

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

REVIEW PETITION (C) NO. _____ OF 2019

IN

WRIT PETITION (C) NO.1205 OF 2018

IN THE MATTER OF:

Vineet Dhanda S/o Jai Prakash Dhanda,

Age: 38 Years, Occupation: Advocate,

Resident of Flat No-401,

Sohag Building, Linking Road,

Santacruz (W) Mumbai 400 054.

Maharashtra.

Petitioner

Versus

1. Union of India
Through the Chief Secretary
Ministry of Home,
North Block, New Delhi 110001
2. Ministry of Defence
Through the Secretary
South Block, Central Secretariat
Rajpath Marg, New Delhi-110001

Respondents

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Through the Secretary
South Block, Central Secretariat
Rajpath Marg, New Delhi-110001

Respondents

AND IN THE MATTER OF:-

REVIEW PETITION UNDER ARTICLE
137 OF THE CONSTITUTION OF INDIA.

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND
HIS HON'BLE COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA AT
NEW DELHI

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. That the petitioner is filing the present Review Petition against the judgment and order dated 14.12.2018 passed by this Hon'ble Court in Writ Petition (C) No. 1205 of 2018 whereby this Hon'ble Court without considering the prayers of the Petitioner dismissed his Review Petition alongwith other bunch of other Writ Petitions. The prayers of the petitioner read as under:

- a) Issue an appropriate writ in nature of mandamus/order or direction directing the respondents to file the details of the agreement entered into between the Union of India and France with regard to the purchase of 37 Rafale Fighter Jets in a sealed envelope.
- b) Issue an appropriate writ in nature of mandamus/order or direction directing the respondents to furnish in a sealed envelop the information with regard to the agreement of Rafale Fighter Jets;
- c) Issue an appropriate writ order or direction directing the respondents to furnish any other

information in sealed envelope before the Hon'ble Supreme Court with regard to the controversy erupted in the purchase of Rafale Fighter Jets;

d) Pass any such other further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case;

2. It is also important to mention here that on 10.10.2018 this Hon'ble Court in view of the Prayer (b) of the Petitioner herein passed the following order: :

Extract of the order:

W.P.(C) No. 1205/2018

"We have heard the petitioner-in-person and the learned counsels for the parties. We are of the view that the following order would be appropriate at this stage.

We make it clear that we are not issuing any notice at this stage on either of the writ petitions filed under Article 32 of the Constitution. However, we would like to be apprised by the

Government of India of the details of the steps in the decision making process leading to the award of the order for the defence equipment in question i.e. Rafale Jet-Fighters (36 in number).

We also make it clear that while requiring 3 the Government of India to act in the above terms we have not taken into account any of the averments made in the writ petitions which appear to be inadequate and deficient. Our above order is only for the purpose of satisfying ourselves in the matter.

We also make it clear that the steps in the decision making process that we would like to be apprised of would not cover the issue of pricing or the question of technical suitability of the equipment for purposes of the requirement of the Indian Air Force.

The requisite information sought for will be placed before the Court in three separate sealed covers on or before 29th October, 2018 which shall be filed with the learned Secretary General of this Court and not in the Registry. "

3. This Hon'ble Court at the time of deciding the Writ Petition ignored the facts of the Writ Petition (C) No. 1205 of 2018 and decided the same alongwith other Writ Petitions which are Criminal in nature and the petitioner's Writ Petition was Civil in nature.

4. It is respectfully submitted that in September 2016, India signed an inter-governmental agreement with France, dubbed as "Rafale deal", in which India bought 36 off-the-shelf Dassault Rafale twin-engine fighters for a price estimated to be Rs. 58,000 crore or 7.8 billion Euros.

5. There has been a lot of controversy with regard to the agreement which has been entered into between the Union of India and the Dassault Aviation a French Company. As per this agreement the Union of India has agreed to purchase 36 Combat Jets from France for an estimated cost of Rs.58,000Cr. There have been lot of opposition and criticism by the Parties in opposition. It has been in the news that there have been some under the table understanding for entering into the agreement to effect the purchase of Combat Jets.

6. It is respectfully stated that the criticism had reached a proverbial nadir. The critics in the opposition parties have adopted a very ignominious and profligate way even to criticise the Prime Minister of the Country. What a sarcasm! They have started calling the Prime Minister as a Thief. This has been in the news many times. In addition to this allegation there are several others allegations against the present Ruling Party and the Prime Minister of the Country. Criticism is a part of democracy. But the standard of criticism is required to be maintained. The way the Prime Minister and the Government are criticised sends a wrong signal in the World. The people in the whole world will not take a good impression. In future also the foreign governments will hesitate in indulging into even healthy agreement with the Government of India. In order to give full stop to denigrating statements, the agreement entered into between the Government of India and the Dassault Aviation is required to be known atleast by this Hon'ble Court. Such a information on behalf of the Union of India can be furnished before this Hon'ble Court in a sealed envelope so that only the

Hon'ble Supreme Court can read it. Such information may not be made public due to the defence reasons.

