

CENTRAL INFORMATION COMMISSION
2nd Floor, 'B' Wing, August Kranti Bhavan
Bhikaji Cama Place
New Delhi - 110 066

File No. CIC/CC/A/2015/001530/VS

Date: 31/07/2015

NOTICE OF HEARING

| | |
|---|--|
| Central Public Information Officer Prime Minister's Office South Block New Delhi | Appellant Sh. Subhash Chandra Agrawal 1775, Kucha Lattushah Dariba, Chandni Chowk Delhi 110 006 |
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In the appeal filed by the above named appellant, the Commission has fixed the appeal for hearing. You are hereby required to be present with all relevant papers and documents before **Shri Vijai Sharma, Chief Information Commissioner, at Room No. 306, 2nd Floor, August Kranti Bhavan, Bhikaji Cama Place, New Delhi- 110 066 on 26/08/2015 at 02:30:00 PM (Actual time may kindly be confirmed over phone prior to the date of hearing).**

Both the parties are also directed to produce before the Commission all relevant papers and documents that they wish to rely on during the hearing. The Appellant is also advised to send a copy of the appeal/complaint filed before the Commission to the PIO, if not already done.

In case, parties do not wish to attend the hearing, they ensure that their submissions must reach the Commission *at least seven days in advance* after serving a copy of the same on the opposite party. Please also note that *no adjournments* will be given in any circumstances.

If information has been provided by the Public Information Officer, proof of dispatch and copy of the information must be brought to the hearing. Public Information Officer is hereby further directed to communicate the date and time of hearing to any other officers whose assistance has been sought under Section 5(4) of the RTI Act and ask them to appear before the Commission on the said date and time.

Given under the order of the Commission.


(Dhirendra Kumar)

Deputy Secretary & Deputy Registrar

RTI Date:-14/09/2013

Reference No. of PIO's Reply:- RTI/4563/2013-PMR dated 21/11/2014

Tel.- 011-26186535; Fax No. 26106145

SENIOR CITIZEN : PRIORITY HEARING REQUESTED

Shri Vijai Sharma ji
Honourable Chief Information Commissioner
Central Information Commission
2nd floor, August Kranti Bhawan
Bhikaji Cama Place, New Delhi-110066

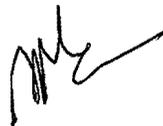
Re Request for priority hearing in appeal-number CIC/CC/A/2015/001530 relating to declassification of files relating to Netaji Subhash Chandra Bose

Respected Sir

I wish to request your honour for priority hearing on one of my several petitions against Prime Minister's Office (PMO) pending for disposal before your honour. Even though my many petitions are pending for hearing before Chief Information Commissioner, I specially request that a priority and urgent hearing may kindly be arranged on my pending appeal-number CIC/CC/A/2015/001530 diarised vide diary-number 109186 on 09.02.2015 against Prime Minister's Office (PMO) which relates to declassification of files relating to Netaji Subhash Chandra Bose. I am a senior citizen also entiteled for a priority hearing.

Information on my referred RTI petition dated 14.09.2013 was already much delayed when CPIO at PMO replied to this petition relating to declassification of files relating to Netaji Subhash Chandra Bose 14 months after on 21.11.2014.

Humbly submitted



SUBHASH CHANDRA AGRAWAL

(Guinness Record Holder & RTI Activist)

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Follow me on twitter @subhashrti

17.06.2015



140692
19/6/15

C.C./C.C/A/2015/001530

SENIOR CITIZEN : PRIORITY HEARING REQUESTED

INDEX OF DOCUMENTS FILED BEFORE HONOURABLE CENTRAL INFORMATION COMMISSION
PETITION UNDER SECTION 19(3) OF RTI ACT AGAINST PRIME MINISTER'S OFFICE (PMO)

Copies enclosed:

RTI petition dated 14.09.2013

CPIO's reply dated 21.11.2014

First appeal dated 27.11.2014

Appeal order dated 02.02.2015

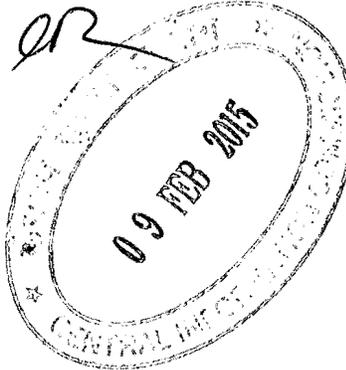
Petition under section 19(3) of RTI Act

Passport-copy for proof of being senior citizen

Filed by

SM

109186



SUBHASH CHANDRA AGRAWAL

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09.02.2015

SENIOR CITIZEN : PRIORITY HEARING REQUESTED
BEFORE HONOURABLE CENTRAL INFORMATION COMMISSION
PETITION UNDER SECTION 19(3) OF RIGHT TO INFORMATION ACT
AGAINST PRIME MINISTER'S OFFICE (PMO)

Petitioner

Subhash Chandra Agrawal
1775 Kucha Lattushah
Dariba, Chandni Chowk
Delhi-110006

Respondent

Shri PK Sharma
Under Secretary & CPIO
Prime Minister's Office (PMO)
South Block, New Delhi-110101

Shri Krishan Kumar ji
Director & Appellate Authority
Prime Minister's Office (PMO)
South Block, New Delhi – 110101

Brief Facts & Prayer

I vide my RTI petition dated 14.09.2013 sought complete information together with related documents/correspondence/file-notings on under-mentioned aspects:

1. Is it true that there are some files relating to Netaji Subhash Chandra Bose with Union government?
2. Complete information on subject-matters of all files relating to Netaji Subhash Chandra Bose as available with Union government
3. Copies of complete files relating to Netaji Subhash Chandra Bose
4. Complete information on action taken for making public files relating to Netjai Subhash Chandra Bose
5. Copies of requests made by various persons to make files relating to Netaji Subhash Chandra Bose public
6. Complete information on action taken on requests for making public files relating to Netjai Subhash Chandra Bose
7. Complete information on commissions etc constituted for enquiry into alleged death of Netaji Subhash Chandra Bose in 1945 mentioning outcome of each of such enquiry-commissions
8. Complete information on efforts made, if any, by Indian government to trace Netaji Subhash Chandra Bose (pre-independence or post-independence) after his sudden disappearance in August 1945?

9. Is it true that Indian government has/had been in some agreement with British government for handing over Netaji Subhash Chandra Bose to British-government
10. Copies of any agreements between Indian government and British government (pre-independence or post-independence) relating to Netaji Subhash Chandra Bose
11. Complete information on celebrating birth-anniversary of Netaji Subhash Chandra Bose every year on 23rd January by Union and/or state-governments mainly including of West Bengal and Orissa
12. Complete information on honours awarded by Union and/or state-governments including also creating memorials or naming institutions after him in honour of Netaji Subhash Chandra Bose
13. Comparative chart of annual expenses for last three years made on celebrating birth/death anniversaries of departed leaders by Union government mentioning also if such expenses are made for celebrating birth-anniversary of Netaji Subhash Chandra Bose also
14. Is 'Netaji' an officially designated honoured pre-fix in the name of Netaji Subhash Chandra Bose?
15. Complete file-notings/correspondence/documents etc on honouring Netaji Subhash Chandra Bose with pre-fixed word 'Netaji' before his name
16. Any other related information
17. File-notings on movement of RTI petition

Learned CPIO at PMO vide a much-delayed response No. RTI/4563/2013-PMR dated 21.11.2014 in response to query-numbers (3) and (4) declined information as exempted under section 8(1)(a) read with section 8(2) of RTI Act as according to CPIO providing information would prejudicially affect relations with foreign countries!

But the matter being so old and people in India being so much sensitive and provocative about mystery in death of Netaji Subhash Chandra Bose indeed requires invoking provisions of section 8(2) of RTI Act in a positive and right perspective where section 8(2) allows access to information in case public interest overweighs the harm protected. Here in this case, public interest definitely overweighs the harm protected where even several commissions/committees have been formed by Union government to probe mystery in death of Netaji Subhash Chandra Bose. Even family-members of India's great freedom-fighter have from time to time expressed their extreme displeasure over Union government handling the probe-matter even to extent of declining receiving Bharat Ratna once announced for Netaji Subhash Chandra Bose.

