, New Delhi.

..... Respondents

Upon reading a petition of Ashim Kumar Ganguly, abovenamed (hereinafter referred to as 'the said petitioner') and his affidavit in verification thereof affirmed on the twenty ninth day of August, one thousand nine hundred ninety-seven and the exhibits annexed to the said petition and marked respectively 'A' and 'B' all filed on the twenty ninth day of August, one thousand nine hundred ninety seven. And upon hearing Mr. Subrata Mukherjee (Mr. Rajesh Ganguly appearing with him) Advocate for the said petitioner and Mr. U.P. Mukherjee, Advocate for the respondents abovenamed and upon the Advocate for the respondent Union of India abovenamed echoing the observations made by the Supreme Court of India in (Union of India & Ors.-Vs.- Bijan Ghosh & Ors.) (1998 W.B.L.R. (SC) Page 9) stating before this court that, without there being a conclusive proof and/or otherwise determined in accordance with law the Union of India cannot accept that Netaji Subhas Chandra Bose

3.

idea in Taiwan on eighteenth day of August, one thousand nine hundred forty five or at any later date and that the ashes which are said to be kept in the Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and this court having 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 And it being difficult to accept that the Defence Minister of the Country has made a statement of such consequences as included in the said petition without verification of the facts, yet responsible newspapers like Bartaman, Ananda Bazar have so reported And the said petitioner through the said petition now 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 the Kencogi Temple, Japan And in view of the assurance that nothing of the sort is likely to be done by the Government of India.

It is ordered that before accepting the ashes which are allegedly kept at the Kencogi 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 Kencogi Temple of Japan are that of Netaji Subhas Chandra Bose and take the people of India in confidence And it is further ordered that this matter is disposed of accordingly.

witness: Shree Prabha Shanker Mishra, the Chief Justice at Calcutta aforesaid the seventh day of April in the year one thousand nine hundred and ninety-eight.

Gouranga Chatterjya..... Advocate.
 Tapan Ch. Dutt..... Advocate.
 S. Chatterjee..... Advocate.

P. Ghosh
 03.8.98.
 For Registrar.

G. B.
 XC
 17/8/98
 [Handwritten signature]

17/8
 17.8.98
 [Handwritten notes]

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 17.8.98
 [Handwritten notes]

W.P. No. 1805 OF 1997
 IN THE HIGH COURT AT CALCUTTA
~~Ordinary Original Civil Jurisdiction~~
 Constitutional Writ Jurisdiction
 Original Side

Ashim Kumar Ganguly

versus

Union of India & Ors.

- (i) Date when the order or order was completed
- (ii) Date of application for copy
- (iii) Date of receipt of the requisite number of folios and stamp
- (iv) Date of delivery of the requisite folios and stamp
- (v) Date on which the copy is ready for delivery
- (vi) Date when delivery was taken of the copy by the applicant

Order passed of the 7th day of
 April, 1998. Filed this 10th day of
 August, 1998.

K. Rakshit
 Superintendent,
 Order Department.

Superintendent,
 Order Department
 High Court, Calcutta.

Rajesh Kumar Gangul
 Ashim

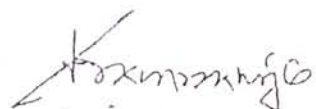
Chapter Five

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

Chapter One

Preamble

1.1 The controversy over the death of Netaji Subhas Chandra Bose ('Netaji' for short), who needs no introduction, surfaced after the announcement from Tokyo on August 23, 1945 that Netaji had died in a plane crash on August 18, 1945. However, some press reports published from Tokyo and Taihoku (Taipei) had given contradictory versions. After independence of India, there was a popular demand for an inquiry into the alleged disappearance/death of Netaji. The issue was also raised in the Parliament from time to time. Responding thereto, the then Prime Minister on December 3, 1955, announced in the Parliament that an official committee would be appointed to go into the matter. Accordingly, the Government of India appointed a three-member Inquiry Committee, vide its Notification No.F-30(26)FEA/55 dated April 5, 1956, with Shri Shah Nawaz Khan, Parliamentary Secretary to the Ministry for Transport and Railways, as its Chairman and Shri Suresh Chandra Bose, elder brother of Netaji and Shri S. N. Maitra, ICS, Chief Commissioner, Andaman & Nicobar Islands, as its members. The task of the Committee, as it appears from the Notification, was to inquire into and report to the Government of India on the circumstances concerning the departure of Netaji Subhas Chandra Bose from Bangkok on or about August 16, 1945 and his alleged death as a result of an aircraft accident and subsequent developments connected therewith. After considering the evidence collected by the Committee, two of

them (Shri Shah Nawaz Khan and Shri S.N.Maitra) came to the conclusion that Netaji had died in the aforesaid plane crash. Shri Suresh Chandra Bose, the other member, 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.

1.2 The 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 a fresh inquiry into the matter. Under the circumstances, the Government of India, in exercise of its powers under the Commissions of Inquiry Act, 1952, (the Act for short), constituted an Inquiry Commission vide its Notification No.25/14/70-Poll.11 dated July 11, 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 and the subsequent developments connected therewith. The said Commission examined some of the witnesses who had testified before the Shah Nawaz Committee and some other witnesses including Shri Shah Nawaz Khan and Shri Suresh Chandra Bose. That Commission also 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 Khosla Commission also did not end the controversy surrounding Netaji's death; several important people and personalities including some members of Netaji's family, Shri Samar Guha, ex-MP, and others did not accept the findings of the Khosla Commission. Since then there had been a widespread feeling among the public that the issue of finding the truth about Netaji's disappearance / death still remained unresolved and there was a consistent demand for another inquiry into the matter.

LSS
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P/B
Collector

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2.4.5 From the above resume of facts relating to the file in question it is evident that the stand taken by the Cabinet Secretariat is evasive and unfathomable. The Director of the Prime Minister's office (PMO for short) clearly stated in her letter dated July 4, 2000 (referred to earlier) that the file "was destroyed in 1972.... since records of Cabinet proceedings are kept permanently in the Cabinet Secretariat from where these may be procured". Since the file is said to have been destroyed four years after formation of the Cabinet Secretariat and since the records of the Cabinet proceedings are to be kept permanently in the Cabinet Secretariat the only conclusion that can be drawn is that if the file had been destroyed as claimed, the copies of the documents contained in the file were in the Cabinet Secretariat and obviously for this reason the Director of PMO asked the Commission to get the file procured therefrom. Judged in that context, the Commission would have been fully justified in pursuing the matter further with the Cabinet Secretariat to bring to their notice that their plea for not producing the papers was specious and tenuous for the reasons aforesaid, but the curt reply of its Deputy Secretary peremptorily forestalled all contemplated future attempts of the Commission to retrieve atleast the copies of the documents contained in a file bearing the subject heading "Investigation into the circumstances leading to the death of Shri Subhas Chandra Bose" which was not only the subject matter of inquiry of the Khosla Commission but is also of the present Commission.

2.5 Some of the deponents before this Commission brought to its notice that on August 3, 1977 Prof. Samar Guha moved the following motion in the Parliament (Lok Sabha):-

"That this House do consider the Report (1974) of the Commission of Inquiry into the disappearance of Netaji Subhas Chandra Bose laid on the Table of the House on the 3rd September, 1974"

and in reply thereto Shri Morarji Desai, the then Prime Minister of India, made the following statement on August 28, 1978:-

"There have been two enquiries into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku airfield 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 official 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."

2.5.1 Pursuant thereto this Commission asked the Prime Minister's office (PMO), the Ministry of External Affairs (MEA), the Cabinet Secretariat (CS) and the Ministry of Home Affairs (MHA) to ensure production of all those 'further contemporary official documentary records' which as stated by the Prime Minister had 'also become available' to the Government of India. They were also asked to send to the Commission

(b) Its limitations and constraints

(i) re : records / documents

2.4 As stated earlier, some files / documents have not been produced by the Government of India in spite of repeated reminders. Out of these files / documents the following would have been, in the opinion of the Commission, of great assistance in answering the terms of reference:-

2.4.1 One of the files called for by the order dated March 23,2000 was file no.12(226)/56-PM (investigation into the circumstances leading to the death of Subhas Chandra Bose). In response thereto the Director of the Prime Minister's office (PMO for short) intimated by her letter dated May 2,2000 that the above file was not available as it had been destroyed. On receipt of the above communication the Commission asked her, by its letter dated May 23,2000, to intimate to the Commission the subject and contents of the above file and the circumstances under which the said file had been destroyed. When the Commission was awaiting her reply Shri A. K. Paitandy, Director (Internal Security-I) in the Ministry of Home Affairs ('MHA' for short) filed an affidavit before this Commission on June 22,2000 wherein he stated, inter alia, as under:-

"... in view of the fact that some of the departments / organisations have informed that they do not have any papers on Netaji / INA, there seems to be

some confusion about filing of affidavits to that effect by them. In view of this fact and in deference to the directions/orders of the Commission, this Ministry is filing this affidavit on behalf of the following and I accordingly further affirm and state that there are reportedly no files/papers concerning Netaji / INA in their (the under mentioned departments') possession (emphasis supplied) :-

- i) Cabinet Secretariat
- ii) Intelligence Bureau
- iii) Research and Analysis Wing"

2.4.2 The assertion made by Shri Paitandy, quoted above, stood belied, as the Director of the PMO in reply to the Commission's letter dated May 23,2000 stated (in her letter dated July 4, 2000) 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 records since records of Cabinet proceedings are kept permanently in Cabinet Secretariat, from where they may be procured".(emphasis supplied).

2.4.3 To ascertain which of the above versions was correct the Commission wrote a letter to the Secretary, MHA on August 18,2000 calling upon him to produce photocopies of all the agenda papers/Cabinet decisions concerning "Investigation into the circumstances leading to the death of Netaji" from the custody of the Cabinet Secretariat. Another letter was addressed to the Secretary of the Prime Minister's Secretariat on August 25, 2000 calling upon him to produce copies of the orders regarding destruction of files/documents concerning Netaji Subhas Chandra Bose as

DISTRICT: HOWRAH,

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

W.P. No. 27541 (W) of 2006.

Subject matter relating to :-

"RESIDUARY"

"PUBLIC INTEREST LITIGATION"

Under Group - IX Head

of the Classification list:

:: CAUSE TITLE ::

SRI ASHIM KUMAR GANGULY AND ANOTHER PETITIONERS.

-VERSUS-

UNION OF INDIA AND OTHERS. RESPONDENTS.

ON-RECORD ::

SRI. SUBHASH CHANDRA BASU,
Petitioner-in-person.

Address: 86, Sadar Boki Lane,
Post Office, Police Station
and District - Howrah, Pin: 711101.

Phone : 2640-1217.

60
39

DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(APPELLATE SIDE)

W.P. NO. 27541 (W) OF 2006.

SRI ASHIM KUMAR GANGULY AND ANOTHER PETITIONERS
-VERSUS-
UNION OF INDIA AND OTHERS RESPONDENTS.

:: I N D E X ::

<u>SL. NO.</u>	<u>PARTICULARS OF DOCUMENTS</u>	<u>ANNEXURE</u>	<u>PAGE</u>
01.	List of Dates	'A'	
02.	Question of Law involved	'B'	
03.	Writ Petition with Affidavit		01 - 38
04.	Xerox copies of the Mukherjee Commission Report on 'Netaji' collected from Wash-side.	<u>"P/1"</u>	39-41
05.	Xerox copy of the Notification dated 14.05.1999 issued under Memo No. 339(E) for appointment of Mukherjee Commission.	<u>"P/2"</u>	42-44
06.	Xerox copy of the representation dated 27.09.2006.	<u>"P/3"</u>	45-48
07.	Xerox copy of the News paper-cutting containing the news in question published in the Ananda-bazar Patrika dated 07.12.2006.	<u>"P/4"</u>	49

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DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(APPELLATE SIDE)

SRI ASHIM KUMAR GANGULY AND ANOTHER. ... PETITIONERS.
-VERSUS-
UNION OF INDIA AND OTHERS ... RESPONDENTS.

:: LIST OF DATES ::

<u>SL. NO.</u>	<u>DATE</u>	<u>E V E N T S.</u>
01.	18.08.1945	:: It was alleged that Netaji Subhas Chandra Bose died in Plane Crash in at Taihoku in Formosa.
02.	1956	:: Sha Nawaz Committee was constituted.
03.	1970	:: Khosla Commission was constituted.
04.	August, 1978	:: Prime Minister Morarji Desai cancelled the earlier Committee and Commission report on Netaji's alleged death.
05.	22.01.1992	:: Press communique announced as to conferment of award of Bharat Ratna posthumously posthumously on Netaji Subhas Chandra Bose.
06.	04.08.1997	:: Transfer Case (C) No. 7 of 1994 was decided. Press communique was cancelled by Supreme court
07.	07.04.1998	:: W.P. No. 1805 of 1997 was decided by the Hon'ble High Court, Calcutta.
08.	30.04.1998	:: W.P. No. 281 of 1998 was decided by the Hon'ble High Court, Calcutta.
09.	24.12.1998	:: West Bengal Legislative Assembly unanimously adopted the Motion for setting up Commission on the Netaji's death.
10.	1999	:: Commission was constituted. Hon'ble Justice Manoj Kumar Mukherjee was appointed as the Chairman of the said Commission.
11.	08.11.2005	:: Mukherjee Commission Report was submitted to the Government of India.
12.	17.05.2006	:: Report of the Mukherjee Commission was tabled in the Parliament and was rejected by the Govt
13.	27.09.2006	:: Petitioner sent representations to the concerned authority.
14.	07.12.2006	:: Report published in the Anandabazar Patrika stating that the Govt. would continue to bear the expenses of Renkoji Temple and so-called ashes ashes of Netaji Subhas Chandra Bose.

62
A

DISTRICT: HOWRAH.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION.

(APPELLATE SIDE)

W.P. NO. 27591 (W) OF 2006.

SRI ASHIM KUMAR GANGULY AND ANOTHER PETITIONERS,
-VERSUS-
UNION OF INDIA AND OTHERS RESPONDENTS.

QUESTION OF LAW INVOLVED:

SL.
NO.

QUESTION OF LAWS INVOLVED

01. Whether the Government of India can incur any amount from public exchequer for maintenance and upkeep of the Renkoji Temple in Japan allegedly keeping the ashes of Netaji Subhash Chandra Bose after filing/submitting the Mukherjee Commission report on 'Netaji' ?
02. Whether the Government of India after appointing the Mukherjee Commission could accept or uphold the earlier Committee/Commission reports and could reject the present Mukherjee Commission report without showing any reason ?
03. Whether the Government of India without any rhyme or reason could withhold the Mukherjee Commission report and could remain silent for a long period as to placing the same before the Parliament for open debate or discussion amongst the members of the Parliament ?
04. Whether the Government of India could incur any amount from public exchequer for alleged death of Netaji on 18.08.1945 after submission of Mukherjee Commission report ?
05. Whether it is the duty of the Government of India to stop all expenses for Renkoji Temple in Japan and for alleged ashes of 'Netaji' kept in the said Temple ?

DISTRICT : HOWRAH.

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate side)

W.P.No. 27541 (w) of 2005.

In the matter of :

An application under Article 226 of
the Constitution of India.

-And-

In the matter of :

A writ and/or writs in the nature of
Mandamus ;

-And-

In the matter of :

/ A writ and/or writs in the nature of
Mandamus ;

-And-

In the matter of :

A writ and/or writs in the nature of
Prohibition ;

-And-

In the matter of :

A writ and/or writs in the nature of
Certiorari ;

-And-

In the matter of :

Any other writ or writs, order or Orders,
direction or directions ;

-And-

In the matter of :

The Right to information Act, 2005 ;

-And-

In the matter of :

The Commission of Inquiry Act, 1952 and
Rules framed thereunder ;

-And-

In the matter of :

The Public Records Act, 1993 ;

-And-

In the matter of :

Violation of the provisions of Article

- 3 -

14, 19 (1)(a), 51A(b) and 21 of the
Constitution of India.

-And-

In the matter of :

Apathetic attitude of the concerned
authorities in considering the
representation dated 27.09.2006 ;

-And-

In the matter of :

Illegal and arbitrary decision of the
concerned Respondents for continuous
wasteful expenditure of public Money
from the Government Exchequer for
maintenance of so-called alleged ashes
of Netaji Subhas Chandra Bose kept in
the Renkoji Temple in Tokyo, Japan ;

-And-

In the matter of :

Non-acceptance of report of Justice
Mukherjee Commission constituted to
find out the clue of alleged death of
Netaji Subhas Chandra Bose allegedly
took place in Plane Crash on 18.8.1945.

1-4-1

And

In the matter of :

Arbitrary and whimsical decision of withholding the Mukherjee Commission's Report and not placing the same before the members of Parliament for open debate of discussion ;

And

In the matter of :

Deliberate and wilful contravention of the provisions for maintenance of Public Records by the concerned Government and gross dereliction of duties and serious consequences of damage and/or destruction of the same

And

In the matter of :

1. SRI ASHIM KJMAR GANGULY,
son of late Netai Chandra Ganguly,
residing at 90, A.K. Mukherjee Road,
3rd, floor, Police Station Baranagar,
Kolkata-700 090.

:- 5 :-

2. SRI SUBHASH CHANDRA BASU

son of late Surendra Nath Basu,

residing at 86, Sadar Boxi Lane,

Police Station and District, Howrah.

Pin Code No. - 711 101 ;

.... ... PETITIONERS.

-Versus-

1. Union of India,

service through the Secretary,
Ministry of Home Affairs, (North Block)
Government of India, New Delhi.

2. Principal Secretary,

Office of the Prime Minister,

Government of India, 7, Race Course
Road, New Delhi

3. Secretary,

Ministry of Foreign Affairs,

Government of India, New Delhi.

4. Secretary,

Ministry of Parliamentary Affairs,

Government of India, New Delhi.

