

Action Thwarted Report

Army Prevented from Operation Clean-up

In sharp contrast to the political establishment, the Army acted swiftly. On March 15, 2001 within two days of Operation Westend being made public - the army set up a Court of Inquiry and started its proceedings. *Tehelka* submitted all the tapes pertaining to army officers. Tarun J Tejpal, CEO, *Tehelka.com*, himself deposed before the Army Court of Inquiry on March 20. Aniruddha Bahal and Mathew Samuel also deposed before the Army Court on March 21.

Picked for Court Martial

The Army court completed its inquiry and filed a report on May 31 recommending action against all those found guilty. We give below a summary of individual acts of corruption by army officials and the punitive action recommended by the Army Court.

□ **Maj-Gen P S K Chaudhari, Additional Director General, Weapons and Equipment:** He was seen on *Tehelka* tapes accepting a gold chain at the first meeting with *Tehelka* journalists posing as arms dealers at the residence of Maj-Gen S P Murgai. He accepted Rs one lakh at the second meeting and advised Westend about the ladder of graft, whom to contact, how much to pay, offering his services to push the deal through.

RECOMMENDED ACTION:
GENERAL COURT MARTIAL

□ **Brig Iqbal Singh, Prospective Procurement Officer (PPO):** He was shown on *Tehelka* Tapes accepting

Rs 50,000, compromising himself sexually with a female companion arranged by people whom he thought to be arms dealers, and with whom he was trading official favours in exchange. He had promised to “try” getting PSK Chaudhari into the deal, and “look after” and “cultivate” the MGO and also promised to organise a meeting with Maj-Gen Dhillon. In addition, he had offered advice to Westend on how to approach people to get the work done.

RECOMMENDED ACTION:
GENERAL COURT MARTIAL

□ **Col Anil Sehgal, Director, Directorate General of Ordnance Services (DGOS):** The behaviour of this man occupying a very key post is the most spine chilling of all. His foul language, his aggressive bullying and demand for kinky sex from the call girl provided to him and general tenor of his conversation, show him to be a hardened criminal type rather than a man reluctantly seduced by offer of a sex bribe, as he later made out to be.

In addition, he is shown accepting Rs 40,000, misusing his office by informing Westend about the relative standing of a number of companies vis-à-vis the Ministry of Defence and advice on opportunities to make a dent in the system. He also offered his services to help Westend with contacts, negotiate commissions and pay-offs in exchange for a cut for himself.

RECOMMENDED ACTION:
GENERAL COURT MARTIAL

□ **Lt-Col B B Sharma, an army officer posted at the Air Headquarters:**

Though not directly in charge of arms procurement, he came along with Col. Sehgal, just for some “fun”. He is seen on the tapes discussing ways he can help Westend climb the ladder of graft.

RECOMMENDED ACTION:
GENERAL COURT MARTIAL

Administrative Punishment

The Army Court of Inquiry had also suggested administrative action against the following officials:

□ **Maj-Gen MS Ahluwalia, Additional Director General, Ordnance Services:**

He was caught on *Tehelka* tapes being approached by Lt Col Sayal with a bribe of Rs 50,000. He refuses it at the time, saying he will take it after the work is done. The transcript says he does accept the money “later”. He also suggested PSK Chaudhari’s name as the right person to deal with to push the deal through. He happily boasts about bribing a lot of people to get work done at that particular point and mentions specific percentages to pay as commission. He advises Westend to come into the business with “deep pockets”. Apart from straight out cash bribes, he elaborates on the ground rules for additional necessary offerings. He says, if someone comes to meet him to talk about such big business, the least he can do is get a bottle of Blue Label, not just Black Label Scotch

whisky. According to him, just to meet Chaudhari, Westend must dish out Rs 30,000. He also tells Westend that if someone of his stature has to just put a signature on a paper, the person will not take such a risk for anything less than Rs 10 lakhs, irrespective of whether the deal gets through or not. He has a long conversation clarifying with Westend about all the information they expect him to provide, and preparing them for the big money they need to spend to get their work done, and how only Chaudhari can help them. He also discusses ways of getting Chaudhari on their side.

