

Union of India

Vs

Bijan Ghosh

(Sujata V. Manohar, G.B.Pattanaik JJ)

04.08.1997

ORDER

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

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

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

3. The petitioner has also raised another objection to the conferment of Bharat Ratna on Netaji

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

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

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

6. We have heard the original petitioners and the learned advocates appearing on behalf of some of the petitioners. In order to clarify the position, Mr. Altaf Ahmad, learned Additional Solicitor General has drawn our attention to notification dated 8th of January, 1955 issued by the office of the Secretary to the President bearing No.1-Pres./55 setting out the Statutes and Rules relating to the awards of Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri. It sets out, inter alia, as follows:-

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

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

10. The President may cancel and annul the award of the decoration to any person and thereupon his name shall be erased from the Register and he shall be required to surrender the decoration and the Sanad. But it shall be competent for the President to restore the decoration and Sanad and to withdraw the orders of cancellation and annulment. The notice of cancellation or restoration in every case shall be published in the Gazette of India." In order to confer the award of Bharat Ratna, it is necessary that the name of that person should be published in the Gazette of India. It is also necessary that the name of such a person should be entered in the register of such recipients maintained under the direction of the President. Clause 10 which deals with cancellation or annulment of the award requires the erasure of the name of such a person from the register. The notice of cancellation in every case is also required to be published in the Gazette of India. It is pointed out by the Additional Solicitor General that the award has to be conferred by first publishing the name of the recipient in the Gazette of India and entering it in the register of recipients. In the present case, only an announcement was made by the press communication which was issued. In deference to the sentiments expressed by the public and by the members of the family of Netaji Subhas Chandra Bose, the Government of India did not proceed further to confer the award and hence the name was not published in the Gazette of India, nor, was it entered in the register of recipient, nor was any

decoration conferred by the President by a Sanda under his hand and seal. That is why the affidavit filed on behalf of the Union of India states that the matter was closed in the sense that no further steps were taken for conferment of Bharat Ratna on Netaji Subhas Chandra Bose. Since the award has not in fact been conferred, the question of cancellation or annulment of the award under Clause 10 does not arise. Looking to the Statutes and Rules relating to the award, inter alia of Bharat Ratna, the position as explained by the Union of India appears to be correct. In deference to the feelings so eloquently expressed in there proceedings and which were no doubt, conveyed to the Union of India, the award was, in fact, not conferred and the proposal was dropped. We need not, therefore, go into the question whether the word 'posthumously' has been justifiably used in the press communique or the wider question whether there is enough material available for reaching the conclusion that Netaji Subhas Chandra Bose died either in the air-crash of 18th of August, 1945 or at any time thereafter. This is a wider issue on which undoubtedly in future as in the past, there will be divergent views. The real controversy in these proceedings relates to the press communique. Since no further steps have been taken pursuant to the press communique and the matter is treated as closed, we declare that the press communique should be treated as cancelled. With this declaration nothing further survives and the various petitions either transferred from the Calcutta High Court or filed in this Court stand disposed of.