Learned CPIO did not even specify name of the country with which relations would be likely to be prejudicially affected. In case such a country is United Kingdom (England), then much larger public-interest is involved because of Netaji Subhash Chandra Bose having devoted his life against domination of that country depriving India from freedom for long till 15.08.1947. India is now a free country which is no longer under domination of UK. Some media-reports indicate that the referred country being Russia. But it is now about seven log decades, and democracy has replaced in most countries replacing earlier

forms of governance including dictatorship etc. Therefore any argument of adversely affecting relations with any foreign country does not stand in present era with change of time. Revealing copies of files will also make the picture clear when media-reports have repeatedly shown certain persons being categorized as Netaji Subhash Chandra Bose having led life in anonymity for some undisclosed reasons after independence of the country.

Learned CPIO while declining information on query (5) and subsequently to query (6) quoted CIC-verdict dated 07.10.2011 in appeal-number CIC/LS/A/2011/002230. But firstly the cases are to be decided on merit according to circumstances of each case. Moreover referred CIC-verdict was an ex-party verdict where appellant was absent and no pleading was possible in that case. Present case is very specific, and PMO may be able to sort computerized data on the query (5).

I filed first appeal dated 27.11.2014 requesting for complete information together with sought and related documents to query (3) of RTI petition but now free-of-cost under section 7(6) of RTI Act. I also appealed for specific reply to query (4) apart from re-visit for query-numbers (5) and (6). In case, no steps are being taken to make files relating to Netaji Subhash Chandra Bose public, then it should be so mentioned specifically.

First Appellate Authority vide much delayed order dated 02.02.2015 declined to intervene in reply of CPIO citing CIC-verdicts in appeal-number CIC/OK/A/2007/001392 followed by another in appeal-number CIC/SM/A/2013/001352/RM quoting a particular sentence and omitting rest of the verdict in appeal-number CIC/OK/A/2007/001392. Appeal-number CIC/SM/A/2013/001352/RM against PMO was decided on basis of that particular sentence in appeal-number CIC/OK/A/2007/001392 where also full CIC-verdict in appeal-number CIC/OK/A/2007/001392 was not quoted. As such both the quoted CIC-verdicts have no relevance in present matter.

First Appellate Authority in his order in respect of query-numbers (5) and (6) declined information under provisions of section 7(9) of RTI Act. But in present era of computerization, providing the information sought under query-numbers (5) and (6) must not be difficult.

It is significant that political rulers in power at time of CPIO's response dated 21.11.2014 and First Appellate Authority's order dated 02.02.2015 before May-2014 Lok Sabha elections always advocated for making files relating to Netaji Subhash Chandra Bose as sought under present petition to be made public, but changed tone for a U-turn after coming to power thereby playing a big impropriety with citizens of this country.

Both the CPIO's response dated 21.11.2014 and First Appellate Authority's order dated 02.02.2015 are much beyond stipulated time provided under RTI Act for which PMO should be warned to be careful in future. Even section 7(8) of RTI Act was not followed by CPIO when particulars of First Appellate Authority were not mentioned in CPIO's response dated 21.11.2014. First Appellate Authority also failed to direct CPIO for this lapse. I appeal that PMO may kindly be directed to respond to RTI queries as referred above and also mentioned in my first appeal dated 27.11.2014 with sought and related documents but now to be provided free-of-cost under section 7(6) of RTI Act. It is prayed accordingly.

Humbly submitted



SUBHASH CHANDRA AGRAWAL

09.02.2015

Verification

I, Subhash Chandra Agrawal s/o late Shri Om Prakash and resident of 1775, Kucha Lattushah, Dariba, Delhi-110006 verify that the facts mentioned above are correct to best of my knowledge.



SUBHASH CHANDRA AGRAWAL

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09.02.2015

Copies enclosed:

RTI petition dated 14.09.2013

CPIO's reply dated 21.11.2014

First appeal dated 27.11.2014

Appeal order dated 02.02.2015

Petition under section 19(3) of RTI Act

Passport-copy for proof of being senior citizen

Modi Government's U-turn, Says Netaji Files Can't Be Disclosed

By PTI | Published: 06th February 2015 06:47 PM Last Updated: 06th February 2015 06:48 PM

Email 4

NEW DELHI: Taking the line adopted by the previous Congress-led UPA government, Prime Minister Narendra Modi's Office has refused to disclose records related to Subhash Chandra Bose's death as it rejected the argument that there was a larger public interest involved in making them public.

The Right to Information Act allows for a public authority to disclose records which are otherwise exempt from disclosure if public interest outweighs the harm protected.



Activist Subhash Agrawal had sought from the Prime Minister's Office the records related to the freedom fighter and leader of the Indian National Army to clarify the mystery surrounding his alleged death in a plane crash 70 years back.

Agrawal had also asked for information of the steps taken by the top office to make such records public and the action taken on requests seeking such documents.

But toeing the line of the UPA government, the PMO had cited an exemption clause in the RTI Act which allows withholdng of information that could prejudicially affect relations with a foreign country. The PMO, however, did not even give the names of the countries with which the relations may get affected once the said information is made public.

When the first appeal was filed before a higher officer in the top office, the Appellate Authority, Krishan Kumar, had rejected the argument that public interest would be served through the disclosure of the documents related

to Bose's death.

Home Minister Rajnath Singh, while campaigning for polls, had claimed that there was a larger public interest involved in the disclosure of the documents, but the PMO under Modi does not seem to be in agreement.

"It is observed that the disclosure of the records was withheld under Section 8(1)(a) of RTI Act on the grounds that it would prejudicially affect relations with foreign countries.

"The determination as to whether a particular body of records has such ramifications has been left to the judgement of the competent authority authorised to determine the same," Kumar had said.

CENTRAL INFORMATION COMMISSION
Room No.306, 2nd Floor, B-Wing, August Kranti Bhawan
Bhikaji Cama Place, New Delhi-110066.
Website: cic.gov.in

File No.CIC/SM/A/2013/001352/RM

Appellant: Shri Chandrachur Ghose, Gurgaon
Public Authority: PMO, New Delhi
Date of Hearing: 17.07.2014
Date of Decision: 17.07.2014

Heard today, dated 17.07.2014.

Appellant is represented by Shri Anuj Dhar.

Public Authority is represented by Shri SE Rizvi, Director/CPIO, PMO, Shri Subendhu Hota and Shri Dinesh Shukla.

FACTS

Vide RTI dt 4.4.13, appellant had sought copies of documents contained in three files relating to the widow and daughter of late Shri Subhash Chander Bose.

2. CPIO vide letter dt 22.5.13, informed appellant that disclosure of the documents would prejudicially affect relations with foreign countries and as such the same are exempt u/s 8(1)(a) read with Section 8(2) of the RTI Act.

3. An appeal was filed on 24.6.13 questioning the stand of the CPIO.

4. AA vide order dt 6.8.13, observed that the CIC in their decision (CIC/WB/A/2007/00129) had observed that whether disclosure of a particular piece of information would prejudicially affect relations with a foreign country, is to be decided by the authorized agency competent to do so. Moreover, appellant's contention that disclosure may be considered u/s 8(3) was also not tenable as the same is subject to provisions of Clause 8(1)(a), (c) and (i) of the Act. The appeal was disposed of.

5. Submissions made by the appellant and public authority were heard. Appellant questioned whether due diligence has been exercised by the public authority for arriving at a decision that disclosure of the information would come in the purview of Section 8(1)(a) of the RTI Act. CPIO submitted that due diligence has been exercised and they were willing for inspection as ordered in earlier case of the Commission dt 8.2.2007 – Appeal no.CIC/WB/A/2007/00129A.

DECISION

6. The Commission in its earlier full bench decision dt 16.1.2008 – Appeal no. CIC/OK/A/2007/001392 has held that “It is not for us to substitute our judgment on the applicability of exemptions to that agency duly authorized to determine such issues.”

7. In view of the above, and CPIO's submission that due diligence has been exercised, we uphold the decision of the CPIO/AA in denying the information.

The appeal is disposed of.