**RECOMMENDED ACTION:
DISMISSAL**

□ **Maj-Gen Satnam Singh, former Director General of Operations, Kargil Sector:** He was filmed advising Westend and giving sensitive information about the specifications that Westend's products need to comply with in order to be accepted.
**RECOMMENDED ACTION :
CENSURE**

Army Chief Ready to Punish

The recommendations made by the Court of Inquiry were placed before the General officer Commanding (GOC-in-C), Western Command. He seconded the recommendation of a General Court Martial against Maj-Gen PSK Chaudhari, Brig Iqbal Singh and Col Anil Sehgal.

He recommended administrative action in the form of dismissal against Maj Gen M S Ahluwalia and Lt-Col B B Sharma. For Maj-Gen Satnam Singh, he recommended administrative action in the form of censure.

The Army Chief has accepted the recommendations made by the GOC-in-C, Western Command, both as regards the setting up of a General Court Martial as well as the administrative action.

Involvement of Retd.Officials

The Army Court of Inquiry also recommended action to be taken against the following retired army officers who are no longer under the purview of the Army Act:

Maj-Gen S P Murgai, Additional Director General, Quality Assurance, Lt-Col Sayal, officer at the Directorate General of Ordnance Services, and Lt-Col V K Berry, Officer at the Corps of Signals. These recommendations are under consideration.

Fact Finding Committee

The Ministry of Defence also set up a One-Man Fact-Finding Committee, headed by Chief Vigilance Officer R P Bagai. Its brief was to look into the conduct of its officials, whose names figure in the *Tehelka* tapes. The brief included an inquiry as to whether transactions pertaining to the procurement of armaments, weapons systems and stores shown in the sting tapes and transcripts have been carried out in terms of the prescribed procedure. The Committee has also been asked to examine whether individuals can manipulate existing procurement procedures for extraneous considerations and to suggest appropriate changes to make the system less vulnerable.

Guilty Civilian Officials

Its recommendations have been accepted and a chargesheet is being served upon the following civilians of the Ministry of Defence:

□ **P Sasi, Assistant, Ordnance Supply Directorate, Army Headquarters:** He was one of the earliest contacts made by the team. He was filmed accepting Rs 52,000 in four instalments. He kick-started the ladder of graft that Operation Westend would expose by introducing the *Tehelka* journalists posing as arms dealers to Col Anil

Sehgal. He tells them that Sehgal should be given Rs 50,000, and he will also take a three per cent cut from the sale of the product.

In later meetings, Sasi also provides a number of documents to them, like MoD specifications, details of the RR battalion, details of CSF Thomson, and Russian equipment. He is shown telling the "arms dealers" that the Controller, Quality Assurance, will take Rs 5 lakh, as will the DGOS, for according sanction. Later on, he is filmed discussing a meeting with Maj-Gen Dhillon. *Tehelka* tells him that he will receive the rest of his commission after the meeting. He also discusses percentages of commission he expects from Westend in subsequent meetings. He advises on possible ways of reaching George Fernandes, and provides *Tehelka* with details of the percentages various companies give to get their work done.

□ **Narender Singh, Assistant Financial Advisor, Defence (Finance) Division:** He was found guilty of accepting Rs 10,000. Before meeting him, Sasi had told *Tehelka* that Singh charges heavily for doing work. They discuss setting up of channels and Singh says that he can look after the finance side of things. They also discuss the percentages of amounts that were being currently taken by middlemen in deals such as these. He tells *Tehelka* about the role played by various departments in facilitating this work and how *Tehelka* should coordinate the whole exercise. He also discusses the role of the Master General, Ordnance, and asks the *Tehelka* journalist whether he has been given Rs one crore apart from a percentage from the deal.

