

Smear campaign against the Bhushans: The True Facts

Shortly after the notification of the joint drafting committee, a smear campaign against the Bhushans was unleashed. A fabricated CD was circulated to select media organizations. Allegations were made about stamp duty evasion with regard to the purchase of a property in Allahabad. Aspersions were cast on the allotment of 2 farm land plots in NOIDA to Mr. Shanti Bhushan and Mr. Jayant Bhushan. A lot of misinformation was spread through innuendos by sections of the media. A campaign was mounted to get the Bhushans to resign from the drafting committee. In the swirl of allegations and innuendos the hope of those who carried out this campaign along with their spin doctors in the media was that the facts would not be examined by the people and an impression would remain that the Bhushans were not as clean as people thought them to be. It is therefore important to examine the facts in order to unravel the smear campaign. These facts on each of the three issues are contained in the attached document. We request you to go through these facts and share them with others.

Statement of facts regarding Shanti Bhushan CD

Q1. How did this CD surface and what are its contents?

A1.

1. On 13th April 2011, a CD was mysteriously delivered to some select media organizations, including Indian Express which contained a purported telephonic conversation between Mr. Amar Singh and Mr. Mulayam Singh as well as between Mr. Shanti Bhushan and Mr. Mulayam Singh. The purport of the conversation was to suggest that Mr. Shanti Bhushan was telling Mr. Mulayam Singh that his son Mr. Prashant Bhushan can fix a particular judge in Supreme Court for Rs. 4 crores.
2. This CD was played out by an Indian Express reporter before Mr. Shanti Bhushan on the night of 13th April. Since Mr. Shanti Bhushan had never met Mr. Amar Singh with whom he is purported to be sitting while having this conversation, and because it was preposterous to suggest that such conversation had taken place, he lodged an FIR regarding fabrication of CD the very next day.

Q2. What are the facts about the verification of this CD and what role has the media played in disseminating this information?

A2.

1. On 16th April 2011, Hindustan Times carried a front page story that they had got the CD verified from a Govt Lab, which had certified it to be genuine. They however, did not publish or report the name of the lab or expert.
2. On 17th April 2011, Mr. Prashant Bhushan and Mr. Arvind Kejriwal held a press conference, where they released the reports from two renowned forensic labs; Hyderabad-based Truth Labs, which is amongst the best forensic labs in India, headed by Dr. Gandhi Kaza and US-based Sound Evidence headed by Dr. George Papcun. These reports authored by Dr. S R Singh, Former Director, CFSL-CBI, New Delhi and Dr. George Papcun, PhD (Acoustic Phonetics) who is a forensic expert in acoustic analysis and has been relied upon as an expert witness in numerous high profile cases. Truth Labs' Advisory Board is headed by former CJI Mr. M N Venkatachaliah.

3. These reports found that most parts of Mr. Mulayam Singh's speech were copied from the 2006 conversation between Mr. Amar Singh and Mr. Mulayam Singh, onto the fabricated CD. Moreover, on the basis of spectrograms, it was established that there were multiple signs of editing and gaps in Mr. Shanti Bhushan's purported speech in the conversation. Words/phrases have clearly been edited/lifted from many different conversations and stitched/spliced together.
4. On 18th April 2011, the Delhi police finally collected the copy of the CD from Mr. Shanti Bhushan and were given a copy of another CD containing a conversation between Mr. Mulayam Singh and Mr. Amar Singh, which was filed (along with transcript) in the Supreme Court by Mr. Prashant Bhushan in Amar Singh's tape case in 2006 itself. The police were told that several parts of Mr. Mulayam Singh's speech in the fabricated CD were directly copied from the 2006 conversation between Mr. Amar Singh and Mr. Mulayam Singh; and pasted onto the fabricated CD.
5. On 21st April 2011, the Economic Times carried a report that the CFSL-CBI, Delhi has given a report to Delhi police that the CD was genuine and did not have any breaks. The same day, select media channels started running the story that the CFSL-CBI had concluded that the CD was continuous and showed no signs of editing. Nobody however, had a copy of this purported CFSL-CBI report. The Delhi Police did not officially confirm or deny it.
6. Despite this, the media has been raising doubts about whether the CD is fabricated, primarily on the basis of the alleged CFSL-CBI report and the anonymous report of a Govt Lab cited by Hindustan Times.

Q3. Why should we not rely on the report of the CFSL government lab?

A3.

