

National Herald scam

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The ***National Herald scam*** is an ongoing case in a Delhi court filed by Indian economist and politician Subramanian Swamy against politicians Sonia Gandhi and Rahul Gandhi, their companies and associated persons.^[1] As per the complaint filed in the court of the Metropolitan Magistrate, Indian National Congress granted an interest-free loan of ₹90.25 crore (US\$13 million) to Associated Journals Limited (AJL), owner of the *National Herald* newspaper which was established by Jawaharlal Nehru and other freedom fighters in 1938. It was alleged that the loan was either not repaid or repaid in cash, which is in violation of Section 269T of the Income Tax Act, 1961.^[2] A closely held company, Young Indian, was incorporated in November 2010 with a capital of ₹50 lakh (US\$74,000) and it acquired almost all the shareholding of AJL and all its properties (alleged to be worth ₹5000 crore (US\$740 million)).^[3] Swamy alleged criminal misappropriation by both Sonia Gandhi and Rahul Gandhi. The courts have determined that a prima facie case has been established in the matter.

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Associated Journals Limited

Associated Journals Limited (AJL) is an unlisted public company limited by shares, incorporated on 20 November 1937, with its registered office at Herald House, 5-A, Bahadur Shah Zafar Marg, New Delhi. It was the brainchild of Jawaharlal Nehru but it was never his personal property as it was started with the support of about 5,000 freedom fighters who became shareholders of AJL. The company's capital was ₹5 lakh (US\$7,400) divided into 2,000 preferential shares worth ₹100 (US\$1.50) each and 30,000 ordinary (equity) shares worth ₹10 (15¢ US) each. Apart from Nehru, AJL's Memorandum of Association was signed by stalwarts such as Purushottam Das Tandon, Acharya Narendra Dev, Kailash Nath Katju, Rafi Ahmad Kidwai, Krishna Dutt Paliwal and Govind Ballabh Pant. The company did not belong to any

particular person, nor did it want to be associated with any business except news. AJL had 1,057 shareholders as of 29 September 2010^[4] as per the annual return filed by the company with the Registrar of Companies.

Motilal Vora has been the chairman and managing director of AJL since 22 March 2002.^{[5][6]} The company had incurred losses^[4] before its holdings were transferred to Young India in 2011.^{[7][8]}

AJL published the *National Herald* newspaper in English, *Qaumi Awaz* in Urdu and *Navjeevan* in Hindi until 2008. AJL also owns real estate property in various cities including New Delhi, Lucknow, Bhopal, Mumbai, Indore, Patna and Panchkula.^{[5][3]} The value of the real estate owned by AJL is estimated to be at ₹50 billion (US\$740 million).^[3] The properties of AJL include Herald House, a six-storey building with around 10,000 sq metre office space.^[9]

Young Indian

Young Indian is a private company limited by guarantee, incorporated on 23 November 2010 with a capital of ₹5 lakh (US\$7,400)^[3] and its registered office at 5A, Herald House, Bahadur Shah Zafar Marg, Delhi. On 13 December 2010, Rahul Gandhi was appointed director of Young Indian while Sonia Gandhi joined the board of directors on 22 January 2011.^[5] The company's 76 percent shares are held by Sonia Gandhi and Rahul Gandhi equally and the rest are held by Congress leaders Motilal Vora and Oscar Fernandes (12 percent each).^{[7][10]} It is described by Rahul Gandhi's office as a "not-for-profit company" which does have commercial operations.^[11]

Case

On 1 November 2012, Subramanian Swamy filed a private complaint in a court in Delhi alleging that both Sonia Gandhi and Rahul Gandhi have committed fraud and land grabbing worth ₹16 billion (US\$240 million) by acquiring a publicly limited company called Associated Journals Limited (AJL) through their owned private company, Young Indian.^[12] He also claimed that, through this fraud, they had got the publication rights of the *National Herald* and *Quami Awaz* newspapers, with real estate properties in Delhi and Uttar Pradesh. He alleged that the acquired place was given by the government only for newspaper purposes, but was used for running a passport office with rental income amounting to millions of rupees.^{[13][14]}

His complaint in the court further alleges that, on 26 February 2011, AJL approved the transfer^[6] of an unsecured loan of ₹90 crore (US\$13 million) from the All India Congress Committee at zero interest with company's all ninety million (9 crore) shares of ₹10 (15¢ US) each to Young Indian.^[15] Swamy argued that it is illegal for a political party to lend money for commercial purposes as per Section 29A to C of the Representation of the People Act, 1951, and Section 13A of Income-tax Act, 1961, and demanded investigation by the Central Bureau of Investigation (CBI) and the de-recognition of the Indian National Congress party for using public money.^[16] On 2 November 2012, the party responded that the loan was given only for reviving the *National Herald* newspaper with no commercial interest.^{[17][18][19]}

The hearing of the criminal proceedings case was taken up by the magistrate on various dates while the defendants opposed the petition and asked the magistrate to dismiss it.^{[20][21]} The court finally observed that *prima facie* evidence against all the accused was found. The court issued summons to the defendants to appear in the court to defend themselves against all the allegations made in Swamy's complaint.^[22]