□ **HC Pant, Staff Officer, Ordnance Factor Cell:** After examining the tapes,

the Army Court found him guilty of accepting Rs 60,000 in four instalments. In addition he accepts the offer of a gold chain, but it never comes through.

He claims to know Maj-Gen PSK Chaudhari and Maj-Gen Bhatnagar, and promises meetings with Chaudhari and Gen Shankar Prasad. In the same tape, he also talks about his friends in the DGOS – Col Pandey and Col Soni. It is he who suggests to *Tehelka* that they should give a gold chain to Chaudhari. In tape 41, Pant explains to *Tehelka* that procurements below Rs 25 crore can be directly made by the Minister of State for Defence,

whereas anything up to and above Rs 50 crore has to be made by the Defence Minister himself. He also informs *Tehelka* that the percentage of commission varies between four to 10 per cent. He is shown elaborating on Jaya Jaitley's connection with George Fernandes and tells *Tehelka* that he knows a Shiv Jatia, who is close to Prime Minister's son-in-law Ranjan Bhattacharya who can be helpful with such deals. He talks of a possible meeting with Bhattacharya. Pant also introduces *Tehelka* to Deepak Chhabra (tape 42), as someone close to Bhattacharya.

Govt. Gives Immunity

However, it is noteworthy that no civilian action has been taken against any of these army personnel. They all walk free while Shankar Sharma spent months in jail. The practical immunity given to them by the government has encouraged them to brazenly defend themselves before the Venkatswamy Commission, accuse *Tehelka* of all kinds of wrongdoing including blackmail. Even the action recommended against them by the Army Court of Inquiry has had to be held in abeyance till the Venkatswamy Commission submits its report. □

Need for Accountability

- Defence purchases account for a huge percentage of our national expenditure and should be open to public scrutiny. We demand that the Right to Accurate Information Act should replace the Official Secrets Act and this Act should cover Defence purchases as well.
- 15 defence deals have come under scrutiny in the Venkatswami Commission as a result of Operation Westend. Unfortunately, this part of the investigation has been held *in camera*. People have a right to know what is being done in the name of national security. We demand that when the Venkatswami Commission completes its work, its entire report, including the results of its 'in camera' investigation, be made public.
- Both the CAG and CVC reports point to serious irregularities and corruption in defence matters. These reports should be tabled in Parliament, made public and acted on.
- Shankar Sharma and Devina Mehra of First Global have been victimized and witch hunted for investing in *Tehelka*, while those blatantly caught in the wrong continue to walk scot-free. Given that not a single charge sheet has been filed against them even after a year of

intense scrutiny by a hostile government, Shankar and Devina should be returned their right to livelihood and trade *until* (and if) they are proved guilty of any wrong doing.

- The Enforcement Directorate (ED) has investigated and served summons for "violation" of foreign exchange rules only to *Tehelka* and its investor Shankar Sharma. Instead, investigations should be launched against Bangaru Laxman, RK Jain, Mohinder Pal Saini, RK Gupta, Deepak Gupta, Rakesh Nigam, Sudeep Chaudhuri, Suresh Nanda and others, who either appear on the *Tehelka* tapes or are referred to as being part of dubious deals involving foreign exchange.
- The Government of India has neither investigated nor filed a single affidavit in the Venkatswami Commission against those caught red-handed in the *Tehelka* tapes. Instead, it has filed ridiculous and malafide affidavits with provable lies against *Tehelka* and First Global. We demand that all those found accepting or facilitating bribes be properly investigated and punished.
- The one-man Bagai Commission was set up post Operation Westend to investigate the non-uniformed

officers. We demand that action be taken on its recommendations.