1. Based on past experience there are questions on the credibility of reports released by Government labs. Also, Prashant Bhushan has gone on record much before the CD was supposed to have been sent to CFSL apprehending that there is an orchestrated campaign to malign the Bhushans and it appears that the Government is behind it. Under the circumstances a government controlled lab such as the CFSL cannot be relied upon.

2. How can CFSL not even be able to detect the copying of Mulayam Singh's speech in this fabricated speech from 2006 conversation with Mr. Amar Singh (which has been filed in the Supreme Court in 2006) and pasting it onto the fabricated CD?.. They already have the report of Truth Labs and Sound Evidence, showing exact positions of editing signatures and some of the gaps in Mr. Shanti Bhushan's speech.

3. The Bhushans have in any case petitioned the Supreme Court to order an impartial investigation regarding the CD.

Q4. How can one trust two private labs commissioned by the Bhushans ?

A4.

1. Both labs are not only highly renowned for their professionalism as expert witnesses in various cases but also have provided clear spectrographic evidence of the exact positions of editing signatures and gaps.
2. One report has been given by one of the world's leading experts on Acoustic Analysis, George Papcun, His CV can be accessed from here. <http://www.soundevidence.com/>
3. The second report is of Truth Labs whose Chairman of the Advisory Board is Retd. Chief Justice of India, M N Venkatachalliah. Their website can be accessed from here. <http://www.truthlabs.org/index.php>
4. On the other hand, the so called CFSL-CBI report, has not been shown by any media organization , which relied on that report. Hindustan Times has not even named the lab or author, of the so called report or quoted even a sentence from it.
5. In any case, there cannot be any doubt whatsoever, about Mr. Mulayam Singh's speech, having been copied from 2006 conversations with Amar Singh and pasted onto this fabricated CD.

Q5. Why weren't Mr. Shanti Bhushan's voice samples been taken, to examine their authenticity in the said CD?

- A5.** The voice does appear to be of Mr. Shanti Bhushan, but the forensic reports show that bits and pieces from different conversation appear to have been

spliced together to create his speech in the purported conversation. In fact voice samples were taken by Truth Labs. No other lab has asked for voice samples from Mr. Shanti Bhushan.

Q6. So who could have fabricated this CD and circulated it in the media?

A6.

1. Amar Singh's voice in the initial part of the CD is clear and appears continuous. He says that Mr. Shanti Bhushan is sitting with him (which is factually incorrect). If what Amar Singh has said in the CD has actually been said by him, it appears clearly that he has participated in fabrication of this CD.
2. Moreover, he mentions the name of the judge who is dealing with the 2G spectrum and Amar Singh's own tape case in Supreme Court. His objective of fabricating this CD would be to:
 - a. Smear the Bhushans (Mr. Prashant Bhushan was seeking the public disclosure of Amar Singh's tapes in that case and had got two chief secretaries of UP appointed at the instance of Amar Singh, removed through Supreme Court).
 - b. Get the concerned judge to recuse himself from the 2G case and Amar Singh's tape case.
3. That is why, Mr Shanti Bhushan has filed a criminal contempt petition at Supreme Court and has sought an independent investigation into the conspiracy behind the fabrication of the CD. The fact that the CFSL-CBI has been made to give what appears from media reports to be a dishonest report and the Delhi police, which didn't collect the copy of the CD for four days after the FIR, has participated in disseminating the CFSL-CBI report without showing copy to anyone, shows the involvement of the Central Govt in this smear campaign.

Statement of facts regarding NOIDA plot allotments to Shanti and Jayant Bhushan

A lot of misinformation has been spread regarding the allotment of farmland plots by the NOIDA authority to Jayant Bhushan and Shanti Bhushan. In this connection it has to be emphasised that:

- (1) This allotment was not made under any discretionary quota.
- (2) The total price of the property is Rs. 3.67 crores (not Rs. 35 lacs, as has been quoted in many newspapers) plus Rs 9.18 lakhs per annum lease rent.

Q1. Was the land allotted under discretionary quota?

A1.

No.

1. The allotment of farm land was not from any discretionary quota but from a regular scheme floated by NOIDA. This scheme was advertised in the news papers and was open for application by any person. It was for farmland plots of 10,000 sq. meters on which a farmhouse of upto 15,000 sq. ft is allowed to be constructed. It was not specified as to where in NOIDA the plots would be allotted.
2. The Bhushans applied for the plots as per the scheme in March 2009.
3. In May 2009, they were called for an interview which they attended, in which the means of finance was verified.
4. In January 2010, NOIDA sent a letter stating that a plot of 10,000 sq. Mtrs in sector 165 had been reserved and the allotment letter would be issued separately.
5. Thereafter nothing was heard from NOIDA authority till January 2011 when by allotment letters dated 05/01/2011, plot Number FH-18 & FH-19, sector-165 measuring 10,000 sq mts was allotted for a total premium of Rs 3,67,50,000 at an allotment rate of 3,500 per sq mtr plus location charges for being on 30m wide road. It may be noted that the allotment rate had gone up from Rs 3,100/- per sq mtr prevailing earlier to Rs 3,500/- per sq mtr.