Sd/-
(Rajiv Mathur)
Chief Information Commissioner

Appeal No.CIC/OK/A/2007/001392
CENTRAL INFORMATION COMMISSION
(Under Sec 19 of the Right to Information Act 2005)
B Block, August Kranti Bhawan,
New Delhi 1100065

Name of the Appellant - Shri Nusli Wadia,
Mumbai

Name of the Public Authority Respondent -Ministry of External Affairs (MEA)
South Block,
New Delhi-110011

Date of Hearing 21.12.2007

Date of Decision 16.01.2008

Facts:

1. By an application of 6-6-'07 submitted on 12-6-07 Shri Nusli Wadia of Mumbai sought the following information from the CPIO, MEA

- (i) "documents, notes of meeting and file notes relating to or arising out of the letter dated July 06, 2001 sent by Mrs. Dina Wadia to the Hon'ble Prime Minister of India including notes of or documents relating to the discussion between the Hon'ble Prime Minister of India and the Hon'ble External Affairs Minister referred to in the letter no. 757/PSBPM/2001 dated July 13, 2001;
- (ii) copies of all documents, notes of meetings, file notings, including inter-ministerial notes, advice sought or given including all approvals, proposals, recommendations from the concerned ministers/ICCR including those to and from the Hon'ble Prime Minister;
- (iii) minutes of meetings with the Hon'ble Prime Minister and any other Ministers/Officials on the matter; and
- (iv) Opinions given by any authority or person, including legal advice."

2. To this he received a response on 12-7-07 that the information from CPIO Shri A.K. Nag, JS, (Welfare & Information) was being collected and sought more

time. On still not having received the information sought, however, Shri Wadia made his first appeal to Shri Ajai Chowdhary, AS (PP) and 1st appellate authority on 27-7-2007, upon which Shri Ajai Chowdhary directed on 22-8-07 as below:

“The CPIO, Minister of External Affairs is directed that subject to the provisions of Section 8 of RTI Act, 2005, he may, without any further delay, provide the information requested by the applicant in his original application with the assistance of Shri T.C.A Raghavan, JS (PAI). If any information is withheld under Section 8 of RTI Act, the applicant may be duly informed of the reasons for withholding the information.”

3. Accordingly through a letter dated 23-8-07 Shri Wadia received a detailed response from the CPIO enclosing copies of the following documents:

1. Ministry of Home Affairs' UO No. 2 (7)/2001 – Settlement dt. 3-12-2001.
2. Note No. 2073/02 dt. 24-6-2002 from Dy. Legal Advisor, Ministry of Law, Justice & Company Affairs, Deptt of Legal Affairs.
3. MHA, Rehabilitation Division's UO No. 2(7)/2001-Settlement dt. 28-6-02.
4. Note No. L-5511/4/2002 dt. 29-7-2002 from Legal & Treaties Divn, MEA.
5. Note No. L-114/1/2001 dt. 20-12-2001 from Legal & Treaties Divn, MEA.
6. MoUD & PA, Works Division ID No. 110015/30/85-WI dt. 21-11-01.
7. Letter No. 4/2/79-Regions (Vol.II) dt. 9-8-2002 from Directorate of Estates.
8. Note dt. 20-7-02 of the Foreign Secretary and consequential notings of the External Affairs Minister, etc.
9. Note dt. 9-11-02 of the Foreign Secretary and consequential notings of the External Affairs Minister, and the Prime Minister.

4. However, in this letter CPIO Shri A.K. Nag also mentioned as below:

“As you are aware, the matter of Jinnah House has been subject of discussion at the inter-governmental level between India and Pakistan from time to time. Issues concerning our relations with Pakistan are involved.

A close scrutiny of the documents pertaining to this case indicate that disclosure of the contents of some of the documents, would prejudicially affect the relation of India with a foreign State. After a careful consideration, it has, therefore, been decided to invoke provisions of Section 8 (1) (a) of the RTI Act, 2005 in respect of that part of the information and not to disclose the same.”

5. Accordingly, this became the subject of another appeal before 1st Appellate Authority Shri Ajai Choudhary dated 18-9-07 that, however, was rejected on the ground that a second appeal could not be agitated on the same

matter already decided upon by the 1st Appellate Authority. The prayer of appellant Shri Wadia before us in his second appeal is as follows:

- a) "To set aside the impugned order/letter dt. 1-10-2007, and to set aside the order dt. 23-8-07 to the extent that it holds that disclosure of the contents of some of the documents would prejudicially affect the relations of India with a foreign State and invokes the provisions of Section 8 (1) (a) of the RTI Act, 2005.
- b) To call for and examine the record relating to Jinnah House to decide whether the documents/information disclosure of which has been withheld qualify as exempted from disclosure on the ground that they would be prejudicial to relations with a foreign State and whether the public interest in disclosure outweighs the harm to the protected interests;
- c) To disclose, or to direct the CPIO to disclose, the complete list of information/documents forming the record relating to Jinnah House;
- d) To determine the reasons which portion, if any, of the documents/information withheld are prejudicial to the relations of India with any foreign country;
- e) To direct the CPIO to disclose all the documents and information requested relating to Jinnah House after redacting, if necessary and appropriate, the text in the document that is prejudicial to the relations of India with any foreign country;
- f) To direct that information required u/s 10 (2) of the Act be provided by the CPIO;
- g) To award in favour of the appellant the costs of filing of and proceedings in the present appeal inter alia u/s 7 (6) of the RTI Act; and
- h) To pass any such other orders as the Hon'ble Commission may deem fit."

6. Subsequently, we received a request from appellant Shri Wadia dated 25-11-07 submitting as follows:

"It appears from the documents provided by the CPIO, which include notings of the Foreign Secretary, the External Affairs Minister and the Prime Minister, that they have been provided on a selective basis. It is our submission that the CPIO has hence taken shelter under Section 8(1) (a) of the RTI Act, in order to frustrate my request to provide documents pertinent to the claim of my mother, Mrs. Dina Wadia to 'Jinnah House'. My appeal against this order was summarily rejected by the Appellate Authority, Mr. Ajai

Choudhry by his order dated 1-10-2007. It is against this order that my above captioned appeal is pending.

This appeal raises substantial questions of great public importance as to the interpretation of Section 8 (1) (a) of the RTI Act, in respect of which an authoritative pronouncement of the Commission is needed.

An additional ground of urgency for a hearing and decision of this appeal is that a Writ Petition filed by my mother in the Bombay High Court (Dina Wadia vs. Union of India & Ors. W.P. (L) No. 1633/2007) is due to come up before the Hon'ble High Court of Bombay on 10-12-2007. This Writ Petition seeks a declaration that the possession of the property Jinnah House by the Government of India is illegal and prays for restoration of the same to the Petitioner. The documents applied for by me in my application under the RTI Act are of the utmost importance in deciding this matter.”

7. The appeal was heard by a Full Bench comprising of Chief Information Commissioner Wajahat Habibullah, Information Commissioner Dr. O.P. Kejariwal and Information Commissioner Dr. M.M. Ansari on 21-12-2007. The following are present:

Appellant:

Shri Nusli Wadia
Ms. Manik Karanjawala
Shri Neeraj Kaul
Ms. Diya Kapur
Ms. Prachi Goel
Shri. Burgor Nariman
Ms. Anu Bagai

Respondents:

Shri T.C.A. Raghavan, JS, MEA
Shri A.K. Nag, JS, MEA & CPIO

8. **ISSUES FOR DETERMINATION**

The issues before us are three:

1. Whether the Appellate Authority was justified in declining to admit the first appeal on the ground that there was no provision in the RTI Act for second appeal in the same case to the Appellate Authority when in this particular

case the first appeal was against the first information provided by the CPIO and not request for reconsideration of an appeal already made thereon. The first appeal was tendered on the grounds of absence of response.

2. If secret and confidential documents have, in fact, been revealed in the PIO's response of 23-8-07, the reasons for not disclosing other similar documents marked `secret' and `confidential', also pertaining to the same request.
3. When references have been made to the opinion submitted by Advocate General to the Government, what was the reason for not disclosing the contents of these?
9. In this context the plea of appellant in his appeal is as below:

“Neither the note of the MEA dt. 12-6-2002 nor a copy of the opinion of the Attorney General had been disclosed to the petitioner. No reason is given for this, much less any ground u/s 8 of the RTI Act. In fact, the letter of the Dte. of Estates dt. 9-8-2002 addressed to the DS, MEA shows the intention of the GOI to lease out the property to Mrs. Wadia, as it seeks certain information for the purpose of processing the matter further.”