1- 6 - 1

5. Director,

Netaji Research Bureau,
38/2, Lala Lajpat Roy Road,
Bijnor Road, Kolkata. -20;

... .. RESPONDENTS.

To
The Hon'ble Vikas Shridhar Sirpurkar, Chief Justice and His
Companion Justices of the said Hon'ble Court.

The humble petition of the above
named petitioners

Most Respectfully sheweth :-

1. That the petitioners are the peace-loving and public
spirited citizens of India having their permanent address
mentioned in the Cause Title hereinabove.

2. That the petitioner no.1 is the learned Advocate of
this Hon'ble court and he is involved in various social and
philanthropic activities and earlier he came forward on
several occasions to espouse or ventilate the grievances of
the hapless people before this Hon'ble Court and at the
instance of the petitioner No.1 a large numbers of political
and social victims were saved, rehabilitated and heaved a

sigh or solace and as a citizen of this Country he further
 painfully observed the apathetic attitude of the Government
 of India towards the World's Famous Hero like Netaji Subhas
 Chandra Bose and of his own volition and/or accord
 spontaneously challenged the indifferent and derogatory
 attitude of the Government of India towards " Netaji "
 by filing the writ petition being W. P.No. 1805 (w) of 1997,
 decided on 07.04.1998, which was the initiation for
 constituting the Commission of Inquiry on the mysterious
 disappearance of Netaji Subhas Chandra Bose (hereinafter
 referred to as " Netaji").

So as to the petitioner No. 2 is concerned, he is also
 the learned Advocate of this Hon'ble court and the office
 Secretary of Howrah Ganatantrik Nagarik Samity, a non-party
 Citizen Forum, which is the sentinel of the City of Howrah
 and there was/is hardly any major public issue which
 was not attended by the said samity and a large number of
 public Interest Litigations viz. on Calcutta Maidan,

Victoria Memorial, Police Morgue, Rabindra Sarobar,
Botanical Garden, Shibpur, Howrah Bridge and Calcutta
Traffic Managements etc. were filed by the petitioner no. 2
with others petitioners before this Hon'ble Court and as a
result many Civic authorities were compelled to discharge
their statutory duties and public goods were done and
further he was one of the petitioners before the Hon'ble ^{Supreme} Court
of India regarding some Civic problem of the City of
Howrah and based on which and by the order dated 16.4.1996
passed in Writ petition (C) No. 390 of 1995, this
/ Environmental Bench was constituted, which is popularly
known as " Green Bench".

3. That the emergence of Netaji Subhas Chandra Bose in
the history of struggle for Independence was epoch-making
and the role of Netaji and his contribution and gallant
Deeds for liberation of Indian Independence and his great
ideals are honoured from the core of the hearts and if any

person is blessed to be born in any part of the Indo-Pak sub-Continent, unhesitatingly he should bow down his head before Netaji for his high ideals and contribution who had shakened the British Imperialism and tried to hesten the Indian Independence and brought the same to our threshold and by arms revolution with the help of Azad-Hind-Fouz he brought the blue firmament and new harizon of Independence for us well in advance. Such of great role of the great son of India, who had insurmountable personality, sky-kissing popularity and inbuild quality of high ideals, was never assessed and/or properly honoured by the Government of India and always inclined to show an indifferent attitude towards "Netaji", the great National "Hero" of our country and when the whole nation was about to go on total oblivion as to our national hero, heritage and the noble ideals which inspired our national struggle for freedom due to motivation a writ petition being W.P.No. 1805 (w) of 1997 was filed by the petitioner No.1, which was decided on 07.04.1998 challenging on the question of death of Netaji allegedly on 18.03.1945 in Plane Crash and his alleged ashes kept

in the Renkoji Temple, Japan and thereafter a further writ petition being W.P.No. 231 of 1998 which was decided on 30.04.1999 and reported in AIR 1999 Cal.9, was filed in this Hon'ble Court challenging the attitude of the Government of India towards "Netaji", inter alia with the following prayers :-

i) To classify and disclose all documents relating to Netaji Subhash Chandra Bose including the Indian National Army;

ii) To make a categorical statement whether the name of Netaji was still in the list of War criminals drawn up after the Second World War and issue a press communique to the said effect ;

iii) Not to allow any agency or publish or any person to publish the story of the death of Netaji Subhas Chandra Bose in the alleged plane crash on 18.03.1945 ;

iv) 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

v) 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 ;

The aforesaid writ petition being W.P.No. 231 of 1993 was disposed of on 30.4.1998 inter alia, ^{with} on the following orders :-

1. Respondent shall launch a vigorous enquiry in accordance with law by appointing, it necessary, a Commission of Inquiry 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) If he is alive, in respect of his whereabouts ;

2. The Respondent shall follow for the said purpose the direction of this court given in W.P.No.1305 of 1997, namely to take the people of India in confidence ;

3. Respondents shall at appropriate level examine/scrutinise all publication 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 house 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 ;

4. That the said writ petition being W.P.No. 281 of 1993 was heard by the Hon'ble Division Bench (Public Interest Litigation BENCH) on 30.04.1993 (~~and the Hon'ble Bench was pleased to, inter alia, pass the orders as stated hereinabove and thereafter the West Bengal Legislative Assembly, unanimously adopted a Motion on 24.12.1993 for setting up a Commission of Inquiry~~) and the said Hon'ble Bench was pleased to, inter alia, pass the orders as stated hereinabove and thereafter the West Bengal Legislative Assembly, unanimously adopted a Motion on 24.12.1993 for setting up a Commission of Inquiry

and the Chief Justice of the Hon'ble Supreme Court of India thereafter had given the names of the Chairman of the said Commission and the Hon'ble Justice Manoj Kumar Mukherjee (Retired) of the Hon'ble Supreme Court of India was, thus, appointed as the said Chairman and finally the Commission of Inquiry was constituted in the year 1999.

5. That it may not be out of place to mention here that before setting up and/or constituted the said commission of Inquiry the Government of India made an attempt to confer posthumous Bharatratna Award to Netaji and further the then Defence Minister took the initiative to bring the alleged ashes of Netaji Subhas Chandra Bose to our Country allegedly kept in the Renkoji Temple, Japan and on that issue a Writ petition being C.O.No. 6720 of 1993 (Union of India vs. Bijan Chosh) was also filed by the learned Advocate in this Hon'ble Court and the same was, afterwards, transferred to the Hon'ble Supreme Court of India and Transfer case being Transfer Case (C) No.7 of 1994 which was decided on 04.03.1997 and was reported in AIR 1997 SC-3019 wherein the Government of India was compelled to retreat and abandon the long

cherished illusory decision and, hence, there was no necessity to proceed further with the writ petition and was disposed of accordingly with the declaration that the press communique on 22.01.1992 announcing conferment of award of Bharat Ratna Posthumously on Netaji should stand cancel .

6. That after setting up of Commission of Inquiry under the Chairmanship of Hon'ble Justice Manoj Kumar Mukherjee (Retired) (hereinafter referred to as " Mukherjee Commission") proceeded sincerely to find out the clue of mysterious disappearance of Netaji Subhas Chandra Bose and/or to unearth whether Netaji died in alleged plane crash that took place at Taihoju (Now Taipei) in Taiwan (formerly Formosa) on 18.03.1945 and also to find out whether the alleged ashes kept in the Renkoji Temple in Tokyo, Japan is that of Netaji Subhas Chandra Bose or not. The all sections of people of the Country welcomes this Commission of Inquiry since it was the fervent aspiration for a long time and it was the people's believe that this Commission of Inquiry would be able to bring the people of

of India in confidence and to unearth the real truth which was kept deliberately hidden for a long time for some unknown reason and/or for vested political vendetta or motivation.

7. That said Mukherjee Commission (hereinafter referred to as the said "Commission") has examined 131 nos. of witnesses and had gone through and/or perused 303 nos. of documents as " Exhibits" and further visited all possible places for the purpose of the said Commission to find out whether there was/is any clue of possible death of Netaji alleged to have claimed or took place and also took other help of investigations to come to the conclusion as per terms of reference, seriatim is as follows :-

- a) Netaji Subhas Chandra is dead ;
- b) He did not die in 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 ;

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.

7. That the report of the Mukherjee Commission was submitted by the Hon'ble Justice Manoj Kumar Mukherjee on 08.11.2005 to the Government of India, and the Commission report was tabled in the Parliament of India on 17.05.2006 when the Government of India in the "Action Taken Report" (ATR) has expressed their view and/or stand that the Government of India has rejected the findings of the Commission, saying that it did not agree with the findings. Such rejection was without showing any reason and further upheld the earlier two reports - the Sha Nawaz Inquiry Committee held in 1956 and Khosla Commission held in 1970 but the same were declined to accept by the former Prime Minister Morarji Desai, in August, 1978 while sitting in the floor in the Parliament and he cancelled the same unhesitatingly.

The xerox copied of the Mukherjee Commission Report on 'Netaji' collected from web-site are enclosed herewith and marked as Annexure - P/1.

8. That since the Mukherjee Commission was set up or constituted through the Judicial intervention and since the

contd....

name of the Chairman was given by the Chief Justice of the Hon'ble Supreme Court of India and thus, was appointed the sanctity, reliability and credence are obviously claimed to be much more than that of earlier Inquiry Committee led by Sha Nawaz and Khosla Commission led by D.S. Khosla in this regard. The said report was filed by the Mukherjee Commission absolutely based on available evidence and it has reflected a complete light and clear vision in the matter of alleged death of Netaji Subhas Chandra Bose and thus, the people are agreed to accept the said report with due respect from the core of their hearts. It is further stated that the earlier two, Committee and Commission, were constituted by the Government of India of their own accord on which the Government of India had the control and supervision in all respect for which the same had lost the confidence or credence of the people at large. Furthermore, the earlier two, Committee and Commission, had never visited any possible place of death allegedly claimed to have taken place on 18.03.1945 at Taihoku in Taiwan. Furthermore, Colonel Habibur Rahaman appeared before the Sha Nawaz Committee,

when he did not face any cross-examination, but he did not appear before the Khosla Commission in order to avoid cross-examination and even the Government of India made no arrangement or attempt to ensure his presence before the said Khosla Commission as a result the entire purpose for such Committee and Commission were frustrated and/or miserably failed. In spite of such glaring defects, the work earlier two Committee and Commission were honoured and was inclined to accept by the Government of India and in reality the Government of India has accepted the same and still the Government of India stick to their earlier stand and thus, the Government is not inclining to accept the report submitted by Mukherjee Commission.

10. That thereafter much water have been allowed to flow over the river Ganges but the Government of India has not come forward or tried to put the matter for a permanent end and for some political motivation they want to clutch the earlier Committee and Commission report and they are not leaving their inclination as yet for the same which has

60
81

culminated this present writ petition challenging their indomitable purportive stand taken in this regard but they are not placing the Mukherjee Commission report for open debate before the members of Parliament and the reason best known to them. Be it stated here that the Government of India never has shown any interest in this matter and had there been any interest to bring in public confidence in this regard, it was their solemn duty for this National here to place the matter for open debate and should not re-treat in this way of patronising the old cherish concept in disguise.

14. That it is further stated that if it was the firm indomitable insurmountable stand with regard to death of Netaji, the Government of India could have challenged the matter, ^{as to Constituting Commission of Inquiry} further before the Hon'ble Supreme Court of India and they could have expressed their negative view for constituting and spending public money for the further Commission on the death of Netaji. It is really curious enough that the Government of India, Ministry of Home Affairs vide Notification, New Delhi, the 14.5.1999, Memo No. S.O. 339(E) has appointed a Commission of Inquiry

of Mr. Justice N. K. Mukherjee, a retired Judge of the Supreme Court of India and when for the Commission a lot of money was spent from the public exchequer to put an permanent end to the matter and when after a long endeavour and/or effort and after completion of a mammoth ^{strenuous efforts} ~~strains~~ works, the Commission had ^{completed the report} submitted the report and brought in the confidence of the public, the Government of India rose to the occasion to clutch their earlier stand and the Government of India (hereinafter referred to as the "said Government") has not accepted report of Mukherjee Commission and uphold their earlier view or stand in this regard. It is further stated that after spending public money from public exchequer for this present Commission and after submission of report, there must be public accountability for upholding the earlier two reports or stand by the Government in this regard. Moreover, the Government could have clear their stand that even after third Commission, i.e. Mukherjee Commission they would never change their earlier stand taken by the Government India with political motivation and/or some other purpose.

The xerox copy of the said Notification dated 14.05.1999 issued under Memo No.339(E) is enclosed herewith and marked P.2 as Annexure P-2,

12. That being the position the Government of India should come forward with a formal declaration of death of Netaji Subhas Chandra Bose, otherwise, the Government has ^{got} no right to spend the public money from the public exchequer for upkeep^{ing} and maintenance of the ^{Renkaji} Temple in Taihoku, Japan and/or to preserve and reserve the ashes alleged to have been claimed of Netaji Subhas Chandra Bose and in the event if such formal declaration is not forthcoming, the Government of India should forthwith stop all expenditures in respect of alleged death of Netaji Subhas Chandra Bose and if there be any other expenditure for research works or death on Netaji Subhas Chandra ^Bose from the public exchequer, it is also required to be stopped with immediate effect for public interest inasmuch as the country like ours where more than 50% people live under poverty line, never support such wasteful expenditure of public money from public exchequer for unnecessary purpose with political motivation. Furthermore,

if there be any institute for continuous research on Netaji's death holding firmly the date of death is on 18.08.1945 in plane crash in Taihoku, in Japan such Institute after submission of Mukherjee Commission's Report before the Government of India, required to be interred with or derecognised for all purpose for the interest of the people at large, otherwise, the under-current will be continued ^{to flow,} which would result in the slur and/or disregard to the prestige, dignity and the status of the National Hero Netaji Subhas Chandra Bose and also public commotion, resentment, furor throughout the breadth and length of the country could not be put to an end, which was not the object of this Commission.

19. That the conducts of the Government as stated herein above, are incredible and some vested interest the people who are still inclined to hold the earlier decision as sacrosanct or authentic but without any basis causing thereby direct slur or disregard to the National Hero, who had intential importance in all respect and their only purpose is to lower down the prestige, dignity and high ideals of Netaji Subhas Chandra Bose which

the people still possess the unfathomed and unshaken faith in their core of the hearts inasmuch as the people have enthroned their beloved National leader in the minds and the people do not want any sort of slur or disregard to the Hero by the Countrymen or by the Government or by any Institution.

14. That it is further stated that it was revealed that the Government of India neither extended full co-operation in matter of despatching the documents or records relating to the enquiry on alleged death of Netaji in Plane Crash on 18.3.1945 nor the said Government obeyed or followed the provision of the Public Records Act, 1993 and utterly violated the prescribed procedure for keeping public record and brushed aside the liability and accountability for the maintenance of the public records like Netaji Subhas Chandra Bose by merely filing an affidavit in this regard before the Mukherjee Commission. No explanation was given regarding cause of destruction and by whose order the said sensitive file was destroyed, and when it was destroyed and why the master file was not preserved and why the only file of Netaji Subhas Chandra Bose was destroyed etc. and the Government mysteriously and deliberately silent for political motivation. Therefore, it is clearly evident that the

(65)

Government has acted absolutely against the public interest and/or public good for which the concerned officials of the said Department are required to be suitably dealt with in accordance with law for gross negligent and dereliction of duty. It is, in fact, a contemptuous conduct and/or treacherous activities with the people at large as well as the Nation.

15. That it is further stated that the Right to Information Act, 2005 in conjunction with Fundamental right enshrined under Article 19(1)(a) of the Constitution of India have strengthened the rights to information from the Government and/or public bodies by virtue of provisions of the said statute and thus, the petitioners are entitled to know whether the Government had/has stopped the said wasteful expenditure for Renkoji Temple in Japan with regard to alleged death of Netaji and further wanted to know whether the Government has decided to place the said report of Mukherjee Commission for open debate before the members of the Parliament. The petitioners though sent the representation dated 27.9.2006 in detail to the concerned respondents of seeking immediate stopping of said wasteful expenditure and to place the said

report of Mukherjee Commission for open debate before the members of the Parliament. The petitioners though sent the representation dated 27.09.2005 in detail to the concerned Respondents seeking immediate stopping of said wasterul expenditure and to place the said report before the members of the Parliament but till date no reply is discernible from any corner or end.

The Xerox copy of the said representation dated 27.09.2005 in this regard is enclosed herewith and marked P-3 as Annexure P-3.

15. That it is further stated that Netaji subhas Chandra Bose, the National Hero of our country having international fame or importance and/or recognition is neither confined to only " Bose Family" nor is confined to any " Geographical limit" nor could be claimed as personal property, rather Netaji is claimed to be the beloved leader and brave son of mother India and is concerned for the all and sundry of the Nation. Therefore, any personal claim from any corner to Netaji subhas Chandra Bose, ^{is required to} be unhesitatingly ignored or overlooked for the interest of the Nation. Now the prestige, dignity and status of Netaji are the concerned

/ for all the citizens of India and thus, the Respondent no.5 cannot claim absolute rights to continue such purportive research works, which is denegrating or lowering down the prestige, dignity and honour of the world famous national hero Netaji Subhas Chandra Bose. Therefore, as citizens of India the petitioners alongwith others raise the voice of protest to the said ^{conniving} conductive act or activities.

17. That it is further stated that the Government of India at the present wants to hand over the alleged ashes of Netaji Subhas Chandra Bose kept in the Kenjoji Temple in Japan for about 60 years to Ms. Anita Das, daughter of Netaji and further desire to settle the disputes in this way and the Government of Japan was also persistently pressurising the Government of India as alleged for which the apparent solution to be taken and unless and until the said alleged ashes is handed over, the Government would bear the maintenance cost of the said temple. The said News was published in the Anandabazar Patrika dated / 07.12.2006 wherein it was also inter alia firstly contended that the Government of India would bear the major part

68

of the maintenance and other related expenditure and in this regard the Japan Government would be assured very shortly and further necessary money would be given to Trust, ^{which is} under the main priest of Renjoji Temple and secondly it was contended that the permission would be given to hand over the said alleged ashes to Ms. Anita Papp if she wants to take the same.

