

# The Workings of the Official Secrets Act

## The Story of a Victimised Nuclear Scientist

**W**hen an award-winning naval scientist is framed under false charges, forced to undergo 20 months of imprisonment, dragged into court for five long years and finally awarded an abysmal acquittal, his career and emotional well-being are in shambles—all because a paranoid establishment is trying desperately to hide its flaws—we have transgressed all sense of justice.

The story of Dr Buddhi Kota Subbarao would evoke a sense of outrage in every thinking individual. He was a victim of his professional integrity, a classic example of how a talented life can be damaged by the machinations of a corrupt bureaucracy.

Dr Subbarao, 57, is a former captain of the Indian Navy. Having stood first in electrical engineering (B.E.) from the Andhra Pradesh University in 1963, he joined the Indian Navy the same year. He took voluntary retirement in 1987 after 25 years of distinguished service.

During the years of his initiation into the navy, Subbarao acquired specialisation in naval systems and equipment. Immediately after joining, he took a 58-week advanced weapon electronic course, topped it and became senior to all his batchmates. He became a specialist in computer-aided control systems of guns, missiles and torpedoes, radar, sonar and radio systems.

Subbarao was obviously a cut above the rest. He served on several anti-aircraft and anti-submarine ships,



**Dr B.K. Subbarao**

and his outstanding qualities were recognised by the navy with various awards and citations. He was the recipient of the Herbert Lott Memorial Award “for his inventiveness in improving the existing fighting devices of the navy” and the Lieutenant V.K. Jain Memorial Gold Medal “for his achievements in the field of computer technology, electrical engineering and control engineering.”

His life started taking a new twist when, in June 1976, he was called in as second-in-command for a team of naval officers and scientists working at the Bhabha Atomic Research Centre (BARC) at Trombay. The team was developing a nuclear submarine propulsion plant. Subbarao did not know at this point of time what BARC had in store for him or that his professionalism and commitment would bring him into a dangerous conflict with the BARC hierarchy.

The BARC scientists had been working on the first design of a nuclear submarine propulsion plant since 1971. On the basis of Subbarao’s technical findings, this design had to be dropped in 1976. The second design was also dropped in January 1978 after Subbarao showed that it was not viable for naval application. The BARC authorities were predictably peeved at Subbarao picking holes in their work and at their next go, decided to bypass the naval team.

The third design was directly submitted by the BARC in March-April 1980 to Prime Minister Indira Gandhi. Not only this, but the scientists also wanted Rs 150 crore to build a prototype of their third design. Indira Gandhi, however, directed the then defence minister (R. Venkataraman, later President of India) to seek technical opinion from Subbarao.

Subbarao’s report rejected BARC’s third design. He specified that the design failed to meet the basic standards, such as safety, followed by the nuclear navies of the USA, Russia, Britain, France and China. Consequently, Indira Gandhi returned BARC’s proposal. However, she also said that she would reconsider her decision if the BARC scientists could disprove Subbarao’s claim.

The BARC started work on the fourth design towards the end of 1980. Meanwhile, the Indian Navy instructed Subbarao to develop a design of his own. Subbarao’s design was ready by November

1982 and was submitted to the Prime Minister's Office.

Indira Gandhi asked the BARC scientists to examine the possibility of building a prototype based on Subbarao's nuclear submarine design. Dr Raja Ramanna, the BARC director (also scientific adviser to the Defence Minister) declined to consider Subbarao's design under a lame pretext that the work of a naval officer could not be pursued at BARC.

In fact, the BARC establishment was tired of Subbarao showing them up. Following the incident, Dr Ramanna allegedly exerted superior pressure upon the naval authorities to withdraw Subbarao from the nuclear submarine project. He was called back into active naval service.

However, Subbarao pursued the special interests he had acquired through academics and wrote a doctorate thesis. In 1985, Subbarao was awarded a Ph.D by the Indian Institute of Technology, Mumbai for his thesis, "Nuclear Power Plant Modelling and Design Multivariable Control Approach".

In 1987, Subbarao took voluntary retirement. He readied himself for academics and consultancy in computer systems.

In 1988, he was invited by CEAT (INDIA) and AT&T (USA) to make a presentation for a joint venture project. Dr Subbarao was readying himself for a visit to the USA.

Around this time, Gopi Krishan Arora, Secretary of Information and Broadcasting sounded Subbarao on Prime Minister Rajiv Gandhi's offer to become the technical head of the nuclear submarine project. However, Subbarao says he was not satisfied in getting appointed to such a position by an executive order of the Prime Minister. Therefore, he suggested to the Prime Minister that a selection committee be formed which would scrutinise the

candidature of BARC scientists for the post as well. Rajiv Gandhi was pleased with this proposal and it was to be executed when Subbarao returned from the USA.

The idea of a selection committee seemed to have alarmed and upset the BARC scientists working on the nuclear submarine project to no end. The BARC and the Department of Atomic Energy (DAE) connived with the Maharashtra government to implicate Subbarao in a false case to prevent his reinduction into the project. Subbarao did not make it to the USA.

No sooner had he reached the Sahar International Airport on May 30, 1988 that Subbarao was confronted by police officials and detained. This was to be the beginning of a five year long gruelling battle, with the scales unnaturally lopsided.

Subbarao was charged under the Official Secrets Act and the Atomic Energy Act with trying to smuggle secret documents out of the country. A vicious propaganda campaign was launched against him through the national and the vernacular press to suggest that he was caught at the airport carrying atomic and defence secrets of the country on board a foreign flight.

But all that Subbarao was carrying with him was his Ph.D thesis approved by IIT, Mumbai, and other literature on nuclear technology which is freely available and can be readily accessed from various universities and research centres in the world. In fact, Subbarao had not violated any law.