10. In his submissions before us learned counsel for appellant has specifically invited our attention to the letter marked `secret' from the MHA addressed to the MEA, which states as follows:

“The MEA may refer to their U.O. No. J/114/25/01 dated 28-8-2001 regarding deciding a proper usage for Jinnah House at Bombay, particularly in the context of Mrs. Dina Wadia's letter dt. July 6, 2001 to the PM requesting that the property should be returned to her so that she could restore it to its original condition and maintain it as a heritage property for use only by her and her family. Views of the MHA have been sought largely on the option of restoring the property to the family of late M.A. Jinnah by leasing it out to Mrs. Dina Wadia, on a nominal rent, on a long-term basis,¹ after

¹ Underlined by us

stipulating clear conditions about the future use of the building and its grounds.”

11. He also argued that while the noting dated 20-7-2002 of Foreign Secretary contradicting the legal view of the Advocate General has been provided the AG's own suggestion has not been. Reference is to the following note of Shri K. Sibal, the then Foreign Secretary:

“He (meaning the AG) then effectively gives the contradictory view that notwithstanding her status as the sole legal heir of late Mohammad Ali Jinnah, the return of the House to Mrs. Dina Wadia “with full ownership rights is not feasible and would be difficult to sustain if challenged in a court of law’. The implicit admission here is that his own legal view on Mrs. Wadia's rights is not likely to stand scrutiny by the courts. Attorney General's suggestion that a fair and equitable solution would be to grant a long-term lease of Jinnah House to Mrs. Wadia on appropriate terms and conditions, one of which would be that the entire cost of repairs and renovations of Jinnah House is to be borne by the Lessee, cannot be treated as legal opinion. It is a solution of an administrative, executive nature that he is proposing.”

12. This was repeated in a subsequent note of Foreign Secretary dated 9-11-2002, which was submitted along with External Affairs Minister's endorsement to the then Prime Minister and approved by the latter.

13. Joint Secretary, Ministry of External Affairs Shri Raghavan has stated the reasons for not disclosing some information, have been given and these specifically concern relations with a foreign State i.e. Pakistan and will, therefore, fall within the exemption u/s 8 (1) (a). The MEA has taken a considered decision on this request and all information that has no bearing on the relationship with Pakistan has been given.

14. During the hearing Shri Nusli Wadia has submitted a copy of a letter of 21-9-07 addressed to Shri Jaswant Singh MP who had been Minister of External Affairs reminding him of their meeting on the matter of handing over of Jinnah House to his mother Ms. Dina Wadia as sole heir in which he quoted extensively from paragraphs 5, 7.6 and 7.7 of his petition before the Mumbai High Court in

which reference have been made to his meeting with the External Affairs Minister as also the then Prime Minister concluding with the following:

“5. As stated above, I have quoted the information that was made available to me during the course of these meetings. I have specially referred to one of the meetings where I was informed of the decision of the Government to grant to long lease to my mother in respect of Jinnah House, as suggested by the Attorney General in his Opinion. **I was informed that Mr. Atal Bihari Vajpayee had affirmed the decision taken by you as Minister of External Affairs and endorsed it.**² As conveyed to me, this was based on the fact that, the Attorney General was of the Opinion that in law, my mother the sole heir of Mr. Jinnah and his only child, would be entitled to all his properties, including Jinnah House. However, he further opined that due to the lapse of time, a fair and equitable course of action would be to grant a long-term lease. I was informed that the lease would conditions that the substantial expenditure on repairs would be undertaken by the Wadia Family, the property will remain as Heritage Property, and would not be used for commercial purposes and be used for the self occupation of the Wadia Family.

It was these terms that I was asked to convey to my mother in order to ascertain as to whether this would be a fair and equitable solution her longstanding claims. She, due to her strong emotions and sentiments for the property, still desired the absolute return of the property to her. She was, however, under the circumstances, through a compromise, agreeable to accept the terms and conditions communicated for the return of Jinnah House on lease. When I conveyed this to you as Minister of External Affairs informed me that the matter had now to be implemented by the concerned officers.”

15. To this was attached a letter of 29-9-2007 from Shri Jaswant Singh, M.P. and then EAM confirming the contents of para-5 and stating that he was prepared to confirm the same on oath.

REASONS & DECISION

16. From the above arguments and on perusal of the documents the following emerges: There is a large gap after 20.12.2001 to 24.06.2002. No document pertaining to this period has been supplied to appellant Shri Wadia. As per

² Emphasis added

arguments of appellant in the hearing documents not provided are in relation to the following facts.

- That the matter of Jinnah House had been referred by the Government of India to the then Attorney General of India for his consideration and opinion;
- That the then Attorney General of India gave an opinion where he is stated to have opined on Mrs. Wadia's status in law as heir of Mr. Jinnah, and as such her entitlement to his properties including Jinnah House. He seems to have advised the grant of a long term lease to Mrs. Wadia, which Foreign Secretary has found to be "a solution of an administrative, executive nature that he is proposing," not a legal opinion.
- The note and decision of the External Affairs Minister accepting the opinion and decision to lease Jinnah House to the Appellant's mother Mrs. Dina Wadia, on certain terms and conditions.
- The affirmation of the then Hon'ble Prime Minister of India of the decision of the External Affairs Minister.
- The Second Opinion of the Attorney General dated sometime in October 2002 in response to the note of the Foreign Secretary dated 20.02.2002 which expresses disagreement with the first opinion of the Attorney General. The note of the Foreign Secretary has been disclosed, but neither the Attorney General's response nor the first opinion with which He disagrees, has been disclosed."

17. Facts of the case reveal that in this case, the appellant submitted his request for seeking the information before the CPIO and since no response was received, he approached the First Appellate Authority. The First Appeal was disposed of by the First Appellate Authority with a direction to provide the information subject to provisions of Section 8 of the Act. The CPIO decided the matter for the first time concerning the application under the Right to Information Act, 2005 and communicated the decision to the appellant vide letter dated 23rd August, 2007, after receiving the directions of the 1st appellate authority. Against this Order, the applicant approached the First Appellate Authority and the First Appellate Authority rejected this appeal on the ground that there cannot be a second appeal as the same matter has been earlier agitated before him and decided by him. In this case therefore, no decision has been taken on what can only qualify as a first appeal, since no such appeal had thus far been preferred on the information provided, and this was therefore not a second appeal, since

the “matter” in question had not hitherto been addressed by the first appellate authority. The First Appellate Authority has therefore erred in rejecting the appeal in an arbitrary manner. He should instead have considered the matter and decided the appeal on merit. **Issue No. 1 is decided accordingly**

18. In the present case learned counsel for appellant Shri Nusli Wadia has cited a decision of the Commission in **case No. CIC/MA/A/2006/00121**. In this case, the appellant requested for disclosing the contents of the correspondence exchanged between the former President, Late Shri K.R. Narayanan and the former Prime Minister, Shri Atal Bihari Vajpayee during the period 28.02.2002 to 15.03.2002 concerning the Gujarat riots. In this case, the information was denied by the CPIO under Section 8(1)(a) of the Right to Information Act, 2005 as in the opinion of the CPIO, the disclosure would prejudicially affect the sovereignty and integrity of India, the security, the strategic, scientific or economic interests of the State etc. The Commission after carefully examining the matter came to a conclusion that it is difficult to understand on which ground the information has been denied. The Commission also found it difficult to comment as to how the disclosure of information is going to affect the strategic, scientific or economic interests of the State.

19. The learned counsel for appellant in that case agreed that some part of the correspondence may be held to be exempted under Section 8(1) (a) of the Right to Information Act, 2005 and, as such, its disclosure may have to be denied, but it was submitted before the Commission that it will be its duty to sever that part of the information the disclosure of which would affect the security and integrity of the State, but remaining part of the correspondence can be made available. *In contra*, it was forcefully submitted by the learned Additional Solicitor General that correspondence concerns a matter involving national security and it will not be in public interest to disclose the same. It is legally permissible for the public authority to deny the information on grounds of national security under Section 8(1) (a). However, a public authority may still allow access to such

information if public interest in disclosure outweighs the harm to the protected interests. The sensitivity of the matter and involvement of a larger public interest has also been admitted by all concerned including the appellant. Since two differing stands were taken before us in regard to public interest, applying the decision in S.P. Gupta's case, we considered it appropriate, that, before taking a final decision on this appeal to personally examine the documents to decide whether larger public interest would require disclosure of the documents in question or not. The Decision of the Commission is, however, subjudice now before the Hon'ble Delhi High Court and its operation is under "stay".