The Xerox copy of the News paper cutting containing the said news published in the Anandabazar Patrika dated 07.12.2005 is annexed herewith and marked with the letter

P-4. P-4.

18. That the petitioners apprehend that the Government of India due to pressure given by the Government of Japan to take back the alleged ashes kept in Renkuji Temple at Japan has decided to bring back the said alleged ashes to India and full preparation for bringing and staking the same ^{be taken} in India, ^{Hence,} very shortly. ^{is urgently required} Had an interim order, ^{to restrain} the authorities of Government of India from accepting the said alleged ashes and staking the same till the disposal of the instant writ application.

19. That being aggrieved by and dissatisfied with the apathetic, deliberate and wilful attitude of the

Government of India towards Netaji Subhas Chandra Bose and for incurring huge amount of public money from the Government Exchequer for preserving and reserving the so-called ashes of Netaji allegedly kept in the Renjoji Temple in Japan and also for not placing the report submitted on 08.11.2005 by Mukherjee Commission for open debate or discussion before the members of the Parliament, beg to move this instant application on the following amongst other

G R O U N D S :-

- I. FOR THAT the Respondents acted illegally, arbitrarily, discriminatorily and whimsically inclining to incur huge amount of public money from the Government Exchequer for the maintenance of Renjoji Temple in Japan to keep the alleged ashes of Netaji Subhas Chandra Bose who allegedly died on 18.08.1945;
- II. FOR THAT the Respondent concerned when inclined to uphold the earlier two Committee and Commission reports in this regard, further notification of Commission of Inquiry for the same reason was uncalled for and to camouflage the

People with a view to
neutralise the public commotion;

III. FOR THAT the Respondents concerned ought to have given much more weightage or importance on Mukherjee Commission since the said Commission was constituted by the order of the Hon'ble High Court, Calcutta passed on 30.04.1998 in W.P.No. 231 of 1998 and the name of the Chairman of Commission of Inquiry was given by the Chief Justice of the Hon'ble Supreme Court of India and the Commission was constituted accordingly, whereas the other two Committee and Commission were not constituted by the judicial intervention, however, the Government of India did not accept report submitted by the Mukherjee Commission and without assigning any reason the same was cancelled / rejected;

IV. FOR THAT the concerned Respondent is arbitrarily and illegally spending public money from the Government Exchequer for patronising or encouraging the research works on the alleged death of Netaji Subhas Chandra Bose claiming to have taken

7 192

place on 13.08.1945 as such the said expenditure for
~~Constitution~~^{Continuation} of research work incurred for the
Respondent no.5 in the name of Netaji Research
Bureau be stopped forthwith ;

V. FOR THAT since the Government money is the public
money, there should be an accountability before the
citizens of India with regard to any such expenditure
with political motivation on the Netaji Subhas
Chandra Bose, which is against the public interest
or public policy or public good ;

VI. FOR THAT without any formal declaration of death of
Netaji any attempt to spend further amount for
maintenance of Renjoji Temple in Japan allegedly
keeping the ashes of Netaji and after submission of
report of Mukherjee Commission, is absolutely
derogatory and vile conduct on the part of the
Government as such the said conduct is depreciatory
and disparaging too ;

VII. FOR THAT the Respondent concerned ought to have placed the Commission Report submitted by the Hon'ble Justice Manoj Kumar Mukherjee (Retired) on 03.11.2005 before the members of the Parliament for open debate or discussion, otherwise it would carry a wrong message to the public and for the reason of withholding the said report for open debate, reliance or credence of the public upon the Government of democratic set up would be declined to a great extent ;

VIII. FOR THAT the citizen has the right to know how much amount of public money was incurred till date to preserve and rearve and/or for the purpose of the maintenance of the Renjoji Tempde allegedly keeping the ashes of Netaji Subhas Chandra Bose due to alleged death of Netaji on 13.08.1945 and such right has been strengthened for enactment of right to Information Act, 2005 and thus, as the citizen of India the petitioners are entitled to know such quantum of said wasteful expenditure for Netaji's ~~ashes~~ alleged ashes;

IX. FOR THAT in any view of the above matter the conduct of the Respondent concerned are not above board in all respects ^{as} ~~where~~ greater public interest is involved and , thus, bad in law and liable to be interfered with by this Hon'ble court.

20. That since our Government is democratic Government, in that view a duty has cast upon the Government to honour the public sentiment relating to the said National issue and all the citizens are concerned for the same and in such a situation the Government is required to unhesitatingly unveil their stand on the National Hero Netaji to put a permanent end of the said National issue, which was the only and/or sole object of the Mukherjee Commission.

21. That it is further stated that no other writ petition was filed by the petitioners on the self-same cause of action in this Hon'ble court or anywhere.

22. That the records are located in the ordinary original civil Jurisdiction of this Hon'ble court and direction may be given to the Respondents concerned to produce all relevant records relating to mysterious death of Netaji Subhas

Chandra Bose and previous enquiry reports in this regard including the representation and notification as stated hereinabove at the time of hearing of this writ petition.

23. That there is no other alternative suitable / efficacious legal remedy open to your petitioners to seek / ~~easy~~ save and except filing the writ petition for remedy / and, if any relief be given, the same to be adequate and complete relieves.

24. That the application is made on good faith and to secure the ends of justice.

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

- a) A writ and/or writs in the nature of Mandamus commanding the Respondents, their men, agents, sub-ordinates, superiors, successors in office to refrain from incurring further public money from Government Exchequer for maintenance and upkeep of the Henkoji

75

Temple in Japan allegedly keeping the ashes as that of Netaji Subhas Chandra Bose who allegedly died on 18.08.1945 forthwith ;

b) A writ and/or writs in the nature of Mandamus commanding the Respondents concerned, their men, subordinates, superiors, successors-in-office to place the Commission report submitted by the Hon'ble Justice Manoj Kumar Mukherjee (Retired) on 08.11.2005 before the Members of Parliament for open debate or discussion immediately;

c) A writ and/or writs in the nature of Mandamus directing the Respondents concerned refrain from incurring any amount for the Respondent No.5 from public Exchequer to continue research work on any issue pertaining to Netaji including the alleged death of Netaji Subhas Chandra Bose ;

d) A writ or and/or writs in the nature of Certiorari directing the Respondent concerned to transmit and certify all relevant records relating to Enquiry on the alleged death of Netaji on 13.03.1945 allegedly took place in Plane Crash in Taihoku, Japan including the representations being Annexure - "P/3" and the notification being the Annexure - "P/2" at the time of hearing of the writ petition and so as to render the conscionable justice after perusing the same ;

e) A writ and/or writs in the nature of Prohibition forbidding the Respondents nos. 1 to 4 from incurring any amount of public money from public Exchequer for preservation and reservation and/or maintenance of Kenkoji Temple, Japan allegedly keeping the ashes of Netaji

allegedly died on 18.08.1945 till the disposal of this writ petition ;

f) Rule Nisi in terms of prayers (a), (b), (c), (d) and (e) as aforesaid ;

g) An ad-interim order restraining the concerned Respondent from taking any step or steps to accept and/or bring or staking the alleged ashes kept in the Renkoji Temple at Japan till the disposal till the disposal of the instant application

h) Any other or further writ or writs, order or orders, direction or directions as your Lordships may deem fit and proper.

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

:: AFFIDAVIT ::

I, Ashim Kumar M Ganguly, Son of Late Netai Chandra Ganguly, aged about 45 years, by religion Hindu, by profession - lawyer, residing at 90, A. K. Mukherjee Road, 3rd Floor, Police Station Baranagar, Kolkata - 700090, do hereby solemnly affirm and declare as follows:-

1. That I am the petitioner No. 1 of this instant Writ petition as such conversant with the facts and circumstances of the case.

2. That the statements made in Paragraph No. 1, 2, 3 (Part), 5, 6, 7, 8, are true to my knowledge and the statements made in Paragraph No. 1, 3 (Part), 4, 18, are true to my information derieved from the relevant records which I veriiy believe to be true and rest are my humble submission before this Hon'ble Court.

Sd/- Ashim Kumar Ganguly,

Prepared by me in my office.

The deponent is known to me.

Sd/- Ashim Kumar Ganguly
Petitioner-in-person.

Abolus Salam,
Clerk to Mr.....

Advocate,

Solemnly affirm before me
this 15th day of December, 2006.

COMMISSIONER OF OATH.

:: A F F I D A V I T ::

I, Subhash Chandra Basu, Son of Late Surendra Nath Basu, aged about 41 years, by religion Hindu, by profession - lawyer, residing at 86, Sadar Boxi Lane, Post and Police Station, and District - Howrah, Pin code : 711101, do hereby solemnly affirm and declare as follows:-

1. That I am the petitioner No. 2 of this instant Writ petition as such conversant with the facts and circumstances of the case.

2. That the statements made in Paragraph No. 1, 2, 3 (part), 5, 6, 7, 8, are true to my knowledge and the statements made in Paragraph No. 1, 3 (part), 4, 18, are true to my information derieved from the relevant records which I verily believe to be true and rest are my humble submission before this Hon'ble Court.

Sd/- Subhash Chandra Basu

Prepared in my me in my Office. The deponent is known to me.
Sd/- Subhash Chandra Basu Clerk to Mr. *Abolus Salam,*
Petitioner-in-person. Advocate.

Sd/-
Solemnly affirmed before me
this 15th day of December, 2006.

COMMISSIONER OF OATH.

Mukherjee Commission

From Wikipedia, the free encyclopedia

Jump to: [navigation](#), [search](#)

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".^[1]

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 Renkoji 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 14th 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/aug_18_1945/

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

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 16th 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)

45

SPEED POST WITH A/D.

FROM: SRI ASHIM KUMAR GANGULY
90, A.K. Mukherjee Road,
3rd floor, Kolkata - 700090
-And- Ph: 2531-1861

SRI SUBHASH CHANDRA BASU
86, Sadar Boxi Lane,
Howrah - 711101.
Ph: 2640-1217

To

Date: 27.09.2006.

1. The Hon'ble Prime Minister,
Government of India, Office of Prime Minister,
7, Race Course Road, New Delhi - 110003
2. The Hon'ble Minister of Foreign Affairs,
Government of India, New Delhi:
3. The Hon'ble Minister for Home Affairs,
Government of India, New Delhi:
4. The Hon'ble Minister of Parliamentary Affairs,
Government of India, New Delhi:

S I R (S),

With deep sense of regards being the responsible citizen we felt it necessitated to put forth the following points for your immediate intervention so as to bring the people of India into confidence into the question of alleged death of the National Hero Netaji Subhas Chandra Bose and put an end to the same:-

1. It is a matter of great ^{importance} that the Government of India has not accepted the reports made by the Netaji Enquiry Commission namely Justice Monoj Mukherjee Commission set up by the Government of India and placed the report before parliament for discussion at great length.
2. The apathetic attitude of the Government of India in not accepting the report and placing the same before the Parliament has widely been circulated in the leading News papers in the country and also echoed the same through the Electronics media, which made furore in the mind and sentiment of the public at large throughout the breadth and length of our country.
3. It will not be exaggeration to enunciate that the Justice Monoj Mukherjee Commission was set up by the Solemn order of the Hon'ble High Court at Calcutta passed in the case of Ashim Kumar Ganguly - Vs - Union of India and Ors. being W.P.No.1805 of 1997 and also following an unanimous motion adopted on 24.12.1998 by the West Bengal Legislative Assembly, Government of West Bengal, and the Chief Justice of the Hon'ble Supreme Court of India selected name of Hon'ble Justice Monoj Kumar Mukherjee (Retired) of the Hon'ble Supreme Court of India and ultimately it was constituted in 1999.

4. As per the terms of reference the Commission was constituted to find out the clue of mysterious disappearance of Netaji Subhas Chandra Bose and/or unearth whether Netaji Subhas Chandra Bose died in alleged Plane crash that took place at Taihoku (now Taipei) in Taiwan (formerly Formosa) on 18th August, 1945 and also to find out whether the alleged ashes kept in the Renkoji Temple in Tokyo, Japan as that of Netaji Subhas Chandra Bose or not.

5. Can it not be emphatically demanded that it is the duty of all citizens to know the cause of death and/or place of death if it really happens of such national leader and hero unlike Subhas Chandra Bose. The doubts have concretised in the minds of all Indians about such alleged reporting of death news of Netaji Subhas Chandra Bose and also alleged ashes staked in the Renkoji Temple since the earlier two attempts made by the Government of India to find out the aforesaid queries by setting up Shah Nawaz Inquiry Committee in 1956 and by Khosla Commission in 1970 which failed to achieve the credence of the public at large. Furthermore, the then Hon'ble Prime Minister Morarji Desai on August, 1978 declined to accept the said two earlier Committee and Commissions' report on Netaji Subhas Chandra Bose and cancelled the same while sitting in the Parliament.

6. Therefore, considering the above facts the Hon'ble Mukherjee Commission was constituted through the judicial intervention and its sanctity and reliability are much more than that of the earlier two Committee and Commission in this regard and thus, the people of India have eagerly accepted the findings of Mukherjee Commission in as much as it was based on evidence and it will also reflect the complete light and clear vision and/or complete light in the matter of alleged demise of Netaji Subhas Chandra Bose, the National Leader of the country having national regard all over the country and Crowned with international honour over the world.

7. In this context the above undesired action of the Government of India rejecting the report of Mukherjee Commission is really shocking and heart-breaking for the people of India. The Government of India has ignored the strong public sentiments over the long cherished reserved issue, which is rared up or nurished

by the Government of India. It may cause volcanic eruption in future if such ignorance is continued. It is, therefore, necessary that the Government of India should raise to the occasion and to give proper regard to the sentiment of the people of the country.

8. It is further stated that the citizen has a right to know the reason of such unreasonable rejection of report of Mukherjee Commission and also not placing the same before the parliament for wide discussion is a drastic attempt of the Government to turn a deaf ear to the rights enshrined under Article 19 of the Constitution of India and the said right has been consolidated and codified by the Parliament of our country enacting the Right to Information Act, 2005 and therefore, under the above Constitutional provision and under the said codified Act the people are entitled to know the real reason for such hostile rejection of report. Therefore, the people want to know the reason of such rejection. The apathetic attitude of the Government has strengthened the doubts and causes serious consequences in the minds of the people at large.

9. It is further stated that the Government of India in earlier occasion made attempt to award posthumous "Bharatratna" to Netaji Subhas Chandra Bose and further attempt was made to bring the alleged ashes of Netaji Subhas Chandra Bose without any formal declaration of death of Netaji. The purported attempts were ultimately abandoned due to filing a Writ petition in the Hon'ble Supreme Court of India challenging such arbitrary, whimsical and irrational decision of the Government of India. Till date the Government of India has neither declared the date of death of Netaji Subhas Chandra Bose nor abandoned the wasteful expenditure of Government exchequer for maintaining the temple at Renkoji ~~temple~~ in Japan to keep the alleged ashes of Netaji Subhas Chandra Bose. This decision for bearing the cost for such maintenance is nothing but national wastage of public money from exchequer for which the Government is questionable before the public at large with regard to such unwarranted and undesirable expenditure. Moreover, it is an absolute non-democratic decision of the democratic ^{Govt. of the} country where the more than 60% people live below the poverty line. Thus, it is required to be immediately stopped the said expenditure for the interest of the nation. The exordium in this regard is totally unsustainable and not praiseworthy.

9. The people of this country share a common view that Netaji

9/2/2011

Subhash Chandra Bose would be given honour much from the core of hearts if any real attempt is made to find out the clue of alleged death of Netaji Subhash Chandra Bose and immediately if the said expenditure is discontinued and no attempt be made to maintain the said temple cost unless there was/is a formal declaration of death to that effect. The report of the Justice Mukherjee Commission opined that the ashes kept in the Renkoji Temple in Japan is not of Netaji Subhas Chandra Bose.

Under the above facts and circumstances you are requested to immediately stop the expenditure for the maintenance of the so-called ashes kept in the Renkoji Temple at Japan and inform the applicants forthwith the reason for such rejection and/or non-acceptance of report of Mukherjee Commission within 10 days failing which the undersigned will have no other alternative except to knock at the door of the temple of justice for seeking appropriate order from the Hon'ble Court.

An early reply to the context of the instant appeal will be appreciated and also may restrain the hands of the undersigned to move further.

Yours faithfully,

- Ashim Kumar Ganguly*
 1. (Ashim Kumar Ganguly)
Subhash Chandra Basu
 2. (Subhash Chandra Basu)

भारतीय डाक
 HON'BLE H.P.O. (711181)
 SP-POST OFFICE (Subhas Chandra Bose Temple)
 Counter No: 3, SP-Code: NRI
 TOWNSHIP OF N.R., SOVT. OF INDIA
 New Delhi, PIN: 110
 From: SUBHASH CH BASU, HON-1
 Rt: 33grams,
 Ret: 36.00 ; 20/09/2005 ; 12:15
 Taxes: Rs. 4.00 (Have a nice day)

भारतीय डाक
 INDIA POST
 HON'BLE H.P.O. (711181)
 SP-POST OFFICE (Subhas Chandra Bose Temple)
 Counter No: 3, SP-Code: NRI
 TOWNSHIP OF N.R., SOVT. OF INDIA
 New Delhi, PIN: 110
 From: SUBHASH CH BASU, HON-1
 Rt: 33grams,
 Ret: 36.00 ; 20/09/2005 ; 12:15
 Taxes: Rs. 4.00 (Have a nice day)

भारतीय डाक
 INDIA PCST
 HON'BLE H.P.O. (711181)
 SP-POST OFFICE (Subhas Chandra Bose Temple)
 Counter No: 3, SP-Code: NRI
 TOWNSHIP OF N.R., SOVT. OF INDIA
 New Delhi, PIN: 110
 From: SUBHASH CH BASU, HON-1
 Rt: 33grams,
 Ret: 36.00 ; 20/09/2005 ; 12:15
 Taxes: Rs. 4.00 (Have a nice day)

DISTRICT : HOWRAH

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

W. P. No: 27541 (W) of 2006

In the matter of :

An application under Article 226 of the
Constitution of India;

-And-

In the matter of :

A Writ and/or writs in the nature of
Mandamus;

-And-

In the matter of :

A Writ and/or Writs in the nature of
Mandamus;

-And-

In the matter of :

A writ and/or writs in the nature of
Prohibition;

Contd.....P/2.