On 26 June 2014, Metropolitan Magistrate Ms. Gomati Manocha summoned Sonia Gandhi, Rahul Gandhi, Motilal Vora, Oscar Fernandes, Suman Dubey and Satyan Pitroda to appear in the court on 7 August 2014. She said that according to the evidence so far, "it appears that YIL was in fact created as a sham or a cloak to convert public money to personal use" to acquire control over ₹20 billion (US\$290 million) worth of AJL assets. The court noted that all accused persons had allegedly acted "in consortium with each other to achieve the said nefarious purpose/design".^{[23][24]}

Appeal in Delhi High Court and Supreme Court

The defendants appealed in the Delhi High Court against the summons issued by the magistrate. The court issued a temporary injunction against the summons for a week.^{[25][26][27][28]} On 1 August 2014, Swamy was served notice to file reply in the High Court.^[29] On 28 August 2014, the metropolitan court fixed 9 December 2014 for the next hearing of the case.^{[30][31]} On 12 January 2015, the judge of the Delhi High Court recused himself from hearing the case stating that schedule of cases has been changed and directed that the petitions be directed before an appropriate bench.^[32]

Swamy appealed to the Supreme Court of India for a speedy trial of the case in the trial court. On 27 January 2015, the Supreme Court asked Swamy to make out a case for the speedy trial in the Delhi High Court which was hearing the appeal of Sonia Gandhi and others against the summons issued to them by the trial court.^[33] The case was assigned to Justice Sunil Gaur. In October 2015, the roster changed and the case was assigned to another judge. Sonia Gandhi and others requested the Chief Justice to assign the case to Justice Sunil Gaur again. Justice Gaur then again started hearing the case.^[34]

On 1 August 2014, the Enforcement Directorate initiated a probe to discover if there was any money laundering in the case.^[35] On 18 September 2015, it was reported that the Enforcement Directorate had reopened the investigation.^[36]

On 7 December 2015, the Delhi High Court dismissed the appeals of Sonia Gandhi, Rahul Gandhi and five others which included Motilal Vora, Oscar Fernandes, Suman Dubey and Satyan Pitroda,^[37] and ordered them to appear in person before the trial court on 9 December.^[38] The Delhi High Court said in its 7 December 2015 judgment "After having considered the entire case in its proper perspective, this Court finds no hesitation to put it on record that the modus operandi adopted by petitioners in taking control of AJL via Special Purpose Vehicle, i.e., Y.I., particularly, when the main persons in Congress Party, AJL and Y.I. are the same, evidences a criminal intent. Whether it is cheating, criminal misappropriation or criminal breach of trust is not required to be spelt out at this nascent stage. In any case, by no stretch of imagination, it can be said that no case for summoning petitioners as accused in the complaint in question is made out. Questionable conduct of petitioners needs to be properly examined at the charge stage to find out the truth and so, these criminal proceedings cannot be thwarted at this initial stage."^[39]

On 12 February, 2016 the Supreme Court granted exemption to all the five accused in the case from personal appearances while refusing to quash proceedings against them.^{[40][41]}

Trial in the magistrate's court

On 7 December 2015, the Delhi High Court ordered Sonia Gandhi, Rahul Gandhi and five others to appear in person before the trial court on 9 December. They did not appear in the court and, on their lawyers' request, the trial court ordered them to appear before him in person on 19 December. He disallowed their request for exemption from personal appearance.^{[42][43]} On 19 December 2015 the Patiala House court granted bail to all but one and ordered them to appear in the court on the date of next hearing 20 February 2016.^{[44][45]}

Other shareholders allege their shares usurped

After the Delhi High Court dismissed the appeal of Sonia Gandhi and others against the summons issued by the trial court, many shareholders of AJL have alleged that no notice was served on them by AJL for any meeting of the shareholders and that the shares held by their fathers have been transferred by AJL to Young Indian fraudulently without their consent. These include people such as the former law minister Shanti Bhushan, whose father had purchased shares of AJL in 1937, and Markandey Katju, former chief justice of Allhabad and Madras High Courts and former judge of Supreme Court, whose grandfather Kailash Nath Katju was one of the original seven subscribers to the Memorandum of Association of AJL in 1937. Some other shareholders have also alleged criminal conspiracy by AJL and its directors.^[46] A number of shareholders of AJL have claimed that the company's chairman, Motilal Vora, and its directors did not inform them or obtain their approval while deciding to transfer its entire equity to Young Indian in December 2010. At least 10 shareholders that the *Indian Express* newspaper spoke to said that their approval had not been sought by the management. Vora is also the treasurer of the Congress party.^[46]

Shanti Bhushan said, "Jawaharlal Nehru had three preferential shares worth Rs.300, my father had five preferential shares worth Rs.500 and Kailash Nath Katju had seven preferential shares and 131 ordinary shares worth Rs.2,000. But we (shareholders) have to get the heirs substituted before we can start legal proceedings which will take a couple of months... we will go to the company law."^[47]

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