20. In the above Full Bench Decision, the Commission has come to a clear finding that the Appellate Authority failed to take cognizance of the infirmities in the order of denial of information as it did not examine as to whether information sought for by the appellant could qualify for exemption under Section 8(1) (a) of the Act. To that extent, the present case is also similar in nature.

21. The learned Advocate appearing on behalf of the appellant has submitted several decisions of the Apex Court where the orders passed by the Appellate Authority are not reasoned ones and where the Appellate Authority has failed to provide an effective opportunity of being heard to the appellants and in all such cases, the orders were set aside. There is no doubt that the First Appellate Authority while exercising a statutory power under the Right to Information Act, 2005 and being a quasi-judicial authority has to follow the principles of natural justice which include the basic principle of *audi-alteram partem*, and every such authority is obliged to give a reasoned decision. The law on the point is well settled.

22. In this case, the information asked for by the appellant has been denied on the ground that the matter has been a subject of discussion at inter-Government level between India and Pakistan from time to time and the issues concerning our relations with Pakistan are involved. Respondents have argued

that it is only that part of the information that has been withheld, other information also marked 'Secret' and 'Confidential' having been disclosed. The CPIO, MEA on scrutiny of the documents pertaining to the case is convinced that the disclosure of contents of some of the documents would prejudicially affect relations with a foreign State. The CPIO has, therefore, invoked provisions of Section 8(1) (a) of the Right to Information Act, 2005 in respect of only that part of the information that stands denied. It is for the concerned public authority, which is the authorised agency for the purpose, and not for this Commission to take a view as regards applicability of the provisions of Section 8(1) (a) in this case and the Commission is of the view that there will be no obligation on the part of a public authority to provide information if disclosure of the same prejudicially affects relations with a foreign State, maintenance of relations with which is the responsibility of the MEA. However, the provisions of Section 8(1) have to be read with Section 8(2) and Section 10(1). Under Section 8(2), a public authority may allow access to exempted information if public interest in disclosure outweighs the harm to the protected interests. Moreover, u/s 10 (1) *"notwithstanding anything contained in this Act, access may be provided to that **part of the record which does not contain any information which is exempt**³ from disclosure".* In the present case, neither the CPIO nor the First Appellate Authority has examined the matter concerning denial in the light of provisions of Section 8(2) or Sec 10(1), since no notice required u/s 10 (2) has been given to appellant Shri Wadia.

23. Hon'ble Supreme Court in S.P. Gupta's case has clearly decided that disclosure of documents relating to affairs of State involves two competing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the State to protect the information relating to its crucial affairs. It was further held that, in deciding whether or not to disclose the contents of a particular document, a Judge must

³ Emphasis ours

balance the competing interests and make a final decision depending upon the particular facts involved in each individual case.

24. In the instant case, it is, therefore, necessary to determine as to whether the public interest would justify the disclosure of the information or not, and indeed whether in fact the disclosure of the entire information withheld, including the report of the AG, would compromise the exemption granted by the law. Since this issue has not been determined either by the public authority or the First Appellate Authority, the Commission after careful consideration of the matter decided to call for the relevant documents the disclosure whereof has been denied under Section 8(1) (a). After examining the documents, the Commission will first consider whether it would be in public interest to order disclosure or not, and in light of the correspondence exchanged between appellant Shri Nusli Wadia and then Minister, External Affairs referred to in Para 14 and 15 above, if any part of the information held can be provided which does not contain any information which is exempt from disclosure and existence of which then EAM Shri Jaswant Singh is willing to attest on oath, and only then it will issue appropriate directions to the public authority. **By this means we will address Issue no. 2**

25. On Issue no. 3, no fresh argument has been submitted to support denial of disclosure of judicial advice, nor a fiduciary relationship pleaded u/s 8 (1) (e). Because the matter concerns advice from one public authority to another, these are in the normal course not exempt u/s 8, unless they can be demonstrated to be part of any of the sub-sections of Sec 8(1). Therefore, we can only conclude that the contents of this advice have been withheld seeking refuge u/s 8 (1) (a). **Our Decision with regard to Issue no 2 will therefore apply also in regard to the correspondence under Issue No 3.**

26. Accordingly, we directed the public authority to produce the documents listed at Para 16 above for our perusal in a sealed cover on January 15, 2008

through a senior officer to remain present during the perusal and who would thereafter take back the documents after sealing the same in our presence, so as to enable the Commission to determine as to:

- (i) Whether public interest would justify disclosure of the information;
- (ii) Whether in fact disclosure of the entire information withheld including the report of the Attorney General would compromise the exemption granted by law.

Summons to that effect was sent by the Registrar. Accordingly, the following appeared before us with the file in sealed cover:

1. Shri TCA Raghavan, JS MEA
2. Shri JS Nag, CPIO, MEA
3. Shri Balasubramanian, Deputy Secretary (Pak) MEA

27. The Commission decided that it will first consider whether it would be in public interest to order disclosure or not and examine this in the light of the correspondence exchanged between appellant, Shri Nusli Wadia and the then Minister of External Affairs.

28. Shri T.C.A Raghavan, JS (PAI) present at the time of hearing with the documents called for by this Commission, at the very outset submitted that before deciding the matter, the Ministry has carefully considered the whole issue and the MEA has arrived at a considered view as to what could be disclosed and what could not be disclosed with full weightage to the public interest. Even though the entire matter was sensitive in nature, still a substantial part of the information was disclosed as the Ministry has had the best possible intent to abide by the spirit of the RTI Act even though it could have taken a blanket shelter under Section 8(1) (a) and withheld all information sought thereunder.

29. It was also submitted by Shri Raghavan that what has been withheld is actually sensitive in nature and any disclosure thereof would affect relations of this country with a foreign State, thus attracting exemption under Section 8(1) (a) of the RTI Act. He narrated the chronology of the events and also reiterated the Ministry's view that in their opinion the noting of the then External Affairs Minister and the Attorney General should not be disclosed. Although it was agreed that some portions of the documents held may not transgress this view on applying exemption u/s 8(1) (a), it was decided in the public interest that specific correspondence not be edited as this will lead to unwarranted conjecture. A copy of the will of the late Shri MA Jinnah dated 30th May 2009 was also produced before us, which bequeaths no part of the property in question to Shri MA Jinnah's daughter, who is mother of appellant Shri Wadia, except to set apart Rs 200,000 which would at 6% bring an income of Rs 1,000/- payable to her. It was also submitted that the claim of the appellant is still *sub-judice* in the Hon'ble High Court.

30. The Commission acting under the RTI Act is, however, only required to determine as to whether the information asked for by the appellant is disclosable or as to whether it is exempted from disclosure. The Commission is also required to see as to whether the doctrine of severability enshrined in Section 10(1) of the RTI Act can be applied and such part of the information, which is unlikely to be covered by Section 8(1) (a), could be disclosed to the appellant.

DECISION NOTICE

31. After carefully considering the matter and the submissions of both parties, and after perusing the documents produced before it, the Commission is of the opinion that as explained by respondents in the hearing of 15.1.'08, the information asked for by the appellant can be classified as "sensitive" in nature, but still some part of it or an edited version thereof can certainly be made

available to the appellant, particularly in light of information already disclosed, much of what has been classified as “Secret” or “Confidential”. As referred at Para 15 above, we also have on record a communication from then External Affairs Minister Shri Jaswant Singh MP that he had indeed made certain recommendations on the basis of the report of AG, which had been approved by then PM, Hon'ble Shri AB Vajpayee, and that he would be willing to swear as much on oath.. The material already in the public domain therefore, has already negated MEA's conclusion that specific correspondence not be edited as this will lead to unwarranted conjecture. However, as held by us in Para 22 it is not for us to substitute our judgment on the applicability of exemption to that of the agency duly authorised to determine such issues. In this case the duly constituted authority responsible for administering relations with foreign states, is the Ministry of External Affairs. It is therefore for the concerned Public Authority to determine as to which part is sensitive and cannot be disclosed and which part even though sensitive can still be disclosed without prejudicially affecting relations with a foreign state.