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155

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-And-

In the matter of :

A writ and/or writs in the nature of
Certiorari;

-And-

In the matter of

Any other writ or writs, order or orders,
direction or directions;

-And-

In the matter of :

The Right to information Act, 2005;

-And-

In the matter of :

The Commission of Inquiry Act, 1952 and
Rules framed thereunder;

-And-

In the matter of :

The Public Records Act, 1993;

:: 3 ::

-And-

In the matter of :

Violation of the provisions of Article 14, 19
(i) (a), 51A(b) and 21 of the Constitution of
India;

-And-

In the matter of :

Apathetic attitude of the concerned
authorities in considering the representation
dated 27.09.2006;

-And-

In the matter of :

Illegal and arbitrary decision of the
concerned Respondents for continuous
wasteful expenditure of public Money from
the Government Exchequer for maintenance
of so-called alleged ashes of Netaji Subhas
Chandra Bose kept in the Renkoji Temple in
Tokyo, Japan;

-And-

Contd.....P/4.

114
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In the matter of :

Non-acceptance of report of Justice Mukherjee Commission constituted to find out the clue of alleged death of Netaji Subhas Chandra Bose allegedly took place in Plane Crash on 18.8.1945;

-And-

In the matter of :

Arbitrary and whimsical decision of withholding the Mukherjee Commission's Report and not placing the same before the members of Parliament for open debate of discussion.

-And-

In the matter of :

Deliberate and willful contravention of the provisions for maintenance of Public Records by the concerned Government and gross dereliction of duties and serious consequences of damage and/or destruction

Contd.....P/5.

158
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of the same;

-And-

In the matter of :

1. SRI ASHIM KUMAR GANGULY,

son of Late Netai Chandra Ganguly, residing
at 90, A. K. Mukherjee Road, 3rd floor,
Police Station Baranagar, Kolkata-700 090.

2. SRI SUBHASH CHANDRA BASU

son of Late Surendra Nath Basu, residing at
86, Sardar Bosi Lane, Police Station and
District-Howrah, Pin Code No. 711 101;

..... Petitioners.

-Versus-

1. Union of India,

service through the Secretary, Ministry of
Home Affairs (North Block), Government of
India, New Delhi.

2. Principal Secretary,

Office of the Prime Minister, Government of
India, 7, Race Course Road, New Delhi.

Contd.....P/6.

(116)
H59

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3. Secretary,

Ministry of Foreign Affairs, Government of
India, New Delhi.

4. Secretary,

Ministry of Parliamentary Affairs,
Government of India, New Delhi.

5. Director

Netaji Research Bureau,
38/2, Lala Lajpat Roy Road, Kolkata-20.

.....Respondents.

AFFIDAVIT – IN - OPPOSITION ON BEHALF
OF THE RESPONDENTS HEREINABOVE

I, Naresh Jaiswal son of Shri K. Choudhary, aged about 44 years, by occupation Service under Government of India and posted in New Delhi residing at No. 111-P, Type-III Quarters, Aram Bagh, Paharganj, New Delhi-110 055, do hereby solemnly affirm and say as follows :

1. I am one of the Principal Officer of the respondents as such I am competent to swear this affidavit. I know the facts and circumstances of the case. I have also been authorized to affirm this affidavit on behalf of all the respondents and am otherwise competent to depose to the same.

Contd.....P/7.

117
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2. That I have come to know that the instant writ petition was heard on 15.02.2008 before Their Lordships the Hon'ble Chief Justice Mr. Surinder Singh Nijjar and the Hon'ble Justice Pinaki Chandra Ghose for filing affidavit-in-opposition.

3. I have read a copy of the writ petition affirmed by the writ petitioners and filed in the Hon'ble High Court under Article 226 of the Constitution of India and I have understood the contents of the same.

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

5. With regard to the statement made in paragraphs 1 to 4, 7 & 21 of the writ petition, I state that those are matters of record are admitted and deny and dispute those which are contrary to and inconsistent with the said records.

6. With regard to the statement made in paragraphs 5 of the writ petition, I state that the averments relating to the conferment of Bharat Ratna on Netaji Subhas Chandra Bose, it is stated that the decision to award Bharat Ratna was taken in January, 1992, in view of his public service of the highest order. Keeping in view the widespread public reaction and sentiments of the people and to avoid unnecessary controversy, Government of India decided, notwithstanding the earlier announcement, not to take any further action in the matter. It is stated that

1118
161

:: 8 ::

the Hon'ble Supreme Court also recorded in its order dated 4.8.1997 that "The real controversy in these proceedings relates to the press communiqué. Since no further steps have been taken pursuant to the press communiqué and the matter is treated as closed, we declare that the press communiqué 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". Regarding bringing the ashes of Netaji Subhas Chandra Bose Kept in the Renkoji Temple, Japan, to India by Ministry of Defence, it is stated that there is no proposal before the Ministry of Defence to bring back the ashes of Netaji to India.

7. With regard to the statement made in paragraphs 6 of the writ petition, I state that Justice Mukherjee Commission of Inquiry was set up by Ministry of Home Affairs vide Notification dated 14th may, 1999 to 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;

Contd.....P/9.

119
162

:: 9 ::

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

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 Commissions' 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, Governemnt 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 Houses 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 in asmuch 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

1120
163

:: 10 ::

other manner at any other place and it 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 also 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.

10. With regard to the statement made in paragraphs 10 of the writ petition, it is submitted that the report of the Justice Mukherjee Commission along with the Action Taken Report was placed before both the Houses of Parliament on 17th May, 2006, as required under section 3(4) of the Commissions of Inquiry Act, 1952. It is denied and disputed that Government of India had no interest in the matter, as alleged. It is submitted that Government of India extended full cooperation to the Justice Mukherjee Commission of inquiry into the alleged disappearance of Netaji Subhas Chandra Bose as required from time to time.

:: 11 ::

11. With regard to the statement made in paragraphs 11 of the writ petition, it is submitted that Government of India appointed the Justice Mukherjee Commission of Inquiry under the Commission of Enquiry Act, 1952. It is further submitted that the Government of India treated this matter of public importance by issuing said Notification dated 14th May, 1999 appointing Justice Mukherjee Commission of Inquiry, which states that "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". After scrutinizing of the Justice Mukherjee Commission Report, the Government of India submitted an Action Taken Report and placed the same along with the report before the Parliament.

12. With regard to the statement made in paragraphs 12 of the writ petition, I state that the Government of India is not spending any money to maintain the ashes kept in the renkoji Temple, Tokyo. With regard to the averment about expenditure from public exchequer on research work on Netaji. It is submitted that Netaji Research Bureau is an internationally known Institute of History, Politics and International Relations established in 1957. Netaji Research Bureau is celebrating its Golden Jubilee anniversary in the year 2007-2008. The Founder Director of Netaji Research Bureau Dr. Sisir Kumar Bose had collected materials

122
165

:: 12 ::

on the life of his uncle Netaji Subhas Chandra Bose from all over the world for many decades. Apart from a very rich archives the Bureau has a museum and preserved rooms of Netaji which are visited by hundreds of people throughout the year. The Bureau has published 12 volumes of Netaji Subhas Chandra Bose's works. It has also produced documentaries and audio cassettes on him. The Bureau is engaged in preserving and propagating the life and works of Netaji Subhas Chandra Bose for the generations to come. It is run by a body of distinguished persons.

13. With regard to the statement made in paragraphs 13 of the writ petition, I state that there is any vested interest to 'uphold' the earlier reports. It is stated that the Government of India accepted the earlier reports as they were well reasoned in comparison to the JMCI report which did not give complete findings on the terms of reference especially point at (d) of terms of reference as explained in reply to para 9 herein above.

14. With regard to the statement made in paragraphs 14 of the writ petition, I state that the averments made in this para are denied. It is submitted that the Government of India extended full cooperation to the Justice Mukherjee Commission and produced all available records/documents before it. It is submitted that records in the Government of India offices are destroyed/weeded out strictly as per the record retention schedule.

Contd.....P/13.

1123
166

15. With regard to the statement made in paragraphs 15 of the writ petition, I state that it is denied that the Government of India is spending money to maintain the ashes kept in the Renkoji Temple, Tokyo. The report of the JMCI has already been placed before Parliament on 17th May, 2006.

16. With regard to the statement made in paragraphs 17 & 18 of the writ petition, it is reiterated that Government of India is not spending any money to maintain the ashes kept in the Renkoji Temple, Tokyo. It is also stated that there is no proposal between Government of India and the Government of Japan regarding return of the ashes to India including handling over of ashes to the daughter of Netaji, as averred.

17. With regard to the statement made in paragraphs 19 of the writ petition, I state that the averments made in this para are denied. Government of India attaches high importance to Netaji Subhas Chandra Bose. The JMCI report has already been discussed in Parliament.

18. With regard to the statement made in paragraphs 20 and 22 of the writ petition, it is submitted that Government of India has submitted the Action Taken Report before the Parliament. Save and except which is stated in the Action Taken Report the allegations in the writ petition are denied.

19. With regard to the statement made in paragraphs 23 of the writ petition, it is submitted that in view of the fact, the petitioners have not been able to make

124
167

out any convincing case in this writ petition, no relief should be allowed/granted to them.

20. With regard to the statement made in paragraphs 24 of the writ petition, it is stated that (i) the report of the Justice Mukherjee Commission has already been placed before both the Houses of Parliament.

21. The statements contained in paragraphs 5 to 20 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.

Narash Samal
[Signature]

The deponent is known to me

Prepared in my office
[Signature]
Advocate.

Clerk to Mr. Tarun Kumar Ghosh,
Advocate.

Solemnly affirmed before me on
this the day of March, 2008.

Commissioner

1125

DISTRICT : HOWRAH

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W. P. No: 27541 (W) of 2006

In the matter of :

An application under Article 226 of the
Constitution of India;

- And -

In the matter of :

Sri Ashim Kumar Ganguly & Anr.
.....Petitioners
-Versus-
Union of India & Ors.
.....Respondents.

AFFIDAVIT - IN - OPPOSITION ON
BEHALF OF THE RESPONDENTS.

Mr. Tarun Kumar Ghosh,
Advocate.
Bar Association, Room No. 2,
High Court, Calcutta.
Office at 10-A, Dr. Kartick Bose Street,
1st floor, Kolkata - 700 009.
Phone : 2350-9128 & 2351-2988.

S.No.	Document details	Status
Documents addressed to PMO on the receipt		
1.	Letter dated 30.7.07 endorsed to Dir(VV) from M/o Law and Justice	As per record it is not received
2.	Letter dated 27.9.06 addressed to PM from Sh. A. K. Ganguly	-do-
3.	Letter dated 19.8.08 addressed to Secretary to PM from Ministry of Home Affairs	-do-
Documents available in the section		
4.	Letter dated 6.6.07 addressed to Principal Secretary to PM from Shri Tarun Kumar Ghosh, Advocate, High Court, Calcutta	Forwarded for a/a to Secretary, D/o Legal Affairs vide PMO ID no. 835/11/C/1/07-Pol dated 15.6.07
5.	Letter dated 27.9.06 addressed to the Prime Minister from Shri A. K. Ganguly, resident of Kolkata	No directions, hence filed - file no. 915/11/C/2/2006-Pol (Vol.I)
6.	Letter dated 8.1.07 endorsed to the Principal Secretary to PM from Shri Tarun Kumar Ghosh, Advocate, High Court, Calcutta	No further action was directed, hence filed. - File No.915/11/C/2/2006-Pol (Vol.II)

Pol. Sec

As directed, the details of the documents regarding the matter are tabulated.

S
27/8/08

Sd(Pol) - on leave
statement received (P/20)
Div (AA)

Pl. speak.
Pol.
27/8

Pl. speak.
Sd(Pol)
28/8

127

7/2

Most Immediate

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 101

Subject: CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

Please find enclosed a set of papers on the subject. Secretary to PM would take a meeting to discuss the matter on **Monday, 1.9.08 at 12:30 p.m.** in PMO.

2. The addressees of this note are requested to kindly make it convenient to attend the meeting.



(Amit Agrawal)
Director
Tel : 23012613

d/c

Secretary, Department of Legal Affairs
Secretary, Ministry of Parliamentary Affairs
Joint Secretary (Internal Security), Ministry of Home Affairs
Joint Secretary (CNV), Ministry of External Affairs

PMO ID no. 915/11/C/2/2006-Pol.

Dated: 29.8.08

Encls.: as above

n.o.o.

Copy, with enclosureꝛ to:

1. **Secretary to PM** *29/8*
2. **JS(M)** *29/8*
3. **JS(P)** *29/8*
4. **Dir(VV)**
5. **Dir(R)**

Handwritten signature and date 29/8

1128

Most Immediate

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 101

Subject: CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

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(Amit Agrawal)
Director
Tel : 23012613

Secretary, Department of Legal Affairs
Secretary, Ministry of Parliamentary Affairs
Joint Secretary (Internal Security), Ministry of Home Affairs
Joint Secretary (CNV), Ministry of External Affairs

PMO ID no. 915/11/C/2/2006-Pol.

Dated: 29.8.08

Encls.: as above

n.o.o.

Copy, with enclosure, to:

1. Secretary to PM
2. JS(M)
3. JS(P)
4. Dir(VV)
5. Dir(R)

80/Pol

Attended the meeting wherein it was decided that all future ref shd. be marked to MHA, which will be the nodal Min. Henceforth all related papers to be sent to MHA, to the appl of JS(M) & Secy.

80/Pol P-1 } may pl. see & note. P-3 } 11/24
Shah

129

⑧

**Brief regarding CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 –
Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.**

A Writ Petition has been filed in Calcutta High Court against the Union of India through the Home Secretary, with the Principal Secretary to PM, Foreign Secretary, Parliamentary Affairs Secretary and the Netaji Research Bureau Kolkata as the other respondents. Relieves sought are stoppage of expenditure on the Renkoji Temple in Japan for Netaji's alleged ashes, its shifting or Netaji Research Bureau, tabling of the report of the Justice Mukherjee Commission of Inquiry on Netaji's alleged death / disappearance before MPs for debate, furnishing certified copy of the report and conditional orders in regard to these.

2. Upon receipt of an earlier communication dated 6.6.07 addressed by the Advocate to the Law Ministry, endorsed to the PMO and the Netaji Research Bureau, PMO requested the D/o Legal Affairs on 15.6.07 to take action as appropriate. The Law Ministry also wrote a letter dated 30.7.07 to the MHA conveying that the latter had not furnished paragraph-wise comments and brief history of the case to enable the Law Ministry to prepare the Affidavit in Opposition for the Union of India for which the time granted by the Court had already been expired, while requested for these in most urgently.

3. However, MHA has addressed OM dated 19.8.08 to the MEA, MoD and PMO forwarding copy of another letter dated 14.7.08 addressed by the Advocate to the Law Ministry advising, *inter alia*, that Affidavit in Opposition is required to be filed before next hearing and mentioning that the Hon'ble Court has already taken adverse notice of delay in filing reply against the main Writ Petition. The letter again requested for comments most urgently.

4. The matter relates principally to the MHA in terms of its subject, with the Renkoji temple ashes issue being also handled by the MEA.

5. The following issues may be considered at the meeting:

- (i) Reasons for delay in the filing of the Affidavit of Opposition as well as a definite timeframe for filing the same – to be ascertained from the MHA and Law Ministry
- (ii) Lead responsibility for coordinating inputs, response and filing of Affidavit of Opposition – to be with the MHA, with necessary assistance from the Law Ministry

6. No comments are required in the matter from the PMO. However, the draft – including on behalf of PMO – may be shown to PMO before filing in case MHA / Law Ministry feel this to be necessary.

130

Most Immediate

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 101

Subject: CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

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(Amit Agrawal)
Director
Tel : 23012613

Secretary, Department of Legal Affairs
Secretary, Ministry of Parliamentary Affairs
Joint Secretary (Internal Security), Ministry of Home Affairs
Joint Secretary (CNV), Ministry of External Affairs

PMO ID no. 915/11/C/2/2006-Pol.

Dated: 29.8.08

Encls.: as above

n.o.o.

Copy, with enclosure; to:

1. **Secretary to PM**
2. **JS(M)**
3. **JS(P)**
4. **Dir(VV)**
5. **Dir(R)**

What further
action reqd after
hearing on 11/7/06?

MHA will file
A.O. on behalf
of PMO also.

M/L & J to prepare
draft.

1. Has MHA filed A.O.?
2. Why not? If yes,
then what add. info
is reqd from PMO? Why
did MHA not put forward
PMO's stand which is
identical?
3. What is MEA's
stand? Kenkōji
4. What action
taken by legal Affairs
after 15/6/2007

1131

8/9

Most Immediate

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 101

Subject: CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

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(Amit Agrawal)
Director
Tel : 23012613

Mr. attend. Mr. Singh, Mr. Kishore, Mr. Sameer

- Secretary, Department of Legal Affairs
- Secretary, Ministry of Parliamentary Affairs
- Joint Secretary (Internal Security), Ministry of Home Affairs
- Joint Secretary (CNV), Ministry of External Affairs

PMO ID no. 915/11/C/2/2006-Pol. Dated: 29.8.08

Encls.: as above

n.o.o.