Q2. Has the plot been purchased for a "song", i.e. a throwaway price?

A2.

1. The cost of each plot is Rs.3.67 crores plus additional annual lease rent of Rs.9.18 lacs every year for 90 years which translates to more than 75,000 per month will have to be paid for the entire duration of the lease. It is certainly not a throwaway price.
2. The total price of each property is NOT Rs. 35 lacs (as has been quoted in some newspapers). Rs. 83 Lacs have been paid till date. The rest is payable along with interest at the rate of 11 percent.

3. It seems some people have misunderstood the first installment as the total cost of the land.

4. There is nothing to suggest that the Bhushans have been charged less than the market price.
5. Allegations that the allotment rate is a fraction of the market rate are totally unsubstantiated. No sales have taken place in the open market. No one has explained how the alleged market rate has been arrived at.

Q3. What was the criteria for allotment of plots?**A3.**

1. No criterion for allotment was mentioned either in the advertisement or in the subsequent brochure of the scheme. Applicants were called for an interview which was supposed to determine their ability to pay the requisite amounts for the plots and to determine what the applicants planned to do with their plots.
2. The CEO of Noida has clarified (Business Standard 23/4/11) that out of the 160 applications received, 97 persons were allotted so far and the rest are being considered. Possibly the number of applications was not very high due to the high price and onerous conditions. In case the rate of allotment was much lower than the market value or intrinsic value, clearly the number of applicants would have been many times larger.
3. The brochure did not indicate on what basis the allotment would be made in case the number of applicants was more than the number of plots. Even when the allotment was made, it was unclear as to whether at all the number of applicants was greater than the number of plots or whether a draw of lots should have taken place.

Q4. If the Bhushans knew that the allotment was arbitrary, then why did they not return/cancel their plots?

A4.

1. No criterion for allotment was mentioned either in the advertisement or in the subsequent brochure of the scheme. However this did not indicate that the criteria used by the NOIDA authority for the allotment of plots would be arbitrary.
2. In fact the Bhushans have already stated that if the allotment of plots are found to be questionable, they would be more than willing to surrender their plots.
3. Moreover, if the plots were to be surrendered after allotment, it would entail a substantial forfeiture of the money already paid.

Q5. Jayant Bhushan was fighting a case against Mayawati. Were the plots then given to the Bhushans to dissuade them from fighting a case against her?

A5.

1. No. There is no connection between the cases and the plots. The Noida Park case was argued by Jayant Bhushan tooth and nail in full media glare right till the end. Anyone can look at the judgement delivered in the case or contact the 2 petitioners in the case.
2. The fact also is that there are two blocks in which farm plots were allotted. The Bhushans have been given plots in the worse of the two which is about 10 kms further away and currently in a totally undeveloped area unapproachable by any proper road.
3. It now turns out that several persons were allotted plots in a much better location (in/around sector 125 NOIDA) and much earlier and at a lower rate of Rs 3,100/- per sq mtr even though applications were made at a similar time. The Bhushans may infact have been discriminated against by
 - a. Making them wait for an extra year for allotment without giving any extra interest on the registration money.
 - b. Allotting plots at a location more than 10 km further away than the plots allotted to the initial allottees. These plots are obviously of much lower value than the plots in the initial sectors.
 - c. Allotting the plots at a higher rate (3,500/sqm as compared to 3,100/sqm)

4. Any suggestion that the Bhushans got the allotment as a favour from the Mayawati government because Jayant Bhushan was arguing the NOIDA park case against the government is totally incorrect. On the contrary, that may be the reason for the delay and poor location of allotment.
5. In fact even now, Prashant Bhushan and Mr. Shanti Bhushan are appearing against the Mayawati government in the very important case relating to the Taj corridor scam. The question of favouring the Bhushans by the Mayawati government does not arise.

Q6. Do you think the doubts raised by people on the allotment of these plots are reasonable?

A6.