32. The Commission, therefore, has decided to remit the matter back to the first Appellate Authority Shri Ajai Chowdhary, AS (PP) who has till now not heard the 1st appeal, which he was required to do as held by us in determining Issue No 1. The first Appellate Authority, which has not examined this issue from this angle, will now examine the whole matter and consider disclosing such part of the information that can be disclosed without undermining the relations of this country with a foreign State. The Commission is also of the view that the First appellate authority would be justified in disclosing an edited version of the information withholding such of the sensitive information that may prejudicially affect our relations with a foreign State. The appeal may be disposed of within fifteen working days of the date of this Decision Notice.

33. With these observations, the appeal stands disposed of.

Announced on this the 16th day of January 2008. Notice of this decision be given free of cost to the parties.

(Dr. MM Ansari)
Information Commissioner

(Dr OP Kejariwal)
Information Commissioner

(Wajahat Habibullah)
Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(L.C. Singhi)
Additional Registrar

PRIME MINISTER'S OFFICE

New Delhi – 110 011

No. RTI/4563/2013-PMR

Dated: 02/02/2015

To:

Shri Subash Chandra Agrawal
1775, Kucha Lattushah
Dariba, Chandni Chowk
Delhi – 110 006

Subject: Decision on appeal under the Right to Information Act, 2005

Sir,

Please refer to your letter dated 27.11.2014, which has been received on 1.12.2014, preferring an appeal under the Right to Information Act, 2005.

2. It is observed that you made a right to information application dated 14.9.2013 which was received on 16.9.2013, seeking information about existence of files relating to Netaji Subhash Chandra Bose with the Union Govt. and their disclosure to the public, celebration of Birth Anniversary of Netaji by the Union/State Govts, honors, memorials or institution named after him etc.

3. CPIO, PMO, vide office memorandum dated 18.9.2013, transferred your application to the Ministry of Home Affairs regarding points no. 7, 8, 11 to 15, to the Ministry of External Affairs regarding points 9, 10 & relevant portion of point 8, to the Ministry of Culture regarding relevant points 11, 13 to 15, to the Ministry of Urban Development regarding relevant point 12 and to the Cabinet Secretariat regarding relevant portion of point 7 under section 6(3) of the Act. Regarding points 1 to 6 & 16, CPIO informed that the request was not specific in terms of subject matter and time frame and collection and compilation of such dispersed information would result in diversion of manpower. Regarding information pertaining to the State Government, you were advised to file separate applications to the concerned public authority in the State Government(s) for the purpose.

4. Thereafter, in consideration to your submissions as per appeal (dt 30.09.2013), the Appellate Authority vide order dated 01.11.2013, directed the CPIO, PMO to obtain fresh inputs in r/o point no. 1 to 6 (regarding status of files relating to Subhash Chandra Bosh and disclosure thereof). Pursuant to the above order, the CPIO, PMO vide letter dated 21.11.2014, provided inputs in r/o of given pts. (1 to 6) contained in four (4) pages to you. The instant appeal (dt 27.11.2014) is with reference to the given response, whereby you have observed as under:

"Learned CPIO vide a much-delayed response No. RTI4563/2013-PMR dated 21.11.2014 in response to query-numbers (3) and (4) declined information as exempted under section 8(1) (a) read with section 8(2) of RTI Act as according to CPIO providing information would prejudicially affect relations with foreign countries.

But the matter being so old and people in India being so much sensitive and provocative about mystery in death of Netaji Subhash Chandra Bose indeed requires invoking provisions of section 8(2) of RTI Act in a positive and right perspective where section 8(2) allows access to information in case public interest overweighs the harm protected.

Learned CPIO did not even specify name of the country with which relations would be likely to be prejudicially affected. Revealing copies of files will also make the picture clear when media-reports have repeatedly shown certain persons being categorized as Netaji Subhash Chandra Bose having led life in anonymity for some undisclosed reasons after independence of the country.

Learned CPIO while declining information on query (5) and subsequently to query (6) quoted CIC-verdict dated 07.10.2011 in appeal-number CIC/LS/A/2011/002230. Present case is very specific, and PMO may be able to sort computerized data on the query (6) with direction to make sincere and serious efforts to provide information with sought and related document".

5 I have examined the records in the matter. I find that you had asked the following information vide point 1 to 6 as under:

- I. Is it true that there are some files relating to Netaji Subhash Chandra Bose with the Union Government?
- II. Completes information on subject matter of all files relating to Netaji Subhash Chandra Bose as available with Union Government.
- III. Copies of complete files relating to Netaji Subhash Chandra Bose.
- IV. Complete information on action taken for making public files relating to Netaji Subhash Chandra Bose.
- V. Copies of requests made by various persons to make files relating to Netaji Subhash Chaandra Bose public.
- VI. Complete information on action taken on requests for making public files relating to Netaji Subhash Chandra Bose.

CPIO, PMO provided a clubbed response as per the queries; 1 to 4, as under:

"Disclosure of the documents contained in these files would prejudicially affect relations with foreign countries. As such these files are exempt from disclosure under Section 8(1) (a) read with 8(2), of the Right to Information Act, 2005".

However, you have contended that disclosure of the records may be considered u/s 8(2) of the Act, which allows access to information otherwise exempted in case public interest overweighs the harm protected, so as to clarify for the public the mystery surrounding the death of Netaji Subhash Chandra Bose. It is also your contention that the CPIO, PMO has not been categorical about ongoing steps to make public the files on the subject.

It is observed that the disclosure of records was withheld u/s 8(1) (a) on the ground that it would prejudicially affect relations with foreign countries. The determination as to whether a particular body of records has such ramifications, has been left to the judgment of the competent authority authorized to determine the same, as the Commission in its Full Bench decision dt. 16.01.2008-Appeal no. CIC/OK/A/2007/001392, held as under:

"It is not for us to substitute our judgment on the applicability of exemptions to that agency duly authorized to determine such issues".

It is observed that the above decision was cited by the CIC in its decision no. CIC/SM/A/2013/001352/RM dtd 17.07.2014 (Chadrachur Ghose vs. PMO) to uphold the decision of the CPIO, PMO to withhold similar set of information relating to Netaji Subhash Chandra Bose u/s 8(1) (a) of the Act. Given that, the stand of the CPIO, PMO to continue to withhold information as per pt. (no. 3) u/s 8(1)(a) is in order in so far as it is consistent with the extant CIC rulings in the matter. In line with the above status of the matter, information as per pt. no. 4 (regarding ongoing action if any for disclosure of the same) may not be a valid proposition.

As regards pts (5 & 6) (regarding petitions received and action taken for making public the records relating to Netaji Subhash Chandra Bose), the CPIO, PMO had stated that the spread of information was wide in so far as no specific cases were mentioned enabling the CPIO to access the relevant records. Given the dispersed nature of information spread over a number of years, the collection and compilation of the same may necessarily entail diversion of resources and as such provision u/s 7(9) of the Act, are attracted in the case in hand.

6. Based on the reasons given above, no further action is called for on your appeal and the same is accordingly disposed off.


(Krishan Kumar)
Director & Appellate Authority

FIRST APPEAL UNDER SECTION 19(1) OF RIGHT TO INFORMATION ACT

Appellate Authority under RTI Act
Prime Minister's Office (PMO)
South Block, New Delhi – 110101

Sir

I vide my RTI petition dated 14.09.2013 sought complete information together with related documents/correspondence/file-notings on under-mentioned aspects:

1. Is it true that there are some files relating to Netaji Subhash Chandra Bose with Union government?
2. Complete information on subject-matters of all files relating to-Netaji Subhash Chandra Bose as available with Union government
3. Copies of complete files relating to Netaji Subhash Chandra Bose
4. Complete information on action taken for making public files relating to Netjai Subhash Chandra Bose
5. Copies of requests made by various persons to make files relating to Netaji Subhash Chandra Bose public
6. Complete information on action taken on requests for making public files relating to Netjai Subhash Chandra Bose
7. Complete information on commissions etc constituted for enquiry into alleged death of Netaji Subhash Chandra Bose in 1945 mentioning outcome of each of such enquiry-commissions
8. Complete information on efforts made, if any, by Indian government to trace Netaji Subhash Chandra Bose (pre-independence or post-independence) after his sudden disappearance in August 1945?
9. Is it true that Indian government has/had been in some agreement with British government for handing over Netaji Subhash Chandra Bose to British-government
10. Copies of any agreements between Indian government and British government (pre-independence or post-independence) relating to Netaji Subhash Chandra Bose
11. Complete information on celebrating birth-anniversary of Netaji Subhash Chandra Bose every year on 23rd January by Union and/or state-governments mainly including of West Bengal and Orissa
12. Complete information on honours awarded by Union and/or state-governments including also creating memorials or naming institutions after him in honour of Netaji Subhash Chandra Bose

13. Comparative chart of annual expenses for last three years made on celebrating birth/death anniversaries of departed leaders by Union government mentioning also if such expenses are made for celebrating birth-anniversary of Netaji Subhash Chandra Bose also
14. Is 'Netaji' an officially designated honoured pre-fix in the name of Netaji Subhash Chandra Bose?
15. Complete file-notings/correspondence/documents etc on honouring Netaji Subhash Chandra Bose with pre-fixed word 'Netaji' before his name
16. Any other related information
17. File-notings on movement of RTI petition

Learned CPIO vide a much-delayed response No. RTI/4563/2013-PMR dated 21.11.2014 in response to query-numbers (3) and (4) declined information as exempted under section 8(1)(a) read with section 8(2) of RTI Act as according to CPIO providing information would prejudicially affect relations with foreign countries!