Copy, with enclosure, to:

1. Secretary to PM
2. JS(M)
3. JS(P)
4. Dir(VV)
5. Dir(R)

Mr. N. G. has 11. In this n.o. Mr. JS (PM)?

11/30/8

Mr. R. P. 19 P-1

Whats this?

₹ 30/8

~~Dir (P)~~

disappearance of
Reg, Netaji Subhas

Bose ~~have work in~~ -

~~Vipant~~

Tapan

PA

~~JCP~~

Ph attend.

30/8

~~Sur (A)~~

₹ 30/8.

132

Brief regarding CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 –
Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

A Writ Petition has been filed in Calcutta High Court against the Union of India through the Home Secretary, with the Principal Secretary to PM, Foreign Secretary, Parliamentary Affairs Secretary and the Netaji Research Bureau Kolkata as the other respondents. Relieves sought are stoppage of expenditure on the Renkoji Temple in Japan for Netaji's alleged ashes, its shifting or Netaji Research Bureau, tabling of the report of the Justice Mukherjee Commission of Inquiry on Netaji's alleged death / disappearance before MPs for debate, furnishing certified copy of the report and conditional orders in regard to these.

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4. The matter relates principally to the MHA in terms of its subject, with the Renkoji temple ashes issue being also handled by the MEA.

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- (ii) Lead responsibility for coordinating inputs, response and filing of Affidavit of Opposition – to be with the MHA, with necessary assistance from the Law Ministry

6. No comments are required in the matter from the PMO. However, the draft – including on behalf of PMO – may be shown to PMO before filing in case MHA / Law Ministry feel this to be necessary.

Pl. put
up draft
mts -
SM
1/9
D. AN
S. (Sd.)
Meeting
held.
1/9
S. (M)

133

Brief regarding CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 –
Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

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List of participants at the meeting taken by the Secretary to PM on 1.9.08 at 12:30 p.m. regarding CAN No. 2133 of 2003 in Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors

1. Shri T. K. Viswanathan, Secretary, Department of Legal Affairs
2. Dr. (Smt.) Rekha Bhargava, Secretary, M/o Parliamentary Affairs
3. Shri D. Diptivilasa, Joint Secretary (Internal Security), MHA
4. Shri Debnath Shaw, Joint Secretary (CNV), M/o External Affairs

SECRETARY / To PM

135

Most Immediate

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 101

Subject: CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.

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(Amit Agrawal)
Director
Tel : 23012613

Secretary, Department of Legal Affairs
Secretary, Ministry of Parliamentary Affairs
Joint Secretary (Internal Security), Ministry of Home Affairs
Joint Secretary (CNV), Ministry of External Affairs

PMO ID no. 915/11/C/2/2006-Pol.

Dated: 29.8.08

Encls.: as above

n.o.o.

Copy, with enclosure, to:

1. **Secretary to PM**
2. **JS(M)**
3. **JS(P)**
4. **Dir(VV)**
5. **Dir(R)**

for 1/19
P-1



136

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Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors.**

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91

Out today / At once

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 101

Subject: CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors

Reference is invited to this office's ID^{note} of even number dated 29.8.08 on the subject. At the meeting taken on 1.9.08 in this office by the Secretary to PM, after discussion with the Law Secretary, Parliamentary Affairs Secretary, Joint Secretary (Internal Security) in the Ministry of Home Affairs and Joint Secretary (CNV) in the Ministry of External Affairs, it was agreed that the Home Ministry would act as the nodal Ministry for PMO as well as the other Ministries impleaded as respondents and file affidavits on behalf of all. The Government Counsel may also be advised accordingly to correspond with the Home Ministry only regarding the matter. The Home Ministry would make a reference to the Law Ministry for obtaining the advice of the Attorney General of India regarding the case and for securing the services of a more senior counsel for representing the Government in the case.

2. The Ministry of Home Affairs is requested to take immediate necessary follow up action.



(Amit Agrawal)
Director
Tel : 23012613

o/c

Ministry of Home Affairs [Attn: Joint Secretary (Internal Security)]

PMO ID no. 915/11/C/2/2006-Pol.

Dated: 4.9.08

Copy to:

1. Secretary, Department of Legal Affairs
2. Secretary, Ministry of Parliamentary Affairs
3. Joint Secretary (CNV), Ministry of External Affairs

n.o.o.

Copy to:

Sr. PPS to Principal Secretary to PM



Out today / At once

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 101

Subject: CAN No. 2133 of 2008 in Writ Petition No. 2754/2006 – Shri Ashim Kumar Ganguly & Ors versus Union of India & Ors

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for
Dir(AA)2. The Ministry of Home Affairs is requested to take immediate necessary follow up action.



(Amit Agrawal)
Director
Tel : 23012613

Ministry of Home Affairs [Attn: Joint Secretary (Internal Security)]

PMO ID no. 915/11/C/2/2006-Pol.

Dated: 4.9.08

Copy to:

1. Secretary, Department of Legal Affairs
2. Secretary, Ministry of Parliamentary Affairs
3. Joint Secretary (CNV), Ministry of External Affairs

n.o.o.

Copy to:

✓ Sr. PPS to Principal Secretary to PM

to Dir(AA)2
Dir(AA)2
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Ret.
8/19
PS

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19/9

1139

Out today / At once

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 101

Subject: CAN No. 2133 of 2008 in WP No. 27541 (W) of 2006 – Shri Ashim Kumar Ganguly & ors versus Union of India & Ors.

Reference is invited to MHA letter no. I/12014/12/2007-Cdn. dated 19.8.09 on the subject. In this connection, attention is invited to PMO ID note of even number dated 4.9.08, conveying the agreement arrived at the meeting convened by the then Secretary to PM on 1.9.08 with Secretaries / representatives from the Department of Legal Affairs, Ministry of Parliamentary Affairs, Ministry of Home Affairs and Ministry of External Affairs that the Home Ministry will act as the nodal Ministry for this office as well as the other Ministries impleaded as respondents and will file affidavits on behalf of all.

2. Against this background, the undersigned is directed to request that the Ministry may kindly take appropriate action for filing appropriate affidavit on behalf of all respondents, as decided at the aforementioned meeting, in consultation with any other Ministries / Departments concerned. In case clarification / comments regarding any particular aspect relating to this office is felt necessary, Home Ministry could specifically identify and refer the same to this office.



(Amit Agrawal)
Director
Tel.: 2301 2613

Ministry of Home Affairs
[Attn: Joint Secretary (Internal Security)]
PMO ID no. 915/11/C/2/2006-Pol

Dated 1.9.09

19/9

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140

No.I/ 12014/12/2007-Cdn.
Ministry of Home Affairs
Internal Security-II Division
Cdn. Section

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 19th August, 2009.

To

1. The Joint Secretary (CNV),
Ministry of External Affairs,
South Block, New Delhi.
2. The Secretary,
Ministry of Defence,
South Block, New Delhi.
3. Secretary to PM
PMO, South Block,
New Delhi.

*Forwarded to
24/8/09
[Signature]*

Subject: CAN No.2133 of 2008 in WP No. 27541 (W) of 2006 – Shri Ashim Kumar Ganguly & ors versus Union of India & Ors.

Sir,

I am directed to refer to this Ministry's letter of even number dated 19.8.2008 on the above mentioned subject and to enclose a copy of an application for addition of parties in the case. It is requested that para-wise comments may kindly be sent to this Ministry immediately so that affidavit on behalf of the Government of India could be filed. This may kindly be treated as Most Urgent.

*SM
20/8*

Dir AA

Papers to

*[Signature]
20/8*

Yours faithfully,

[Signature]

(Amar Chand)

Under Secretary to the Govt. of India

Tel: 24610466

*Relevant file placed below please.
[Signature] 24/8
Dir AA*

*Log No. 1328650/PMO
2018*

SPEED 1225 (11)

By/Hand/Speed Post.

MOL. F. No. 909/Homc/09/1756/3417
(IN ALL CORRESPONDENCE THE FILE NO.
AND CAUSE TITLE MAY CLEARLY BE GIVEN)

Tele: 22484806
FAX : 22311646

MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
BRANCH SECRETARIAT, KOLKATA

11, Strand Road,
Kolkata- 11

Date: 31-7-09

To ✓ Mr S.K. Malhotra
Dy Secy (Legal)
Min of Home Affairs
Lok Nayak Bhawan
Khan Market
N-D-110503

Sub:

CAN- 2133 of 2009
WP- 27571 (2 of 6)
Sri Ashim Ganguly.

Sir/Madam,

Please note that Sri/Smt. Taruna Bhagshah
(Bar Assn. Room No. High Court, Calcutta Telephone No. 943350696C
has been engaged in the aforesaid matter as Advocate on Record
with Sri/Smt. R.N. Das, Spl Counsel (Bar Assn. Room No.
High Court, Calcutta Telephone No. 9830268681 as his/her Sr.

You are requested to depute one conversant officer with
all relevant documents of the case and furnish parawise comments
brief history and necessary instruction etc. for drawing Affidavit in
Opposition /Reply/Application/Appeal etc to contact this Ministry and
counsel engaged to do the needful and keep this office posted with
the current development of the case from time to time.

Incidental costs may be paid to the Advocate on Record for
filing vakalatnama and Affidavit in Opposition etc.

Duly signed Vakalatnama by the concerned department of UOI
may be furnished immediately after receipt of this letter.

Department concerned is request. to return the petition/
application as enclosed after making xerox.

US(F)
9
7/8

Pl put up immediately
by
7/8
SO (Cdn)

Yours faithfully,
S. S. Mukherjee
(S. S. Mukherjee)
Jr. Central Govt., Advocate.

Encl: AS above.

Fax:

- 1. CAN No. 2133 of 09
- 2. Letter dtd 21-7-09
- 3. Letter dtd 14-7-08

Tarun Kumar

Advocate
High Court, Calcutta.

Bar Association
Room No: 2
High Court, Calcutta
Ph. Bar Association : 2248-5579/3190
Fax No. (033) 2248-2313
E-mail : barasohc@cal.cnic.net.in

Chamber : 2350-VI/28 & 2351-2855
Mobile : 9433506066
Fax No: (033) 2350-9128
Chamber :
10-A, Dr. Kartick Bose Street
1st floor, Kolkata - 700 009.
Visiting Hours : 10 p.m. to 9 p.m.

25, 14
27

By Hand
Through Special Messenger

The 14th July, 2008.

To
The Additional Government Counsel,
Ministry of Law & Justice
Department of Legal Affairs, Branch Secretariat,
11, Strand Road, Kolkata - 700 001.



Your Ref. Nos. 1204/Home/06/III dt. 21.12.2006 and
1204/Home/06/III/1824 dt. 30.07.2007

Re : W. P. No. 27541 (W) of 2006
vs. Ujjain Ganguly & Anr.Petitioners.
vs. Union of India & Ors.Respondents.

(The matter pending in the Hon'ble High Court, Calcutta)

Attention : **Mr. C. S. Makkar, Jr. Central Govt. Advocate,**
Ministry of Law & Justice.

Dear Sir,

Kindly refer to my letter dated 18th March, 2008 addressed to Mr. S. K. Malhotra, Deputy Secretary to the Govt. of India, Ministry of Home Affairs, PS Division, Cdn Secretariat, Room No. 2, Lok Nayak Bhawan, Khan Market, New Delhi - 110003 and a copy of the said letter forwarded to the Additional Government Counsel, Ministry of Law & Justice, Department of Legal Affairs, Branch Secretariat, 11, Strand Road, Kolkata - 700 001 about affidavit-in-opposition to this case.

However, the matter was listed in the daily supplementary list dated 11th July, 2008 of Their Lordships of the Hon'ble Mr. Surinder Singh Nijjar, Chief Justice and the Hon'ble Justice P. N. Chandra Ghose under the head "Hearing" and placed for hearing before Their Lordships on 11.07.2008 itself.

I myself along with Ld. Sr. Counsel Mr. R. N. Das appeared on your behalf at the time of its oral and filed affidavit-in-opposition dated 05th March, 2008. The matter was heard after hearing the Ld. Advocates for the respective parties an application for adjournment of parties filed by the Ld. Advocate Miss Debjani Ghosal allowed. Their Lordships directed that the matter will be placed for further hearing after 2(two) weeks.

Contd..... P 2.

Handwritten notes:
To be reviewed by
immediately

Handwritten notes:
Urgent
S. K. Malhotra
14/07/08

Handwritten signature and date:
14/07/08

Tarun Kumar Ghosh

Advocate.
High Court, Calcutta.

Bar Association

Room No: 2

High Court, Calcutta

Ph. Bar Association : 2248-5579/3190

Fax No. (033) 2248-2313

E-mail : barasohc@cal.cmc.net.in

Chamber : 2350-9128 & 2351-2988

Mobile : 9433506066

Fax No: (033) 2350-9128

Chamber :

10-A, Dr. Kartick Bose Street,

1st floor, Kolkata - 700 002.

Visiting Hours : 6 p.m. to 9 p.m.

1143
978

:: 2 ::

The 14th July, 2008

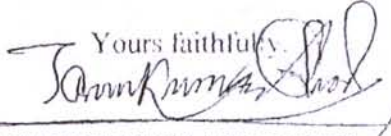
In view of the matter, in the view that opposition is necessary to be filed on or before the next date of hearing against the contents of application for addition of parties file by the Ld. Advocate Miss Debjani Ghosal.

I am enclosing herewith a copy of application for addition of parties being CAN No. 2133 of 2007 for consideration.

This is for your kind and doing the needful.

Thanking You

Encls: 15
As stated above.

Yours faithfully,


(TARUN KUMAR GHOSH)

Advocate.

14.07.2008

23-0145

Tarun Kumar Ghosh
Advocate
High Court, Calcutta

Bar Association
Room No. 2
High Court, Calcutta
Bar Association : 2248-5579/3190
Fax No. (033) 2248-2313
E-mail : barasohc@cal.cmc.net.in

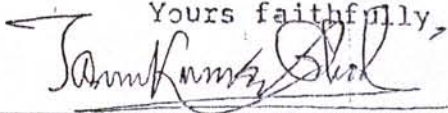
10-A, Dr. Kartick Bose Street,
1st Floor, Kolkata-700009
Phone : 2350-9128 & 2351-2988
Mobile : 9433506066
Visiting Hours : 6 P.M. to 9 P.M.

2 ;;

The 21st July, 2009.

The matter was taken up for hearing on 03rd July and 10th July 2009. At the time of its hearing, I myself led by the Ld. Senior Counsel Mr. R.N. Das. appeared on your behalf. The matter was heard. After hearing the Ld. Advocates for the parties, their Lordships directed to be placed the matter again on 20th August 2009 for further hearing.

This is for your record and doing the needful.
Thanking you,

Yours faithfully,


(TARUN KUMAR GHOSH)
Advocate.
21.07.2009

KOLKATA
DISTRICT-HOWRAH

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL JURISDICTION

APPELLATE SIDE

CAN NO. 2133 OF 2008

W.P. NO. 27541 (W) OF 2006

IN THE MATTER OF

An application for addition of parties

IN THE MATTER OF

Sri Ashim Kumar Ganguly & Anr

.....PETITIONERS

Verus

The Union of Ind

.....RESPONDENTS

258/146
23

2

147
559/1
252

IN THE MATTER OF

1. Sri Surajit Dasgupta, son of Late

Jatindra Mohan Dasgupta, by

occupation business, resident of

25/1, Guruprasad Chowdhury Lane,

P.S. Amherst Street, Kolkata-700 006

2. Shri Keshav Bhattacharjee, Advocate

son of *Late Basudev Bhattacharjee*

Bhattacharjee, Bar Association, Room

No. 4, High Court Calcutta;

3. Sri Nandalal Chakraborty, by

occupation, Head of the Department

of Political Science, Presidency

College, resident of 559/1, Dakshin

260/148
23

3

Dari Road, P.S. lake Town, Kolkata-
700 048

4. Dr. Madhusudan Pal, by occupation
Assistant Professor, Calcutta Medical
College Hospital, resident of A/5/2,
Sharabani Abashan, Salt Lake, Sec-
III, Kolkata-700 009.

5. Sri Tarun Kumar Mukherjee son of
Late Gobindalal Mukherjee, resident
of 2/1, Brindaban Mullick 1st Lane,
P.S.- Amherst Street, Kolkata- 700
009.

6. Sri Jagatjit Dasgupta son of Late
Jatindra Mohan Dasgupta, resident of

267 (149)
234

25/1 Guruprosad Chowdhury Lane,

P.S.- Amherst Street, Kolkata-700

006.

7. Sri Kusal Sankar Chowdhury son of

Chowdhury, resident of 32 B, Justice

Manmatha Mukherjee Row, P.S. -

Amherst Street, Kolkata-700 009.

8. Shri Siddneswar Bhattacharjee,

resident of Hatepara " Matri Bhavan",

P.O. Krishnnagar, Pin Code- 741 104,

District- Nadia

9. Shri Sunil Krishna Gupta, resident of

38, Vic r Street, P. r st

Street, l ta- 10 009

.....APPLICANTS

262 LIS
235

To the Hon'ble Surri... [unclear] jar, the Chief Justice and his

Companion of Justice... of the said Hon'ble Court

the humble petition of the above-named

petitioners

Most Respectfully

1. The Applicants... of India and a part of the public of India.

The Applicants... occasions have also espoused cause of the

people in representative capacity on the subject "Netaji Subhas

Chandra Bose" as described herein below. The people at large from

all corner of the country including West Bengal have encouraged and

requested the Applicants to espouse the cause on the subject "Netaji

Subhas Chandra Bose" to prevent mischievous role played by the

respondent, Government of India and others in unleashing mis

information against Netaji Subhas Chandra Bose, as such the Applicants

are moving the instant application for addition of parties.