The scientists of BARC and DAE, who had failed to match Subbarao's ingenuity in nuclear science and technology, were immensely successful in causing harm to his body, mind and

reputation. They used the legal system and state authority to fulfil their ends. Neither the Constitution of India nor the courts were of any help to him.

Subbarao was kept in torturous police custody for three months while the police searched for ways to invent a false case against him. On August 9, 1988 the Attorney-General of India, K. Parasaran, issued a sanction under sub-section (2) of Section 26 of the Atomic Energy Act 1962 to start prosecution against Subbarao. He was transferred from police custody to judicial custody. For 20 months, Subbarao was lodged in three central prisons of Maharashtra at Mumbai, Thane and Nasik.

To add insult to injury, even a Supreme Court judge, Justice A.M. Ahmadi (later Chief Justice of India) was taken in by the false affidavit filed by the special prosecutors (Mrs. Manjula Rao and Mr. B.R. Handa) and the police, on behalf of the state of Maharashtra. When a conscientious judge of the Bombay High Court tried to render some justice to Subbarao and granted him temporary medical bail, Justice Ahmadi acted high-handedly, not only cancelling the bail but also passing strictures against the High Court judge. Justice Ahmadi also repeatedly refused permission to Subbarao to appear in person before the Supreme Court. Even after it became clear that the case got bolstered from the false affidavit filed before the Supreme Court, there was no zeal in Justice Ahmadi to remedy the miscarriage of justice caused by his orders. As a result, an innocent, respectable and highly talented man spent 20 months in jail.

The court case dragged on for five years. It was placed before three magistrates, five sessions

judges, 21 High Court judges and 13 Supreme Court judges. In the meantime, Subbarao had spent time in the jail studying law and appeared in person in the Sessions Court, the Bombay High Court and the Supreme Court where the case reached for a second time. Finally, in October 1991, the Bombay High Court passed Subbarao's acquittal orders. The appeal against the acquittal was dismissed by the Supreme Court in 1993.

The case ended in the Supreme Court on a bitter note for Subbarao. He was awarded Rs 25,000 as "costs for his mental suffering and financial loss" but all those who had caused him anguish and had mastered his prosecution, went scot-free.

Dr Subbarao was the victim of several miscarriages of justice from the lowest to the highest courts in India. Surprisingly, most magistrates, district judges and Supreme Court judges who dealt with the case did not even enquire if the documents seized on Dr Subbarao's person at Sahar airport were official secrets. Shocked by the facts of the case, Justice V. D. Tulzapurkar, former judge of the Supreme Court, expressed publicly that there was "miscarriage of justice on account of inaccurate, untrue and misleading statements made by the prosecuting agency before several courts in the unfortunate case against Dr B. K. Subbarao." He added, "I hope the apex court judges muster Himalayan courage to admit and rectify a Himalayan blunder... The only other way of making proper amends would be by the state of Maharashtra who had launched the prosecution against Dr Subbarao, declaring publicly that it was an ill-conceived prosecution, tendering

unqualified apology and paying him substantial compensation, unlike the meagre amount of Rs 25,000 awarded to him by the Supreme Court." However, the Supreme Court failed to answer how it ought to accept accountability for violating a citizen's fundamental rights.

A new development in the case took place when, in 1994, it came to light that the former attorney-general, K. Parasaran had been informed by the then chairman of the Atomic Energy Commission (AEC) and Secretary, Department of Atomic Energy (DAE), Dr M.R. Srinivasan, that Subbarao was not carrying any atomic or defence secrets and the Ph.D thesis found in his suitcase was not a classified document. Hence, there was no violation of the Official Secrets Act, and surely no grounds for starting a criminal case against Subbarao. Dr Srinivasan disclosed these facts in a signed article in *The Hindu*. "I find it reprehensible that a naval officer who performed well has been treated so badly by the CBI. The agony that Subbarao and his family have had to endure can never be adequately compensated," he wrote. It appeared that Parasaran had chosen to ignore Srinivasan's opinion and given an 'illegal' sanction to implicate Subbarao.

In light of the above development, Dr Subbarao filed an application before the Supreme Court questioning the basis on which the highest law officer of the land, the Attorney General of India, K. Parasaran had given his consent to prosecute him. He also questioned the basis of 'authorisation' by the Joint Secretary in the (DAE), S.K. Bhandarkar to the prosecution, when the secretary in the (DAE) had declined his involvement.

The Supreme Court first used delaying tactics, and thereafter at the hearing, conveyed that the Chief Justice had "looked at your matter". The presiding judge declined to disclose in open court the assessment of the Chief Justice. The in-house examination at the Supreme Court did not take place despite repeated requests made by Dr Subbarao. Subsequently, he also submitted a detailed 57-page letter requesting the Chief Justice to constitute a larger bench of the Supreme Court to consider questions of law of great public interest which had arisen on account of the case. No action was taken by Chief Justice Ahmadi except issuing a communication on the eve of his retirement, signed by assistant registrar of the Supreme Court stating, "...I am directed to inform you that the same [the letter to the Chief Justice] has been lodged and no further communication in this behalf will be entertained." Dr Subbarao was thus denied his fundamental rights yet again. He tried to follow-up the matter with the next Chief Justice, A. S. Verma who preferred to remain completely silent on the subject.

Dr Subbarao finally submitted a petition to the President of India in April, 1998 which hasn't found a response as yet. □

Dr Subbarao, who at present resides in Mumbai, is an active member of The People's Union of Civil Liberty (PUCL) and is involved in fighting cases for people like him who are implicated in false charges by corrupt establishments. In the article which follows on page 28, Dr Subbarao exposes *Our Nuclear Scam*.

*This article has been put together by M.S. Siddhu with some additions by Tanmayee Dass based on the information collated from the Supreme Court documents on this case.*