But the matter being so old and people in India being so much sensitive and provocative about mystery in death of Netaji Subhash Chandra Bose indeed requires invoking provisions of section 8(2) of RTI Act in a positive and right perspective where section 8(2) allows access to information in case public interest overweighs the harm protected. Here in this case, public interest definitely overweighs the harm protected where even several commissions/committees have been formed by Union government to probe mystery in death of Netaji Subhash Chandra Bose. Even family-members of India's great freedom-fighter have from time to time expressed their extreme displeasure over Union government handling the probe-matter even to extent of declining receiving Bharat Ratna once announced for Netaji Subhash Chandra Bose.

Learned CPIO did not even specify name of the country with which relations would be likely to be prejudicially affected. In case such a country is United Kingdom (England), then much more larger public-interest is involved because of Netaji Subhash Chandra Bose having devoted his life against domination of that country depriving India from freedom for long till 15.08.1947. India is now a free country which is no longer under domination of UK. Revealing copies of files will also make the picture clear when media-reports have repeatedly shown certain persons being categorized as Netaji Subhash Chandra Bose having led life in anonymity for some undisclosed reasons after independence of the country.

Under the circumstances, I appeal that learned CPIO may kindly be directed to provide complete information together with sought and related documents to query (3) of RTI petition but now free-of-cost under section 7(6) of RTI Act. Rather all these documents should be directed to be put on website.

Learned CPIO may kindly be directed to provide specific reply to query (4). In case, no steps are being taken to make files relating to Netaji Subhash Chandra Bose public, then it should be so mentioned specifically.

Learned CPIO while declining information on query (5) and subsequently to query (6) quoted CIC-verdict dated 07.10.2011 in appeal-number CIC/LS/A/2011/002230. But firstly the cases are to be decided on merit according to circumstances of each case. Moreover referred CIC-verdict was an ex-party verdict where appellant was absent and no pleading was possible in that case. Present case is very specific, and PMO may be able to sort computerized data on the query (5). I appeal that learned CPIO may kindly be directed to re-visit query (5) and subsequently to query (6) with direction to make sincere and serious efforts to provide information with sought and related documents but now to be provided free-of-cost under section 7(6) of RTI Act. It is prayed accordingly.

Learned CPIO did not provide particulars of Appellate Authority as mandatory under section 7(8) of RTI Act.

Humbly submitted



SUBHASH CHANDRA AGRAWAL

(Guinness Record Holder & RTI Activist)

1775 Kucha Lattushah

Dariba, Chandni Chowk

DELHI 110006 (India)

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Follow me on twitter @subhashrti

27.11.2014

SP BARUDA (110006) भारतीय डाक
LD290672201 IN
Counter No: 100-00009
For RTI ACT, P M OFFICE India Post
SOUTH BLOCK DELHI, PIN: 110001
From: AGRAWAL, 1775 DARIBA CHOWK
#126/900.
Date: 27/11/2014, 12:29
Track on www.indiapost.gov

Speed Post A.D.
Right to Information

PRIME MINISTER'S OFFICE

South Block
New Delhi – 110 011

No. RTI/4563/2013-PMR

Dated: 21 Nov., 2014

To:

Shri Subhash Chandra Agrawal
1775, Kucha Lattushah
Dariba, Chandni Chowk
Delhi - 110 006

Subject: Follow-up on appeal decision-regarding

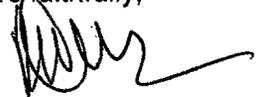
Sir,

Please refer to your letter dated 30.9.2013, received on 3.10.2013, preferring an appeal under the Right to Information Act, 2005 and decision dated 1.11.2013 of the appellate authority in this office.

2. In view of submission made by you and appeal decision dated 1.11.2013, the matter was again referred to the office for providing fresh inputs on points 1 to 6. Inputs provided by the office are enclosed (1+3=4 pages).

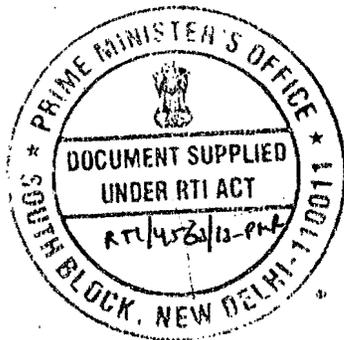
Encl: As above (4 pages).

Yours faithfully,

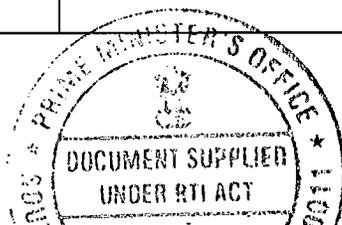


(P.K. Sharma)
Under Secretary and
Central Public Information Officer
☎ : 2338 4667

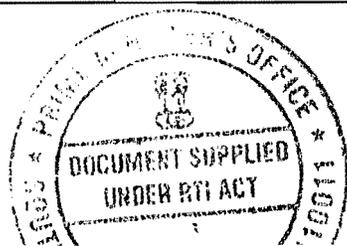
| S.N. | Information Sought | Inputs |
|------|---|--|
| 1 | Is it true that there are some files relating to Netaji Subhash Chandra Bose with the Union Government? | Yes, this Office has some files related to Netaji Subhas Chandra Bose. A list of files, unclassified / classified / declassified, with number and subject matter relating to Netaji Subhas Chandra Bose is enclosed. |
| 2 | Complete information on subject matter of all files relating to Netaji Subhash Chandra Bose as available with Union Government. | Disclosure of the documents contained in these files would prejudicially affect relations with foreign countries. As such these files are exempt from disclosure under Section 8(1)(a) read with 8(2), of the Right to Information Act, 2005. |
| 3 | Copies of complete files relating to Netaji Subhash Chandra Bose. | |
| 4 | Complete information on action taken for making public files relating to Netaji Subhas Chandra Bose. | |
| 5 | Copies of requests made by various persons to make files relating to Netaji Subhas Chandra Bose public. | Reference is invited to CIC's order no. CIC/LS/A/2011/002230 dated 07.10.2011 in the case of Shri Ashok Kumar Vs. Ministry of Power (copy enclosed). In pursuance of the said order, the information/documents sought by the applicant may be declined with the request to him to be specific on his requests for supply of information as the information sought by the applicant is very wide <i>i.e.</i> no specific case(s) has been mentioned. Collating of the information, if any, will require diversion of resources. |
| 6 | Complete information on action taken on requests for making public files relating to Netaji Subhas Chandra Bose. | In view of the (5), question does not arise. |