263/151
23

2. The Applicants have voluntarily engaged themselves in research work on the life of Subhas Chandra Bose for more than last 25 years at their own cost and sacrifice. The applicants moved before the Hon'ble Supreme Court of India, under Article 32 of the Constitution of India, challenging the conferment of the "Posthumous Bharat Ratna" award to Netaji Subhas Chandra Bose. The Division Bench consisting of the Hon'ble Justice Sujata. V. Monohar and the Hon'ble Justice G.B. Pillai after hearing at length cancelled the said "posthumous" award.

The applicants have filed a Writ Petition, as a Public Interest Litigation through one of their associate before the Hon'ble Calcutta High Court, being W.P. No. 281 of 1998 praying inter alia for direction to set up a Commission of Inquiry to give a clinching insight into the mysterious disappearance of Netaji Subhas Chandra Bose. The Hon'ble Division Bench consisting of the Hon'ble Chief Justice Prabha Sankar Mishra (as his Lordship) and the Hon'ble Justice Bhaskar

264/152
257

Bhattacharyya directed the Government of India to set up an Inquiry Commission to the clinching findings on the mysterious disappearance of Netaji Subhas Chandra Bose. The Government of India was compelled to set up such Inquiry Commission by appointing a retired judge of the Hon'ble Supreme Court Justice Manoj Kumar Mukherjee as Chairman of the Commission.

3. The applicant appeared before the Justice Mukherjee Commission of Inquiry on the mysterious disappearance of Netaji Subhas Chandra Bose and has submitted volume of documents, which have been obtained from National Archives as well as from foreign countries which are authentic and genuine and said commission has relied upon the statement and the documents filed by the applicants, with much appreciation which were admitted by the Government of India.

265
153

8

4. That the applicants are working with an object inter alia to preach, promote and propagate the great humanistic ideals, thoughts and sentiments of Netaji Subhas Chandra Bose in the making of modern India among the people at large and also to eradicate misinformed campaign for distortion of history.

5. The applicants have a keen interest in the subject matter, as they have carried out extensive research work on the subject matter of mysterious disappearance of Netaji Subhas Chandra Bose and came across several important secret documents which could unfold the mystery of Netaji's disappearance.

6. The only reliable documents to establish the alleged death of Netaji Subhas Chandra Bose is Death certificate and cremation permit in Japanese language which on translation appears to be a death certificate of one Ichiro Okuro

218
239
154

7. The Government till date never disclosed their stand that it has any record to establish that Netaji Subhas Chandra Bose died in the plane crash on August 18, 1945 and the ashes kept in the temple are that of Netaji Subhas Chandra Bose. On the contrary, Learned Senior Counsel of the Government made an unambiguous submission before the Division Bench of the Hon'ble court to the effect that;

" the Government of India has been maintained and is maintaining a position that a further / fresh enquiry / prove is required and the information that Netaji died in the plane crash on August 18, 1945 is full of loopholes, contradictions and therefore incorrect."

The above mentioned observations of the Learned senior Counsel for the Government of India has been reported in AIR 1999 Calcutta-9

8. The documents in category marked as top secret records maintained by the Government of India reveals as follows:-

i) File No. 10000/57 PM

A secret letter of Shri M.O Mathai dated 2/12/1954 communicated to the Joint Secretary (AD), Government of India to the effect;

"A sum of Rs. 200/- and odd was received by the Minister of External Affairs from our Embassy in Tokyo along with the ashes and other remains of the Late Shri Chandra Bose".

268/158
214

It is clear that the ashes initially kept in the Renkoji Temple have been taken back to India, possibly the genuineness of the ashes was doubtful. The ashes now kept in the Renkoji Temple are not the alleged ashes of Netaji Subhas Chandra Bose.

ii) Parliamentary Questioning Records

The then Home Minister Shri Moraji Desai on 28th August, 1978 on the floor of the Parliament declared that;

There have been two enquires into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Tezgaon airfield during his air-journey to Manchuria, one was a committee presided over by Major-General Shah Nawaz Khan and the second by a one-man Commission of Inquiry headed by Shri C.D. Khosla, retired Judge of the Punjab High Court. The Majority report of the first Committee

2-6-9157
247

and S... hold the report of the death as true. Since
then, ... doubts have been cast on the correctness of
the ... reached in the two reports and various
important ... in the testimony of witnesses have
been ... further contemporary official documentary
records ... become available. In the light of those
doubt ... and those records, Government find
it difficult to ... that the earlier conclusions are decisive

iii) File No. 1/90-Pol

A note ... Shankar, the Director of Prime Minister
Office dated ... August 1990, on the proposal of Mr. Shanti
Lal Patel a member of Parliament for bringing back the alleged
ashes from ... to India states interalia that:-

... S.C. Bose again wrote to Prime Minister
Sri ... Gandhi saying that there was no convincing

270/158
243

proof that the analysed ashes were genuine. In view of this, Government of India did not treat the findings as conclusive and did not bring back the ashes to India. The ashes have been lying in Japan since 1945. The Government of India provides an annual grant of maintenance of the temple"

iv) File No. 111/111/Vol-2(LW-KW)

The first Secretary, Indian Embassy Tokyo, T.N. Kaul in his note dated 28.7.1955 stated inter alia,

"My impression is that while Government of India has accepted the fact of Netaji's death, we haven't necessarily accepted that the ashes in the Renkoji Temple are his ashes"

In the statement and Shri T.N. Kaul raised an interesting question:

24/159

14-

"While we accept Netaji's Death, do we accept these ashes as the real ones"

v) File No. 2111/NE(2) Vol-2(LW-KW):

Shri A.K. Das, Joint Secy. to Govt. of India in
his note dated 13/12/56 stated :-

"Without in any way committing ourselves to the identity of the ashes, we could recompense the priest and the temple by a one-time annual Grant which wouldn't be for the custody of ashes but as a reward for their non-standing loyalty to the Nation"

Shri Das in his said note further stated that:-

"Even if it finally transpires that the ashes aren't the real ones, still this amount would in no-way be an excessive compensation"

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275/160

vi) File No. 10/12/1966 Vol-2(LW-KW)

An official note dated 10/12/1966 issued under the signature of Shri W. D. Datta, Director (Finance), Government of India stated

"But the expenditure has not been pronounced genuine, one has to find justification for incurring the expenditure on their services abroad...In any case if the purpose of the expenditure is not to be disclosed, which, I presume is the intention, it can be made only from discretionary grants of this Ministry."

vii) File No. 10/12/1973 Vol-2(LW-KW):

An official note dated 06/12/1973 issued by Shri P.K. Budhwar, Secretary, Ministry of External Affairs (East

248/161

Asia Division... referring to Muchizuki's statement that he was a... Netaji and people who brought the ashes was...

" A... of this nature could throw doubt on the authenticity of these ashes & it is, therefore, for... whether we should continue making such... of an item whose authenticity would also... some doubt."

Viii) 12(3)/98-NGO

The above... file contents are top secret internal note on the subject "Return of Netaji's ashes to India" under the signature of... Shukla, Joint Secretary (P) dated 1st April, 1998...

"... discussed again in the Cabinet on 8 February, 1965 and it was decided that the ashes would not

be brought to the attention of the Government of India for the present but that the dependability of the arrangements in Japan should be examined. It was also felt that we could raise our annual contribution from Y 600,000 to Y 1 million"

9. Applicants asserted that the above-mentioned secret documents are maintained in the files of the government of India and those files were produced before the Hon'ble Justice Mukherjee Commission of Enquiry. The applicants have gone through the contents of those files and taken note of.

10. The applicants state that the Official notes contained in those secret files show that the ashes kept in the Renkoji Temple are not genuine but the Government of India incurring huge fund from public money for an oblique purpose to mislead the people of the country, which is malafide, unfair and illegal, as

such, the Government of India should be prevented from incurring such expenditure from the public Exchequer.

11. The applicants submit that they have researched the subject matter and collected above-mentioned information along with many other which will enable this Hon'ble Court to fully and completely to adjudicate upon and settle all the questions involved in the writ application, as such, the applicants are desirous party to be added to the writ petition.

12. The applicants submit that they are very much interested in this subject matter involved in the writ petition being filed under Art. 32 of 2006 and intend to place all the relevant documents in connection with the subject matter involved in the said writ petition.

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9 -

13. Unless the applicants are added as party to the writ petition No. 27541(W) of 2006, the cause and purpose of the writ petition shall be prejudicially affected.

14. The instant application is made bonafide and for the interest of the justice.

Under the facts and circumstances stated above your applicants most humbly pray that your Lordships may graciously be pleased to allow this application for addition of parties by directing the petitioners to add the applicants as party

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~~250~~

performa respondents in the writ
petition being W.P. No. 27541(W)
of 2006;

And such other or further order or
orders as to your Lordships may
seem fit and proper for the ends of
justice.

250/166

performa respondents in the writ
petition being W.P. No. 27541(W)
of 2006;

And such other or further order or
orders as to your Lordships may
seem fit and proper for the ends of
justice.

278
251
167

I surajit Dasgupta, son of late Anandra Mohan Dasgupta, aged about 51 years by occupation business assistant of 25/1, Guruprasad Chowdhury Lane, P.S. Amherst Street, Kolkata - 700006 do hereby solemnly affirm and say as follows;

1. That I am the petitioner and am well acquainted with the facts and circumstances of the case. I have been duly authorized by the other petitioners to affirm the affidavit on their behalf, as such, I am competent to affirm this affidavit.

2. The statement made in paragraphs 1,2,3,4,5,6,7,8,9 and 10 are true to my knowledge on the information derived from the records which I verify to be true and those made in paragraphs 11,12,13 are my humble submissions before this Hon'ble court.

Prepared in my office

sl
Advocate

sl
Deponent is known and

identified by me

sl
Advocate

Solemnly affirmed before me

(Signature) day of March, 2008

COMMISSIONER

252

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Appellate Side

W.P. No 27541, of 2006

CAR 2133 of 2008

In the matter of:

an application under Article 226 of the
Constitution of India:

And

the matter of:

application for addition of parties

And

the matter of:

Shri Ashim Kumar Ganguly & Ors

.....Petitioners

Versus

Union of India & Ors

.....Respondents

And

in the matter of:

Shri Surajit Dasgupta and Ors

Applicants

APPLICATION

Miss Debjani Ghosal Advocate
Bar Association Room No.2
High Court, Calcutta
Room No. 20B,
10 Old Post Office Street,

1169

11/2

Most Immediate

PRIME MINISTER'S OFFICE

[Political Section]

South Block, New Delhi - 110 101

Subject: CAN No. 2133 of 2008 in WP No. 27541(W) of 2006- Shri Ashim Kumar Ganguly & ors versus Union of India & Ors

Reference is invited to Ministry of Home Affairs' letter no. I/12014/12/2007-Cdn. dated 2.9.09 on the above subject requesting para-wise comments in respect of the above mentioned court case.

2. The copy of the writ petition received in this office is illegible. The section has telephonically requested thrice for the legible copy of the petition. It is requested that a clear copy of the petition may kindly be sent to this office urgently.



(Amit Agrawal)
Director
Tel: 2301 2613

Ministry of Home Affairs
[Attn.: Shri Amar Chand - Under Secretary]
Internal Security-II Division, Cdn Section
9th Floor, 'C' Wing, Lok Nayak Bhawan, New Delhi

PMO ID no. 1339741/PMO/2009-POL

Dated: 9.9.2009



120

12/R

No.I/ 12014/12/2007-Cdn.
Ministry of Home Affairs
Internal Security-II Division
Cdn. Section

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 2nd September , 2009.

To
Shri Amit Aggarwal,
Director,
PMO, South Block,
New Delhi.

Subject: CAN No.2133 of 2008 in WP No. 27541 (W) of 2006 –
Shri Ashim Kumar Ganguly & ors versus Union of
India & Ors.

Sir,

I am directed to refer to PMO ID No. 915/11/c/2/2006-Pol dated 1.9.2009 on the above mentioned subject and to say that File No 23(ii) 56-57 PM and File No. 800/6/c/1/90-Pol mentioned in the petition pertains to PM Office. The case is coming shortly. It is requested that para-wise comments may kindly be sent to this Ministry immediately so that affidavit on behalf of the Government of India could be filed. This may kindly be treated as Most Urgent.

10/E

Papers pl.
7/9

Yours faithfully,

(Amar Chand)

Under Secretary to the Govt. of India

Tel: 24610466

Our affidavit/pleaded content below #10(E) HLR 2 p 56(W) may kindly be seen. 2/9 D.M.A. 7/9

Pl. check with him on whether he got our reply and

A. speaking authority.

1339741 So (Pl.)

7/9

13/9

(17)

Most Immediate
Court Case

PRIME MINISTER'S OFFICE

[Political Section]

South Block, New Delhi - 110 101

Subject: CAN No. 2133 of 2008 in WP No. 27541(W) of 2006 - Shri Ashim Kumar Ganguly & ors versus Union of India & Ors

Reference is invited to Ministry of Home Affairs' letter no. I/12014/12/2007-Cdn. dated 2.9.09 on the above subject.

2. The undersigned is directed to forward the following files, in original, to ^{enquire MHA to} draft an appropriate affidavit in the matter:

S. N	PMO File no.	Subject	Total pages
1.	800/6/C/1/1990-POL	Netaji Subhash Bose-bringing in the ashes of	note 1 to 6 and corrs. 1 to 35
2.	23(11)56-57-PM/NGO	I.N.A. Treasure	Page 1 to 67




(Amit Agrawal)
Director
Tel: 2301 2613

Ministry of Home Affairs
[Attn.: Shri Amar Chand - Under Secretary]
Internal Security-II Division, Cdn Section
9th Floor, 'C' Wing, Lok Nayak Bhawan, New Delhi

PMO ID no. 1339741/PMO/2009-POL

Dated: 15.9.2009

Encl.. 2 (two) files in original

 15/9/09 (w.f.)

1172

14/R

No.I/ 12014/12/2007-Cdn.
Ministry of Home Affairs
Internal Security-II Division
Cdn. Section

9th Floor, 'C' Wing,
Lok Nayak Bhawan,
New Delhi, the 10th September, 2009.

To
Shri Amit Aggarwal,
PMO, South Block,
New Delhi.

Subject: CAN No.2133 of 2008 in WP No. 27541 (W) of 2006 – Shri
Ashim Kumar Ganguly & ors versus Union of India & Ors.

Sir,

I am directed to refer to PMO I.D.No.1339741/PMO/2009-POL dated 9.9.2009 on the above mentioned subject and to enclose a copy of relevant extracts from the Writ Petition. It is requested to send the comments to this Ministry immediately so that affidavit on behalf of the Government of India could be filed. This may kindly be treated as Most Urgent.

Yours faithfully,



(Amar Chand)

Under Secretary to the Govt. of India

Tel: 24610466

*P1. speak urgently
with the relevant records.*

so (h.l.)



11/9

The above mentioned submissions of the Learned senior Counsel for the Government of India has been reported in AIR 1999 Calcutta-9

8. The documents and records in category marked as top secret records maintained by the Government of India reveals as follows:-

i) File No. 23(ii)/56 57 PM

A secret note of Shri M.O Mathai dated 2/12/1954 communicating to the Joint Secretary (AD), Government of India to the effect that ;

PMO

"A small amount of Rs. 200/- and odd was received by the Minister of External Affairs from our Embassy in Tokyo along with the ashes and other remains of the late Shri Subhas Chandra Bose".

It is crystal clear that the ashes initially kept in the Renkoji Temple has been taken back to India, possibly the genuineness of the ashes was doubtful. The ashes now kept in the Renkoji Temple are not the alleged ashes of Netaji Subhas Chandra Bose.

ii) Parliament proceeding Records

The then Prime Minister Shri Moraji Desai on 28th August, 1978 on the floor of the Parliament declared that;

" there have been two enquires into the report of the death of Netaji Subhas Chandra Bose in the air-crash on 18th August 1945 at Taihoku airfield during his air-journey to Manchuria, one by a committee presided over by Major-General Shah Nawaz Khan and the second by a one-man Commission of Inquiry headed by Shri C.D. Khosla, retired Judge of the Punjab High Court. The Majority report of the first Committee

175
26
24

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 official 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

iii) file No. 800/6/C/1/90-Pol

A note of Meera Shankar, the Director of Prime Minister Office dated 23rd August 1990, on the proposal of Mr. Shanti Lal Patel a member of Parliament for bringing back the alleged ashes from Japan to India states interalia that:-

PMO

However Shri S.C. Bose again wrote to Prime Minister Smt. Indira Gandhi saying that there was no convincing

126
27
242

proof that the so called ashes were genuine. In view of this, Government of India did not treat the findings as conclusive and did not bring back the ashes to India.

The ashes have been lying in Japan since 1945. The Government of India provides "an annual grant of maintenance of the temple"

iv) File No. 25/4/NGO/Vol-2(LW-KW)

The first Secretary, Indian Embassy Tokyo, T.N. Kaul in his note dated 28/7/1955 stated interalia,

"My impression is that while Government of India has accepted the fact of Netaji's death, we haven't necessarily accepted that the ashes in the Renkoji Temple are his ashes"

In the same letter said Shri T.N. Kaul raised an interesting question:-

15/R

177

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S- II Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

Dated, the 6th Nov, 2009.

OFFICE MEMORANDUM

Subject: CAN -2133 of 2008 - W.P. No. 27541 (W) of 2006 Shri
Ashim Kumar Ganguly & Anr Vs UOI and Ors.

The undersigned is directed to refer to PMO's ID Note No. 1339741 / PMO/2009-POL dated 15th Sept, 2009 and to return herewith the following files of PMO.

S.No.	PMO File No.	Subject	Total Pages.
1.	800/6/C/1/1990 – POL	Netaji Subhash Bose – bringing in the ashes of	Note 1 to 6 and Corrs 1 to 35.
2.	23 (11) 56 – 57 – PM/NGO	INA Treasure	Page 1 to 67.