7. That the Writ Petition (C) No. 1205 of 2018 was filed by the Petitioner claiming to a public spirited Indian. The petitioner is submitted that he was inspired to file the Writ Petition being agitated over the matter on the basis of the newspaper articles/reports.

8. In order to be little more acquainted with the controversies the details of the French Company and the agreement entered into between this Company and the Union of India is required to be given.

9. As the controversy surrounding Rafale deal escalates, here is an explainer and a timeline relating to India's purchase of 36 combat jets from France for an estimated Rs 58,000 crore. Rafale is a French twin-engine multi-role fighter jet designed and built by Dassault Aviation. The Rafale jets are considered one of the most potent combat jets globally.

10. India began the process to buy a fleet of 126 Medium Multi-Role Combat Aircraft (MMRCA) in 2007 after the Defence Ministry, headed then by Congress

leader A.K. Antony, cleared the proposal from the Indian Air Force. The contenders for the mega deal were Lockheed Martin's F-16s, Eurofighter Typhoon, Russia's MiG-35, Sweden's Gripen, Boeing's F/A-18s and Dassault Aviation's Rafale.

11. After a long-drawn process, bids were opened in December 2012 and Dassault Aviation emerged as L-1 (lowest bidder). In the original proposal, 18 planes were to be manufactured in France and 108 in India in collaboration with the Hindustan Aeronautics Ltd.

12. There were lengthy negotiations between the then UPA government and Dassault on prices and transfer of technology. The final negotiations continued till early 2014 but the deal could not go through. Details of the negotiated price per Rafale were not officially announced, but it was suggested by the then UPA government that the size of the deal would be USD 10.2 billion. The Congress claimed per aircraft rate including avionics and weapons was zeroed in at Rs 526 crore (As per Euro exchange rates prevailing then).

13. That During his visit to France, Prime Minister Narendra Modi on April 10, 2015, announced India

will purchase 36 Rafale jets in a government-to-government agreement. After the announcement, questions were raised by the Opposition on how the PM finalised the deal without approval of the Cabinet Committee on Security.

14. A joint statement issued on April 10, 2015, after talks between Modi and then French President Francois Hollande, said they agreed to conclude an Inter-Governmental Agreement for supply of 36 Rafale jets on terms that would be better than conveyed by Dassault Aviation as part of a separate process underway.

15. The statement said the aircraft and associated systems and weapons would be delivered on the same configuration as had been tested and approved by Indian Air Force, in clear reference to negotiations and testing process for the Rafale jets under the UPA government.

15. India and France signed an Euro 7.87-billion (Rs 59,000 crore approximately) deal on September 23, 2016 for 36 Rafale jets. The delivery of the aircraft will start from September 2019.

16. The deal was finalised on the basis of the procurement procedure followed under the UPA government. The opposition party has been accusing massive irregularities in the deal, alleging that the government was procuring each aircraft at a cost of over Rs 1,670 crore as against Rs 526 crore finalised by the UPA government. The party has also demanded answers from the government on why state-run aerospace major HAL was not involved in the deal.

17. The Congress has also sought to know price details of the aircraft and how the rate per aircraft has gone up from Rs 526 crore to Rs 1,670 crore. The government has refused to share the details, citing a secrecy clause of a 2008 pact between India and France.

18. The party claimed that Qatar had purchased 12 Rafale fighter jets in November 2017 for USD 108.33 million per aircraft (Rs 694.80 crore).

19. It was also alleged the government was benefitting the Reliance Defence Ltd (RDL) through the deal as the company has set up a joint venture

with Dassault Aviation to execute the offset obligation for the Rs 59,000 crore deal.

20. The has party alleged Reliance Defence was formed just 12 days before the announcement of the Rafale deal by the prime minister on April 10, 2015. The RDL has rejected all the charges.

21. Under India's offset policy, foreign defence entities are mandated to spend at least 30 per cent of the total contract value in India through procurement of components or setting up of research and development facilities.

22. On October 3, 2016, RDL and Dassault Aviation announced a joint venture (JV) in the aerospace sector and a year later, foundation stone of a manufacturing facility was laid in Mihan, Nagpur.

23. Around two years back, Minister of State for Defence, while replying to a question in Parliament, had said the cost of each Rafale aircraft is approximately Rs 670 crore but did not give details of prices of associated equipment, weapons and services.