- Since the Army Court of Enquiry and the Bagai Commission have already indicted some officers on the basis of the *Tehelka* tapes, and Justice Venkatswamy has also ruled on the veracity of those tapes, the government should stop adopting delaying tactics and playing an obstructive role. Instead it should assist the Venkatswami Commission to complete its task with speed and punish the guilty with determination.
- The army officers indicted by the Army Court and the Bagai Commission, are once again part of the Venkatswami Inquiry. It is absurd to have two Commissions set up at the same time to inquire into the same people for the same guilt. The indicted army officers should be given the punishments recommended by the Army Court with immediate effect.
- Political parties should be allowed to have legitimate sources of party funding so that one of the root causes of political corruption can be eliminated. We demand thorough going electoral reforms to make political parties accountable and transparent in their functioning, including fund raising.

Better be Corrupt than Expose Corruption

Unconstitutional Provision (Term D) Added to the Commission of Inquiry

The government announced the Justice Venkataswami Commission of Inquiry on March 24, 2001. The terms of reference of the Commission are as follows:

- (a) to inquire whether the transactions relating to Defence and other procurements referred to in the said video tapes and transcripts have been carried out in terms of the prescribed procedures and the imperatives of national security.
- (b) To inquire whether in any of the aforesaid procurement transactions, illicit gains have been made by persons in public office, individuals, and any other organization as alleged, and if so, to what extent;
- (c) To suggest actions that may be taken in respect of persons who may be found responsible by the Commission for their acts of commission and/or omission in respect of the transactions referred to in sub-clause (a) above;
- (d) To inquire into all aspects relating to the making and publication of these allegation and any other matter which arises from or is connected with or incidental to any act, omission or transaction referred to in sub-clauses (a) and (b) above.

This was a welcome initiative. However, the government gave away its mala fide political intent by including 'Term D' in the terms of reference of the Commission of Inquiry.

This term, which inquires into "all aspects relating to the making and publication of these allegations" is unprecedented in the history of commissions in India, and indeed, investigative journalism anywhere in the world. It cleverly puts the Tehelka team in the dock and shifts the spotlight from the accused.

AG Noorani, reputed constitutional expert and lawyer made the following indictment of this clause: "Never in the half century of the Commission of Inquiry Act, 1952, was the body ever asked to probe into the credentials of those who had made the charges. The focus was on the message, never the messenger. If this move is allowed to pass muster, the press will be effectively muzzled. Any time it publishes an expose, the government will retaliate by setting up inquiries not only into the truth of the charges, but also into the motives, finances and sources of the journal which published them. The widely worded remit – d (of the Venkataswami Commission, dealing with *Tehelka*) includes everything except the kitchen sink... It is not only invidious to single out the press for discriminatory treatment, it is also unconstitutional to do so." *Hindustan Times* on 31 March, 2001.

It is now a year since the inquiry began. *Tehelka* is still defending its 'motives' for the investigation and the veracity of the tapes. (The Hon. Judge Venkataswami has already ruled once that they are genuine; but the political establishment continues to question it, and the subject has been reopened.) In the meantime, all the affidavits filed by the government are against *Tehelka* and First Global; not one is against those caught in blatant acts of corruption.

Since the story broke, as many as 7 *Tehelka* journalists, including two senior editors, have spent more than 8,000 man hours doing Commission-related work rather than practising journalism. They have been attending Commission hearings and confabulating with as many as 13 lawyers.

Tehelka submitted the asked for tapes to the Army Court of Inquiry in mid-March, and to the Venkataswami Commission when it was set up in mid-May. Many leading lawyers and judges opined that the tapes comprised prima facie evidence admissible in court.

The Army Court of Inquiry has already submitted its recommendations for court martial and suspensions based on these tapes. But in the Venkataswami Commission - because of TERM D- the accused are being fully supported by various government agencies to subject the *Tehelka* team and its tapes to endless scrutiny so that in effect *Tehelka* and First Global seem to be the real culprits. The message being driven home is that in today's India to expose corruption is a much greater crime than indulging in it.