(B K Rekhi)
Section Officer (Cdn)

PMO,
[Kind attn : Shri Amit Agarwal, Director,
Political Section, South Block,
New Delhi – 1.

so (Pol.)

Pl. check the record carefully for completeness and acknowledge at your level.

1379267

1178

No. 12014 / 12 / 07 – Cdn
Government of India
Ministry of Home Affairs
I S- II Division: Cdn Section

9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

Dated, the 6th Nov, 2009.

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(B K Rekhi)
Section Officer (Cdn)

PMO,
[Kind attn : Shri Amit Agarwal, Director,
Political Section, South Block,
New Delhi – 1.

So (Pol.)

Pl. check the record carefully for completeness and acknowledge at your level.

16/11

1179

PRIME MINISTER'S OFFICE

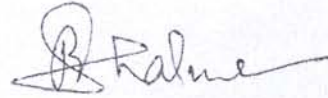
[Political Section]

South Block, New Delhi - 110 101

Subject: CAN No. 2133 of 2008 in WP No. 27541(W) of 2006- Shri Ashim Kumar Ganguly & ors versus Union of India & Ors

Reference is invited to Ministry of Home Affairs' letter no. 12014/12/07-Cdn. dated 6.11.09 on the above subject.

2. The undersigned is directed to acknowledge that the file no. 800/6/C/1/1990-POL and 23(11) 56-57-NGO has been received.


(Rajesh Sharma)
Section Officer

Ministry of Home Affairs
[Attn.: Shri B. K. Rekhi- Section Officer]
Internal Security-II Division, Cdn Section
9th Floor, 'C' Wing, Lok Nayak Bhawan, New Delhi



PMO ID no. 1379267/PMO/2009-POL

Dated: 17.11.2009

Pr 3


17/11

17/R

180

संयुक्त सचिव
JOINT SECRETARY



गृह मंत्रालय
भारत सरकार
एन.डी.सी.सी.॥ बिल्डिंग
जय सिंह रोड, नई दिल्ली-110001
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NDCC-II BUILDING,
JAI SINGH ROAD, NEW DELHI - 110001

Smt. Bina Prasad
Joint Secretary(S)
Tel No: 23438085

D.O. No. 12014/14/2013-Cdn.

Dated 13.05.2013

Dear Shri

I would like to bring to your notice that Public Interest Writ Petition in High Court of Delhi at New Delhi.W.P.(c) No.....2013 Shri Prashant Paliwal Vs Union of India shall be listed on Wednesday (15.05.2013) as informed by the Central Government Counsel. A copy of the Writ Petition is enclosed.

Ministry of Home Affairs has submitted the brief to the Central Government Counsel Shri Jatan Singh(copy enclosed). Now, an e-mail has been received from him requesting us to intimate the stand of the Union of India with regard to bringing back the ashes of Netaji Subhash Chandra Bose and giving them respect in accordance with Hindu traditions (copy enclosed).

8-9
2

Earlier Ministry of External Affairs vide communication No. 25/04/NGO XVI dated 30.12.2007 had submitted comments w.r.t. Writ Petition No. 27541/2006- Shri Ashim Kumar Ganguly and ors Vs UOI and ors. (Copy enclosed).

I shall be grateful if you could send us the update on the matter by fax so that the matter is brought to the notice of the Court to dismiss the matter on admission.

Bina Prasad
(Bina Prasad)
Joint Secretary (S)
Tel-fax No.23438085
Fax-23438085

RB M
13/5
Pot

Shri Mridul Kumar,
Joint Secretary (Coord.),
Ministry of External Affairs,
Room No. 79, South Block.

for no pl. 13/5

P-3
Relevant files please below P/A
one relevant P/A's with public wing (F/A) P/A
14.5
DIR (T)

3751239

Copy to:

✓ Shri Rajiv Topno, Director, Prime Minister Office, South Block, New Delhi with a copy of the Public Interest Petition and other relevant documents for sending comments on behalf of PMO.

5/13/13

NIC Messenger Express

182


Welcome ASHISH V GAWAI UNDER SEC

[Help](#) [Log Out](#)

[Folders](#) [Inbox](#) [Sent](#) [Trash](#) [Drafts](#) [Addresses](#) [Outbox](#)

av.gawai@nic.in: Inbox

Move message to folder: 

From [Jatan Singh <jatan_singh@yahoo.com>](#)

Sent Saturday, May 11, 2013 4:28 pm

To [ASHISH V GAWAI UNDER SECRETARY <av.gawai@nic.in>](#)

Subject Re: PIL Delhi High Court (Prashant Paliwal v. Union of India)

Dear Mr. Gawai,

As you are aware that the Petitioner in the above mentioned case has asked for a direction to the Respondents to bring back the last remains of Late Mr. Subash Chander Bose to India and thereafter submerge the same into the holy Ganges and also from the top of Himalayas as has been the case of other National Leaders .

On a perusal of the brief note sent by your office it is clear that the ashes of Late Mr. Subash Chander Bose are lying at the Renokoji Temple in Tokyo (Japan).

Although the first aspect is clear, the question which would still remain for active consideration before the court would be the duty of this nation to ensure that due respect is accorded to his last remains and that the same are submerged in accordance with the Hindu Traditions.

Therefore, i would request you to kindly intimate us the stand of the Union with regard to bringing back the remains from Japan and giving them respect in accordance to the Hindu tradition.

Regards,

Jatan Singh

Central Government Standing Counsel

--- On Fri, 5/10/13, ASHISH V GAWAI UNDER SECRETARY <av.gawai@nic.in> wrote:

From: ASHISH V GAWAI UNDER SECRETARY <av.gawai@nic.in>
Subject: PIL Delhi High Court (Prashant Paliwal v. Union of India)
To: "Jatan Singh" <jatan_singh@yahoo.com>
Cc: ashishgawai@hotmail.com
Date: Friday, May 10, 2013, 4:13 PM

Dear Sh.Jatan Singh,
PI find the brief along w a letter in the PIL namely Prashant Paliwal Vs UOI which is self explanatory.

Ld. Asst. Secy
Sh. Satam Singh case

File No. *114.6/13*
Litigation (HC) Section
Supt. (Legal)

183

**IN THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI**

[EXTRA ORDINARY WRIT JURISDICTION]

W.P.(C) NO. _____ OF 2013

PUBLIC INTEREST PETITION

IN THE MATTER OF

SHRI PRASHANT PALIWAL ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

I N D E X

SL. NO.	PARTICULARS	PAGES	C. FEE
1.	NOTICE OF MOTION	1	
2.	URGENT APPLICATION	2	
3.	MEMO OF PARTIES	3	
4.	LIST OF DATES AND EVENTS	4-6	
5.	PUBLIC INTEREST PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH THE PROVISIONS OF ARTICLE 14 & 21 OF THE CONSTITUTION OF INDIA		7-22

Service Accepted for U.P.I.
Respondent No. 1
On *6/5/13*
at *12*
Union of India
449, Litigation (HC) Section

- 184
6. AFFIDAVIT IN SUPPORT 23-25
 7. APPLICATION U/S 151 CPC 26-27
FOR EXEMPTION
 8. AFFIDAVIT IN SUPPORT 28-29
 9. COPY OF LETTER DATED 30-31
14-01-2012
 10. COPY OF REMINDER 32-33
DATED 12-03-2013
 11. VAKALATNAMA 34

PETITIONER

DATED : 27.04.2013
THROUGH
DELHI

**[SUGRIVA DUBEY / ANURAG DUBEY/
ANURAG DUBEY]
ADVOCATES**

31/43, VISHWAS NAGAR,
SHAHDARA, DELHI-110032
PH: 9868241144

185
IN THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI

[EXTRA ORDINARY WRIT JURISDICTION]

W.P.(C) NO. _____ OF 2013

PUBLIC INTEREST PETITION

IN THE MATTER OF

SHRI PRASHANT PALIWAL ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

NOTICE OF MOTION

To,

The Standing Counsel

Union of India / Govt. of NCT of Delhi /

New Delhi

Sir,

Please take notice for and on behalf of
petitioner in the matter of _____.


Please be intimated that the matter is being
listed for hearing on 2-5-2013 and you are
requested to be present before the Hon'ble Court
when the case is called.

PETITIONER

DATED :27.04.2013

THROUGH

DELHI


[SUGRIVA DUBEY / NAMITA ROY /
ANURAG DUBEY]
ADVOCATES

31/43, VISHWAS NAGAR,
SHAHDARA, DELHI-110032
PH: 9868241144

2
186

IN THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI

[EXTRA ORDINARY WRIT JURISDICTION]

W.P.(C) NO. _____ OF 2013

PUBLIC INTEREST PETITION

IN THE MATTER OF

SHRI PRASHANT PALIWAL ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

URGENT APPLICATION

To,

The Registrar

Hon'ble High Court of Delhi at New Delhi

New Delhi

Sir,

Kindly treat the accompanying Public Interest Petition Under Article 226 of the Constitution of India Read as an urgent one as per the High Court rules and regulation. The ground for urgency is as under:-

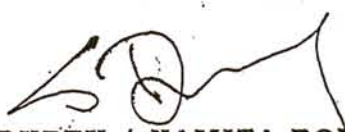
The public interest petition is urgent in nature as being prayed for.

PETITIONER

DATED :27.04.2013

DELHI

THROUGH


[SUGRIVA DUBEY / NAMITA ROY
/ANURAG DUBEY]
ADVOCATES

5
187

IN THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI

[EXTRA ORDINARY WRIT JURISDICTION]

W.P.(C) NO. _____ OF 2013

PUBLIC INTEREST PETITION

IN THE MATTER OF

SHRI PRASHANT PALIWAL ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

MEMO OF PARTIES

SHRI PRASHANT PALIWAL

S/O SHRI S.C. PALIWAL

R/O 31/43, B.S. COLONY,

DELHI-110032.

...PETITIONER

VERSUS

UNION OF INDIA

THROUGH ITS SECRETARY,

MINISTRY OF HOME AFFAIRS,


NORTH BLOCK, NEW DELHI-01 ...RESPONDENT

PETITIONER

DATED : 27.04.2013

THROUGH

DELHI


[SUGRIVA DUBEY / NAMITA ROY/
ANURAG DUBEY]
ADVOCATES

31/43, VISHWAS NAGAR,
7 SHAHDARA, DELHI-110032
PH: 9868241144

4
188

IN THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI

[EXTRA ORDINARY WRIT JURISDICTION]

W.P.(C) NO. _____ OF 2013

PUBLIC INTEREST PETITION

IN THE MATTER OF

SHRI PRASHANT PALIWAL. ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

LIST OF DATES AND EVENTS

- 1944 : The aircraft in which Late Subhash Chandra Bose was traveling from India to Germany crashed on way to Germany.
- 1948 : The father of nation died and tributes
- 1950 : The Constitution of India was enforced by the respondents for the country.
- 1951 : The tributes were paid on the

Rajghat by the National Leaders and this tradition of paying tributes commenced.

1964 : The then Prime Minister of the country i.e. Pandit Jawahar Lal Nehru died and large area of land known as Shanti Van was developed in memory of Late Pandit Jawahar Lal Nehru.

1981 : Sanjay Gandhi who was neither a constitutional head nor a person who gave scarifies of the nation has been cremated and the land has been developed in his name also adjacent to the Shakti Sthal.

30-11-1984: Late Mrs. Indira Gandhi was assassinated and bhas area of land near Rajghat was developed in the memory of Late Mrs. Indira Gandhi.

Late Shri Jagjeevan Ram died and acres of land was

developed in Memory of Late Babu Jagjeevan Ram.

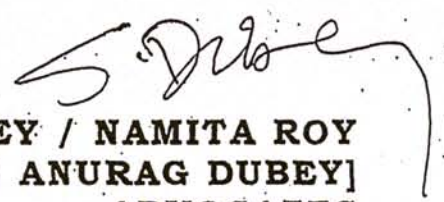
1991 : Late Rajeev Gandhi was assassinated and the vast area of land was developed under the name and style Veer Bhoomi.
Hence the present petition.

PETITIONER

DATED :27.04.2013

DELHI

THROUGH



[SUGRIVA DUBEY / NAMITA ROY / ANURAG DUBEY] ADVOCATES

7 191

IN THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI

[EXTRA ORDINARY WRIT JURISDICTION]

W.P.(C) NO. _____ OF 2013

PUBLIC INTEREST PETITION

IN THE MATTER OF

SHRI PRASHANT PALIWAL
S/O SHRI S.C. PALIWAL
R/O 31/43, B.S. COLONY,
DELHI-110032. ...PETITIONER

VERSUS

UNION OF INDIA
THROUGH ITS SECRETARY,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI-01 ...RESPONDENT

**PUBLIC INTEREST PETITION UNDER
ARTICLE 226 OF THE CONSTITUTION OF
INDIA READ WITH THE PROVISIONS OF
ARTICLE 14 OF THE CONSTITUTION OF
INDIA READ WITH ARTICLE 19 & 32 OF
THE CONSTITUTION OF INDIA FOR
DIRECTION TO THE RESPONDENT TO
BRING THE ASHES OF LATE SHRI
SUBHASH CHANDRA BOSE WHICH IS
LYING IN THE MUSEUM OF GERMANY.**

Contd...2

MOST RESPECTFULLY SHOWETH:-

1. That briefly the case of the petitioner is that the petitioner is a social worker and the petitioner has no personal interest in the litigation and the proceedings being filed in the form of Public Interest Petition. The petitioner has been working for the welfare of the society and the petition is not guided by self gain or for gain of any other person institution/body and there is no motive other than of public interest in filing the present petition.

2. That the petitioner has been working for the welfare of the society and has a good image but surprisingly the petitioner has come to know through the different media about the ashes of Late Subhash Chandra Bose the freedom fighter which are lying in the

Contd...3

museum in Germany and the respondent has never been bothered to bring the ashes of Late Subhash Chandra Bose for immersion in Holy River Ganga as per as per Hindu Tradition and customs.

3. That it is further submitted that the common man is being misled by not giving the background of the traditions maintained in the Hindu Communities.
4. That the common man will be benefited with this P.I.L. and the right of the common man will be protected but however these common man cannot approach the Hon'ble Court because of their economic condition and also they are incapable of approaching the Hon'ble Court for protection of their fundamental rights to safeguard the interest of the

Contd...4

freedom fighters who have lost their lives in the freedom struggle and the persons like Subhash Chandra Bose are being forgotten and even their ashes are not being brought to India.

5. That the petitioner undertakes to pay the cost in the event the same is imposed upon the petitioner by the Hon'ble Court.
6. That it is further submitted that the concerned authorities will be reminded of their functions and no other person is to be impleaded in the present case as respondent and no other person to the knowledge of the petitioner are likely to be affected by the order sought in this writ petition except the common man.
7. That it is submitted that the petitioner has been fighting for the common cause of the innocent public

Contd...5

as the common man is being kept in dark and the common man has started forgetting Subhash Chandra Bose although the leaders of the country are remembers and tributes are paid by the respondents also occasionally but none remembers the contribution of Subhash Chandra Bose given to the nation.

8. That the petitioner is filing the first public interest petition and no other public interest petition has been filed except the present petition which is being filed by the petitioner.
9. That Article 14 to 18 of the Constitution of India constitute the right to equality in other constitutions generally the right to equality is expressed as in Article, 14. As such this right was considered generally and negative right of an

Contd...6

individual not to be discriminated in excess to public offices or places or in public matters generally.

10. That article 14 is clear that the state shall not deny equality before the law or the equal protection of the laws within the territory of India. It did not make account of existing inequalities arising even from the public policies and exercise of public power.

11. That the makers of India's constitution were not satisfied with that kind of undertaking of the right to equality. They knew of the wide spread social and economic inequalities in the country sanctioned for thousands of years by public policies and exercise of public power supported by social norms and practices and in the present case it is above the social norms that a person

Contd...7

gives his life together with thousands of soldiers working with him but the nation has forgotten him and the Nation never pays any tribute to the person who has fought for the freedom of the nation.

12. That article 14 alone is sufficient to say that large number of leaders of the country who participate in the freedom struggle have been given different awards and their ashes have been dropped in different rivers being the custom of Hindus in the country as in case of Late Pandit Jawahar Lal Nehru, Mahatma Gandhi, the father of the Nation and even the ashes of Mrs. Indira Gandhi was dropped in all the rivers of the country including on the top of Himalaya but at no occasion it was remembered that the brave person i.e. Subhash Chander Bose have been ignored in all respect.

13. That the ashes of Late Subhash Chander Bose is lying in Germany and it is the duty of the state to bring back the ashes of a national leader who participated in the freedom of the nation and ultimately died in an accident.
14. That at this stage there is no controversy that Late Subhash Chandra Bose has died in an accident and the ashes are lying abroad in a Nation who has preserved the ashes out of regard to the said person but the nation is not aware and not concerned about the ashes which commands the respect for bringing back to the country the ashes of the Late Leader.
15. That as per Article 14 every leader of the Nation has to be given due respect equally who have given their life for

Contd...9

the freedom of the nation but it is only. Late Subhash Chandra Bose who has been ignored by the respondents though it cannot be ignored that it was late Subhash Chandra Bose who was getting freedom slowly and steadily by use of force but unfortunately due to circumstances beyond control, the late leader died in accident but even after the nation became free but none could remember the leader whose ashes are lying abroad and no respect is given as in case of other national leaders of the country.

16. That the guiding principles of the article 14 is that all persons and things similarly circumstanced shall be treated alike both in respect of privileges conferred and liabilities imposed and this has been laid down

Contd...10

clearly in AIR 1953 Supreme Court Page 250 and also in different cases. It has been defined the equality before the law means that the amongst equals the law should be equal and should be equally administered and that the like should be treated alike but in present case all other national leaders are remembers and also lot of work has been done by the respondents for remembers those leaders but late Subhash Chandra Bose nothing has been done upto date.