1. A PIL was filed in the Allahabad High Court challenging the scheme/allotments. This was dismissed last year by a bench of the High Court. (details)
2. Another writ petition was filed by Mr Vikas Singh, former additional solicitor general, who had also been allotted a plot in the same vicinity as that of the Bhushans. His grievance was that the better plots in the initial sectors(in/around sec-125) had been allotted to favoured persons and that his plot was in a very bad location. 2 other persons who had not as yet been allotted a plot also challenged the allotments. This petition has also been dismissed by the Allahabad High Court on 16/04/2011. Vikas Singh has been shouting in the media that these plots were worth 15-20 Crores and were being given by paying bribes. His petition was not a PIL challenging the allotments. He was seeking a better plot for himself and allotments for his co-petitioners. In fact, though he had applied in the 2010-11 scheme (19 months after the Bhushans, he was allotted a plot at the same time and at the same price at in an adjacent sector. He made an alternative prayer that if he is not allowed a better location, then the allotments should be cancelled and the plots be auctioned. Obviously, he did not think that the plots were worth much more than what he was being asked to pay.

Statement of facts regarding Allahabad property of Shanti and Prashant Bhushan

Q1. Have the Bhushans bought a Rs. 20 crore house for Rs. 1 lakh in Allahabad?

A1.

1. The agreement for sale of the said property was made and signed by both parties in 1966 at the prevailing market value at that time (Rs. 1 lakh). However, on account of the fact that the 99 years lease granted by the Government in favour of the owner had expired and was pending renewal, the sale deed could not be executed.
2. Finally when the lease deed was renewed and the property was converted into free-hold, the Bhushans demanded execution of the sale deed which was refused by the owner.
3. The Bhushans instituted a suit for specific performance in the year 2000 in Civil Court at Allahabad which was pending.
4. Thereafter a compromise was arrived at between the Bhushans and the owner, under which the owner agreed to sell a major portion of the property to the Bhushans for the consideration agreed to in the agreement to sell, provided that the remaining portion of 4317.78 sq. yards be released from the agreement and be left with the owner to sell independently to other persons. The pending suit was decreed in terms of the agreement and it is in this background that the property was purchased for Rs. 1 lakh.
5. The sale deed was executed in 2010 through complete mutual agreement by both parties.

Q2. Have the Bhushans evaded stamp duty?

A2.

1. No. There is absolutely no question of evading Stamp Duty.
2. As per law the stamp duty could be calculated in either of three ways:
 - If it is a matter of sale consideration which was Rs. 1 Lakh, the stamp duty payable would be on Rs. 1 Lakh.

- If it is a case of sale of a house, the stamp duty will be payable on 20 times the annual assessed rent in which case the amount payable would be on Rs. 6,67,200/- .
 - It could also be considered as a sale of land, in which case the stamp duty payable would be dependent on the value of the land on the date of the execution of the sale deed.
3. In light of the above, the Bhushans **applied under section 31** of the Stamp Act on 29th September 2010 (2 months before the execution of the sale deed) by filing a copy of the sale deed asking the collector to determine as to what stamp duty would be payable on the sale deed when executed. Since the collector did not make any such determination and the sale deed had to be executed by 29th November 2010, Bhushans paid the higher of the first two methods of duty calculations since this is the sale of a house and not of vacant land and the land is part of the house itself. Mr Shanti Bhushan is pretty confident that he has paid the correct amount of stamp duty and that that his contention would be upheld by the courts even if the departmental officers under political pressure take a view against his contention. Law provides for a challenge to the determination of stamp duty by the departmental authority by the High court and eventually the Supreme court.
 4. Much before any notice was received, the Bhushans have themselves asked the collector to assess the duty payable and there is no question of evading duty.

Q3. Have the Bhushans received any notice asking them to pay stamp duty worth Rs. 1.33 crores?

A3.

1. The first notice from the authorities was dated February 5th 2011 asking the Bhushans to come on 22nd April to discuss the stamp duty payable. It did not mention any figure.
2. Another notice dated 15/04/2011 has been received only on 23rd April 2011 which is identical to the first notice except that for the first time it mentions a figure of approx. 1.33 Cr and fixes a date of 28/04/2011 for finalization of the Stamp Duty. Even this notice mentions that the question of determination of stamp duty was pending before him and the Bhushans were invited to assist him in determining the appropriate stamp duty payable. This would involve the collector to determine which of the 3 methods of collecting the stamp duty were applicable. **It is important to note that this notice was issued on the very day that Mr. Digvijay Singh publicly made the allegation about evasion of Stamp duty.**

A follow up date has been issued for May 5, 2011.

3. There is no notice for evasion of stamp duty. The final decision on the Stamp Duty payable is still pending. All legally applicable stamp duty will be paid.