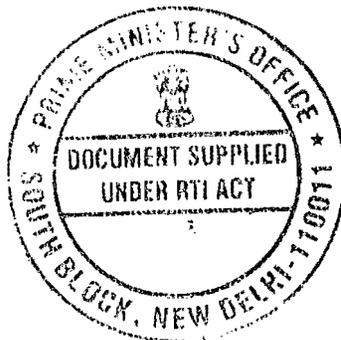
| S.N. | File No. | Subject | Classification |
|------|----------------------|---|----------------|
| 1. | 2(658)/53-PMS | Jankinath Bhavan at Cuttack, birthplace of Shri Subhas Chandra Bose – acquisition by the Orissa Government of – use of the building as a hospital by the Netaji Subhas Seva Sadan | S |
| 2. | 2(64)/56-66-PM(V.1) | Death of Shri Subhash Chandra Bose -Appointment of an inquiry committee to go into the circumstances of the death | S |
| 3. | 2(64)/56-66-PM(V.2) | Death of Shri Subhash Chandra Bose -Appointment of an inquiry committee to go into the circumstances of the death | S |
| 4. | 2(64)/56-67-PM(V.3) | Death of Shri Subhash Chandra Bose -Appointment of an inquiry committee to go into the circumstances of the death | S |
| 5. | 2(64)/56-68-PM(V.4) | Death of Shri Subhash Chandra Bose -Appointment of an inquiry committee to go into the circumstances of the death | S |
| 6. | 2(64)/56-70-PM(V.5) | Death of Netaji Subhash Chandra Bose -Appointment of an inquiry committee to go into the circumstances of the death | S |
| 7. | 2/67/56-71-PM (V.1) | Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about | TS |
| 8. | 2(67)/56-71-PM (V.2) | Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about | S |
| 9. | 2/64/78-PM | N.S.C. Bose | S |
| 10. | 2/64/78-PM Annexure | - | C |
| 11. | 2/67/78-PM | Widow and daughter of Shri Subhash Chandra Bose Miscellaneous correspondence with and about | S |
| 12. | 2/64/79-PM | N.S.C. Bose | C |
| 13. | 2(64)/80-PM | NSC Bose | U |
| 14. | 2/64/80-PM Annexure | - | S |
| 15. | 2(64)/81-PM | NSC Bose | U |
| 16. | 2(64)/82-PM | NSC Bose | U |
| 17. | 2(64)/84-PM | NSC Bose | U |



| | | | |
|-----|------------------------------|---|---|
| 18. | 2/64/86-PM | N.S.C Bose | S |
| 19. | 800/6/C/3/88-Pol | Death of Netaji Subhash Chandra Bose – Appointment of an enquiry commission to go into the circumstances – papers regarding INA treasure etc. | S |
| 20. | 800/6/C/1/89-Pol | Netaji Subhash Bose | S |
| 21. | 800/6/C/1/90-Pol | Netaji Subhas Bose- bringing in the ashes of | U |
| 22. | 870/11/P/17/90-Pol | Netaji Subhash Chandra Bose – disappearance regarding – reference from Prof. Samar Guha, MP | S |
| 23. | 800/5/C/1/91-Pol(V.1) | Bharat Ratna Award – Maulana Abul Kalam Azad, Subhash Chandra Bose, JRD Tata, Morarji Desai | S |
| 24. | 800/6/C/1/91-Pol | Netaji Subhsash Chandra Bose – disappearance of | U |
| 25. | 870/11/P/10/91-Pol | Netaji Subhsash Chandra Bose – disappearance regarding – reference from Prof. Samar Guha, MP | S |
| 26. | 870/11/P/16/92-Pol | Netaji Subhash Chandra Bose – disappearance of – papers regarding Funeral of widow of Netaji | C |
| 27. | 870/11/P/10/93 Pol(V.2) | Disappearance of Netaji Subhash Chandra Bose-regarding | S |
| 28. | 870/11/P/11/95-Pol | Disappearance of Netaji Subhash Chandra Bose | S |
| 29. | 915/11/C/6/96-Pol | Disappearance/ death of Netaji Subhash Chandra Bose, etc. | C |
| 30. | 915/11/C/9/99-Pol(V.1) | Netaji Subhash Chandra Bose – disappearance/ death inquiry reg | S |
| 31. | 915/11/C/9/99-Pol(V.3) | Netaji Subhsash Chandra Bose – death / disappearance regarding | U |
| 32. | 915/11/C/2/2006- Pol(V.1) | Netaji Subhas Chandra Bose- regarding | S |
| 33. | 915/11/C/2/2006- Pol(V.3) | Mortal remains of Netaji Subhas Chandra Bose kept in the Rankoji Temple in Japan on behalf of Govt. of India- letter dated 7.12.2006 addressed to the Prime Minister by Shri Barun Mukherjee, MP (Rajya Sabha) and Shri Subrata Bose, leader of All India Forward Bloc in Lok Sabha & nephew of Netaji Subhas Chandra Bose regarding. | C |



| | | | |
|-----|--------------------------|--|----------------------------|
| 34. | 915/11/C/2/2006-Pol(V.4) | Court case- CAN no. 2133 of 2008 in WP no. 2754/2006- Shri A.K. Ganguly & oths vs. UoI & oths- letter from Shri A.K. Ganguly & Subhash Chandra Basu- regarding disappearance of Netaji Subhas Chandra Bose | U |
| 35. | 915/11/C/2/2008-Pol | Disappearance of Netaji Subhas Chandra Bose- matter / pps related to WP no. 8215 (w) of 2008 in Calcutta High Court | U |
| 36. | 915/11/C/1/2009-Pol | WP no. 8215(w) of 2008 filed in the calcutta HC by Subhas Chandra Basu and otrs- regarding disappearance of Netaji S.C. Bose | U |
| 37. | 23(11)/56-57-PM-NGO | INA Treasure | declassified / Sent to NAI |
| 38. | T-2(64)/78-PM-NGO | Death of Netaji Subhash Chandra Bose – Appointment of an enquiry commission to go into the circumstances of death | declassified / Sent to NAI |
| 39. | G-12(3)/98-NGO | Transfer of the Ashes of Netaji SC Bose to India | TS |
| 40. | G-16(4)/2000-NGO(V.1) | Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry | TS |
| 41. | G-16(4)/2000-NGO(V.2) | Death/Disappearance of Netaji SC Bose-Justice Mukherjee Commission of Inquiry | TS |



UNDER RIGHT TO INFORMATION ACT

Central Public Information Officer
Prime Minister's Office (PMO)
South Block, New Delhi – 110101

Sir

Please provide complete information together with related documents/correspondence/file-notings on under-mentioned aspects:

1. Is it true that there are some files relating to Netaji Subhash Chandra Bose with Union government?
2. Complete information on subject-matters of all files relating to Netaji Subhash Chandra Bose as available with Union government
3. Copies of complete files relating to Netaji Subhash Chandra Bose
4. Complete information on action taken for making public files relating to Netjai Subhash Chandra Bose
5. Copies of requests made by various persons to make files relating to Netaji Subhash Chandra Bose public
6. Complete information on action taken on requests for making public files relating to Netjai Subhash Chandra Bose
7. Complete information on commissions etc constituted for enquiry into alleged death of Netaji Subhash Chandra Bose in 1945 mentioning outcome of each of such enquiry-commissions
8. Complete information on efforts made, if any, by Indian government to trace Netaji Subhash Chandra Bose (pre-independence or post-independence) after his sudden disappearance in August 1945?
9. Is it true that Indian government has/had been in some agreement with British government for handing over Netaji Subhash Chandra Bose to British-government
10. Copies of any agreements between Indian government and British government (pre-independence or post-independence) relating to Netaji Subhash Chandra Bose

11. Complete information on celebrating birth-anniversary of Netaji Subhash Chandra Bose every year on 23rd January by Union and/or state-governments mainly including of West Bengal and Orissa
12. Complete information on honours awarded by Union and/or state-governments including also creating memorials or naming institutions after him in honour of Netaji Subhash Chandra Bose
13. Comparative chart of annual expenses for last three years made on celebrating birth/death anniversaries of departed leaders by Union government mentioning also if such expenses are made for celebrating birth-anniversary of Netaji Subhash Chandra Bose also
14. Is 'Netaji' an officially designated honoured pre-fix in the name of Netaji Subhash Chandra Bose?
15. Complete file-notings/correspondence/documents etc on honouring Netaji Subhash Chandra Bose with pre-fixed word 'Netaji' before his name
16. Any other related information
17. File-notings on movement of RTI petition

In case queries relate to some other public-authority, transfer RTI petition to CPIO there under section 6(3) of RTI Act. Postal-order 11F-094433 for rupees ten is enclosed towards RTI fees in name of "Accounts-Officer" as per DoPT-circular-number F.10/9/2008-IR dated 05.12.2008.

Regards



SUBHASH CHANDRA AGRAWAL

(Guinness Record Holder & RTI Activist)

1775 Kucha Lattushah

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DELHI 110006 (India)

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14.09.2013