17. That hence what for bits the discrimination between persons who are substantially in similar circumstances or conditions. It does not forbid different treatment of unequals. The rule rather is that like should be treated alike and that unlike should be treated differently.

Contd...11

The same or uniform treatment of unequals is as bad as an equal treatment of equals.

- 18. That as a matter of fact all persons are not alike or equal in all respect but this is the case in which the position of Late Subhash Chandra Bose is equally placed and applications of the same laws uniformly to all the leaders will have to be taken, therefore, the principles of equality is being violated by the respondents in the present case.
- 19. That to avoid the situation laws must distinguish between those who are equals and to whom they must apply and those who are different and to whom they should not apply,
- 20. That in fact that leads to us to the important questions of legislative classifications or distinctions between

persons and things made by law. It is accepted that persons may be classified into groups and such groups may be treated differently, if there is a reasonable basis for such differences but in present case the place of Late Subhash Chandra Bose is above most of the leaders whom tributes are paid every year.

21. That article 14 forbids class legislation but does not forbid classification or differentiation which rest upon the reasonable grounds of distinction. The principle of equality does not mean that every law must have universal application to all person who are not by nature attainment or circumstances in the said position, the very needs of different classes of persons required different treatment but in the present

Contd...13

case none has been concerned about bringing the ashes of Late Subhash Chandra Bose to the nation and submerging them to the holy river of Ganda and also to the Himalaya Top.

22. That in fact the public welfare requires that persons property and occupations be classified and be subjected to different and appropriate legislation and the Government is not a simple exercise it encounters and must deal with the problems which came from persons in an infinite variety of relations. Classification is the recognition of the relations and in making it a legislature must be allowed a wild latitude of discretion and judgement but in the present case since the position of Late Subhash Chandra Bose is above the leaders who are remembers every year,

however, it cannot be compared with the father of the nation i.e. Mahatma of the Nation.

23. That India Statue Book is full of instances of special work applying only to a particular classes or group. The leaders or the freedom fighters are subject to a special legislation and special treatment but however none has been bothered about equal treatment to the great freedom fighter Late Subhash Chandra Bose and that by itself Article 14 is ignored by the respondents.

24. That the Apex Court has delivered the judgment and laid down that the equal protection of law guaranteed by Article 14 of the constitution does not mean that all the laws must be general in character and universal in application and that the state is no

longer to have the power of distinguishing and classifying persons or things for the purpose of legislation as no legislation is required in present case and the treatment i.e. being given to the Late National leaders must be given to Late Subhash Chandra Bose, hence the present petition.

25. That no such similar Public Interest Petition has been filed either in this Hon'ble Court or before the Hon'ble Supreme Court of India.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may kindly pass necessary directions thereby the following relief may kindly be granted:-

- a) The ashes of Late Subhash Chandra Bose be directed to be brought to India and kept in a public place for paying tributes to the late leaders for the

scarifies made by him in the freedom struggle of the nation.

- b) The respondents be directed to bring the ashes of Late Subhash Chandra Bose for submerging the same into holy river Ganga and also to the top of Himalayas as in case of other national leaders for whom it has been done like Pandit Nehru, Mrs. Indira Gandhi etc.
- c) Any other relief which this Hon'ble Court deem fit & proper may also kindly be granted to petitioner and against respondents in the interest of justice.

DATE: 27-04-2013
DELHI



PETITIONER

THROUGH
**(SURGIVA DUBEY/NAMITA ROY/
ANURAG DUBEY)
ADVOCATES**

31/43, VISHWAS NAGAR,
SHAHDARA, DELHI - 110032
Mobile No.09868241144

IN THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI

[EXTRA ORDINARY WRIT JURISDICTION]

W.P.(C) NO. _____ OF 2013

PUBLIC INTEREST PETITION

IN THE MATTER OF

SHRI PRASHANT PALIWAL ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

AFFIDAVIT

I, Prashant Paliwal aged about ___ years
S/o Shri S.C. Paliwal R/o 31/43, B.S.
Colony, Delhi-110032, do hereby solemnly
affirm and declare as under:-

1. That I being the petitioner in the abovenoted matter, am well aware of the facts of the case, hence competent to swear this affidavit.
2. That I have filed the present petition as a Public Interest Litigation.
3. That I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the

Contd...2

present public interest litigation is in conformity thereof.

4. That I am the petitioner have no personal interest litigation and neither myself nor any body in whom I am the petitioner in interested would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. This petition is not guided by self gain or gain of any person, institution, by and there is no motive other then of public interest in filing this petition.

5. That I have done whatsoever enquiry/ investigation which was in my power to do, to collect all date/material which was available and which was relevant for this court to entertain the present petition. I further confirm that I have not concealed in the present petition any date/material/information which may have enabled this court to form an

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opinion whether to entertain this petition or not and /or whether to grant any relief or not.



DEPONENT

VERIFICATION

I, the above named deponent do hereby verify that the contents of my above affidavit are true and correct to my knowledge and nothing material has been concealed therefrom.

Verified at Delhi on this 27th day of April 2013.



DEPONENT

IN THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI

[EXTRA ORDINARY WRIT JURISDICTION]

W.P.(C) NO. _____ OF 2013

PUBLIC INTEREST PETITION

IN THE MATTER OF

SHRI PRASHANT PALIWAL ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

APPLICATION UNDER SECTION 151 C.P.C.
FOR EXEMPTION FROM FILING ORIGINALS /
CERTIFIED COPIES OF THE DOCUMENTS.

MOST RESPECTFULLY SHOWETH

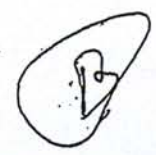
1. That the petitioner has filed the accompanying Petition Under Article 226 of the Constitution of India and the contents be read as part of this application and the same is not being repeated for the sake of brevity and be read together.
2. That the petitioner has filed certain documents which are true copy of the same and the petitioner will file the original /certified copies of the same as and when

27 (211)

the same be made available to the petitioner.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may kindly grant exemption from filing original/certified copies of the documents and the matter be heard on merit in the interest of justice.



PETITIONER.

DATED : 27.04.2013

THROUGH

DELHI

**[SUGRIVA DUBEY / NAMITA ROY
/ ANURAG DUBEY]
ADVOCATES**

31/43, VISHWAS NAGAR,
SHAHDARA, DELHI-110032
PH: 9868241144

IN THE HON'BLE HIGH COURT OF DELHI
AT NEW DELHI

[EXTRA ORDINARY WRIT JURISDICTION]

W.P.(C) NO. _____ OF 2013

PUBLIC INTEREST PETITION

IN THE MATTER OF

SHRI PRASHANT PALIWAL ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

AFFIDAVIT

I, Prashant Paliwal aged about ___ years
S/o Shri S.C. Paliwal R/o 31/43, B.S.
Colony, Delhi-110032, do hereby solemnly
affirm and declare as under:-

1. That I am the petitioner in the above noted matter and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying application under section 151 C.P.C. from filing the certified copies of all the documents have been explained to me in my own language and I have understood the same which are correct to my

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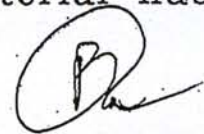
knowledge and nothing material has been concealed there from and the same be read as part and parcel of this affidavit.



DEPONENT

VERIFICATION

Verified at Delhi on this 27th day of April 2013 that the contents of the above said affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.



DEPONENT

214
14-01-2012

To

The Secretary
Ministry of Home Affairs
North Block, New Delhi.

**SUB:REQUEST FOR BRINGING BACK THE
ASHES OF LATE SUBHASH CHANDRA
BOSE FROM GERMANY.**

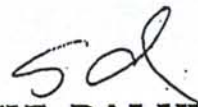
Sir,

It is unfortunate that the persons who did not contribute anything for the nation have been given maximum reward as in case of Sanjay Gandhi. We do not know the contribution given by Late Sanjay Gandhi to the nation but the place of cremation has been shown as Shakti Sthal. Further the place of cremation for Rajeev Gandhi has also been declared as Vir Bhoomi.

I, therefore, request you to kindly bring back the ashes of Subhash Chandra Bose and submerge in the holy rivers in

Contd...2

India and also on the top of Himalaya as he has given life and fought for the nation and his scarifies cannot be ignored but the same is being done.



(PRASHANT PALIWAL)

12-03-2013

To

The Secretary
Ministry of Home Affairs
North Block, New Delhi.

**SUB:REFERENCE MY EARLIER LETTER
DATED 13-01-2012**

Sir,

This is with reference to my earlier letter dated 13-01-2012 and I am again requesting you and reminding you that it is most unfortunate that the persons who did not contribute anything for the nation have been given maximum reward as in case of Sanjay Gandhi. We do not know the contribution given by Late Sanjay Gandhi to the nation but the place of cremation has been shown as Shakti Sthal. Further the place of cremation for Rajeev Gandhi has also been declared as Vir Bhoomi.

I, therefore, request you to kindly bring back the ashes of Subhash Chandra

Bose and submerge in the holy rivers in India and also on the top of Himalaya as he has given life and fought for the nation and his scarifies cannot be ignored but the same is being done.

sd

(PRASHANT PALIWAL)

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iscud
13/5/2013
Newraj

1218
(Speed Post)

No.12014/14/2013-Cdn
Ministry of Home Affairs
Government of India
IS-II Division

NDCC-II Building, Jai Singh Road,
New Delhi Dated 10th May, 2013.

To
Shri Jatan Singh,
Central Government Counsel,
Delhi High Court,
New Delhi.

Sub: Filing of Public Interest Writ Petition in High Court of Delhi at New Delhi.W.P.(c) No.....2013 Shri Prashant Paliwal Vs Union of India.

Sir,

I am directed to refer to the above mentioned Public Interest Litigation (PIL) filed by Shri Prashant Paliwal and to say that PIL has been examined. It is informed that three Commissions /Committee on the subject of Netaji Subhash Chandra Bose's disappearance/ death and also on the subject of ashes were constituted by Government of India. As per the findings of the reports accepted by the Government of India, ashes of Netaji Subhash Chandra Bose are lying at Renokji Temple in Tokyo (Japan). Hence, there is no merit and the PIL is infructous and liable to be dismissed. However, a brief note is also enclosed.


(Ashish V. Gawai)
Under Secretary (NSA)
Tel No:23438078
avgawai@nic.in

WRT
ISSUED
13 MAY 2013
SECRETARY, ANS
SECRET No/Pali/NSA/NDCC-II

Brief on the Public Interest Litigation filed by Shri Parashant Paliwal in W.P.(C)No..... 2013 Vs Union of India.

- a) The Government of India set up three Committees / Commissions on the question of alleged disappearance of Netaji Subhash Chandra Bose.
- b) The first Committee was known as **Shah Nawaz Committee**. 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 18th 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.
- c) The second Commission was set up under the chairmanship of **Justice G.D.Khosla**, retired Chief Justice of Punjab High Court, as sole member. This Commission submitted its report in the year 1974. This Commission also came to the conclusion that Netaji died in the plane crash at Taihoku on 18th August, 1945 and the ashes preserved in the Renkoji Temple, Tokyo (Japan) are of Netaji.
- d) Subsequently, a writ petition was filed before the Division Bench of the Calcutta High Court. After hearing the Counsel appearing for the parties, the Court by its order/judgement dated 30.04.1998 directed the Union of India to re-inquire into the alleged disappearance of Netaji Subh^hsh 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.

e) Therefore Government of India set up a Commission of Inquiry consisting of **Mr. Justice M.K. Mukherjee**, a retired Judge of Supreme Court of India. This Commission was entrusted to inquire into all the facts and circumstances relating to the disappearance of Netaji Subhash Chandra Bose in 1945 and subsequent developments connected therewith including

- i) Whether Netaji Subhash Chandra Bose is dead or alive;
- ii) If he is dead, whether he died in the plane crash, as alleged:
- iii) Whether the ashes in the Japanese temple are ashes of Netaji;
- iv) Whether he has died in any other manner at any other place and, if so, when and how;
- v) If he is alive, in respect of his whereabouts.

f) Justice Mukherjee Commission of Inquiry (JMCI) submitted its report on 8th November, 2005 on the following terms of reference and concluded the following:-

Sl. No.	Terms of Reference	Conclusion of the Commission
A.	Whether Netaji Subhash Chandra Bose is dead or alive	Netaji Subhash Chandra 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 are not of Netaji.
D.	Whether he has died in any other manner at any other place, 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 column (A) above.

- g) The report of the Justice Mukherjee Commission of Inquiry (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 Justice Mukherjee Commission of Inquiry (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 the plane crash on 18th 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 (JMCI), 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 Justice Mukherjee Commission of Inquiry (JMCI).
- h) The report of the JMCI was placed before both the Houses of Parliament along with the Action Taken Report (ATR) on 17th

May, 2006 as per section 3 (4) of 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 8th November, 2005 in detail and have not agreed with the findings that :-

Netaji did not die in the plane crash; and

The ashes in the Renkoji Temple were not of Netaji.”

- i) The Report was placed before both the Houses of Parliament on 17th May, 2006 as required under sub-section 4 of section 3 of the Commission of Inquiry Act, 1952.
- j) Government of India based on reports of Shah Nawaz Committee and Justice Khosla Commission constituted on the question of the alleged death/disappearance of Netaji Subhash Chandra Bose came to the conclusion that Netaji died in the plane crash on August 18, 1945 and his ashes were kept in Renkoji Temple in Tokyo (Japan).



Welcome ASHISH V GAWAI UNDER SEC

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av.gawai@nic.in: Inbox

Move message to folder:

From [Jatan Singh <jatan_singh@yahoo.com>](#)

Sent Saturday, May 11, 2013 4:28 pm

To [ASHISH V GAWAI UNDER SECRETARY <av.gawai@nic.in>](#)

Subject Re: PIL: Delhi High Court (Prashant Paliwal v. Union of India)

Dear Mr. Gawai,

As you are aware that the Petitioner in the above mentioned case has asked for a direction to the Respondents to bring back the last remains of Late Mr. Subash Chander Bose to India and thereafter submerge the same into the holy Ganges and also from the top of Himalayas as has been the case of other National Leaders .

On a perusal of the brief note sent by your office it is clear that the ashes of Late Mr. Subash Chander Bose are lying at the Renokoji Temple in Tokyo (Japan).

Although the first aspect is clear, the question which would still remain for active consideration before the court would be the duty of this nation to ensure that due respect is accorded to his last remains and that the same are submerged in accordance with the Hindu Traditions.

Therefore, i would request you to kindly intimate us the stand of the Union with regard to bringing back the remains from Japan and giving them respect in accordance to the Hindu tradition.

Regards,

Jatan Singh

Central Government Standing Counsel

--- On Fri, 5/10/13, ASHISH V GAWAI UNDER SECRETARY <av.gawai@nic.in> wrote:

From: ASHISH V GAWAI UNDER SECRETARY <av.gawai@nic.in>
 Subject: PIL Delhi High Court (Prashant Paliwal v. Union of India)
 To: "Jatan Singh" <jatan_singh@yahoo.com>
 Cc: ashishgawai@hotmail.com
 Date: Friday, May 10, 2013, 4:13 PM

Dear Sh.Jatan Singh,
 Pl find the brief along w a letter in the PIL namely Prashant Paliwal Vs UOI which is self explanatory.

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MOST IMMEDIATE

No.12014/14/2013-Cdn
 Ministry of Home Affairs
 Government of India
 IS-II Division

NDCC-II Building, Jai Singh Road,
 New Delhi Dated 22nd May, 2013.

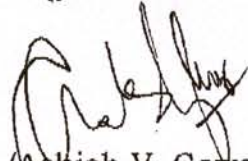
To

1. Joint Secretary (CNV),
 Shri Arun Kumar Chatterjee,
 Ministry of External Affairs,
 South Block, New Delhi.
2. Director, PMO,
 Shri Rajiv Topno,
 South Block, New Delhi.

Sub: Public Interest Writ Petition in Delhi High Court by Shri Prashant Paliwal Vs. Union of India.

Sir,

I am directed to enclose herewith a copy of e-mail received from Central Government Counsel requesting to inform as to which is the relevant Ministry which would be competent to deal with the issue of bringing back the ashes of Late Shri Subhash Chandra Bose from Japan. It is requested to furnish your inputs urgently for sending the same to Central Government Counsel, Delhi High Court.


 (Ashish V. Gawai)
 Under Secretary (NSA)
 Tel No.23438078
 Fax: 23438051,
 23438085.
av.gawai@nic.in

PB, pl.

S.O. (157)

22-5-13

ppr place soon at 17/R MS

23.5.13

DIR (K)

DIR (T)
 3757021

Gmail - Fwd: Re: PIL Delhi High Court (Prashant Paliwal v. Union of India)

Page 1 of 1

----- Forwarded message -----

From: Jatan Singh <jatan_singh@yahoo.com>

To: ASHISH V GAWAI UNDER SECRETARY <av.gawai@nic.in>

Cc:

Date: Tue, 21 May 2013 08:01:47 -0700 (PDT)

Subject: Re: PIL Delhi High Court (Prashant Paliwal v. Union of India)

Dear Mr. Gawai,

Request you to inform us about the relevant ministry which would be competent to deal with the issue of bringing the ashes of Late Mr. Subash Chander Bose from Japan.

Regards,

Jatan Singh

Central Government Standing Counsel.

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226

PRIME MINISTER'S OFFICE
[POLITICAL SECTION]

South Block, New Delhi – 110 011

Sub: Public Interest Writ Petition in Delhi High Court by Shri Prashant Paliwal Vs. Union of India

Reference is invited to Ministry of Home Affairs letter no. 12014/14/2013-Cdn dated 1.5.2013, on the above subject.

2. In this connection, the undersigned is directed to convey that this office has no inputs to offer on this issue.



(Rajeev Topno)

Director

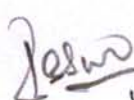
Tel. 2301 4547

Fax No. 23016857

Home Secretary

PMO ID no. 3757021/PMO/2013-Pol

Dated: 31.5.2013


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