24. Later, the government refused to talk about the prices. It has been maintaining that the cost of 36

Rafale jets cannot be "directly compared" with the original proposal to buy 126 combat aircraft as "deliverables" were significantly different.

25. Finance Minister Arun Jaitley wrote a Facebook post today, accusing Congress and its leader Rahul Gandhi of "peddling untruth" and carrying out a "false campaign" on the deal. He said the deal signed by the NDA government was on better terms than the one agreed to in 2007 under the UPA regime.

26. The Hon'ble Supreme Court of India has played a positive role in espousing the cause of the poor, indigent, under trial prisoners, women, unorganized labour, schedule caste, schedule tribes, in illegal mining, in maintaining the balance of environment, etc. Wherever there is a malaise, and this malaise is hindering the lives of the people, then this Hon'ble Court has been pleased to issue appropriate writ order or direction to put the things in right order and to bring ease and convenience to the lives of the people.

27. That being aggrieved the petitioner filed Writ Petition (C) No. 1205 of 2019 before this Hon'ble Court. This Hon'ble Court at the time of deciding the Writ Petition

ignored the facts of the petitioner's Writ Petition (C) No. 1205 of 2018 and decided the same alongwith other Writ Petitions which are Criminal in nature and the petitioner's Writ Petition was Civil in nature. The present petition of the petitioner under Article 32 of the Constitution of India should have been disposed of by giving cogent reasons instead of dismissing the same. As the petitioner has not prayed or demanded any stay of any of the operation of the Rafale agreement.

But in the present case this Hon'ble Court has decided the present Writ Petition with the other Criminal nature Writ Petition which is a gross violation of provisions of law established in the Constitution of India.

28. The petitioner is not a way fairer nor an interloper but a sensitive and sincere citizen of this country who takes keen interest in the safety of citizens of this country. Hence the present Review Petition.

GROUND

- A. Because the error apparent on the face of the record that this Hon'ble Court at the time of deciding the Writ Petition ignored the facts of the petitioner's Writ

Petition (C) No. 1205 of 2018 and decided the same alongwith other Writ Petitions which are Criminal in nature and the petitioner's Writ Petition was Civil in nature. The present petition of the petitioner under Article 32 of the Constitution of India should have been disposed of by giving cogent reasons instead of dismissed. As the petitioner has not prayed or demanded any stay of any of the operation of the Rafale agreement.

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B. Because the error apparent on the face of record that Indian Government had proposed Anil Ambani's as the partner for the set clause under the Current Rafale Agreement without considering the fact that the Reliance Group has no money to invest in the Rafale jet deal as they are unable to clear its Rs 550-crore dues, due to failure of assets sale deal with Jio.

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C. Because the Hon'ble Supreme Court while deciding the writ petition has written in the judgment that Hon'ble Lordships have gone through everything (pricing, etc.) and just one perception has to be taken more that they did not find any informative when everything have been dealt by them then why they did not make clear picture as far as there is any irregularities or not. The faith of the country's

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million people is remains on this court and in order to maintain their faith, this Honorable Court should review its decision once again.

D. Because the error apparent on the face of the record that the critics in the opposition parties have adopted a very ignominious and profligate way even to criticise the Prime Minister of the Country. What a sarcasm! They have started calling the Prime Minister as a Thief. This has been in the news many times. In addition to this allegation there are several others allegations against the present Ruling Party and the Prime Minister of the Country. Criticism is a part of democracy. But the standard of criticism is required to be maintained. The way the Prime Minister and the Government are criticised sends a wrong signal in the World.

E. Because the error apparent on the face of the record that there has been a lot of controversy with regard to the agreement which has been entered into between the Union of India and the Dassault Aviation a French Company. As per this agreement the Union of India has agreed to purchase 36 Combat Jets from Franch for an estimated Rs.58,000Cr. There have been lot of

opposition and criticism by the Parties in opposition. It has been in the news that there have been some under the table understanding for entering into the agreement to effect the purchase of Combat Jets.

F. Because the error apparent on the face of the record that due to the above frivolous allegations the people in the whole world will not take a good impression. In future also the foreign governments will hesitate in indulging into even healthy agreement with the Government of India. In order to give full stop to denigrating statements, the agreement entered into between the Government of India and the Dassault Aviation is required to be known atleast by this Hon'ble Court. Such a information on behalf of the Union of India can be furnished before this Hon'ble Court in a closed envelop so that only the Hon'ble Supreme Court can read it. Such information may not be made public due to the defence reasons.

G. Because the error apparent on the face of the record that in order to be little more acquainted

with the controversies the details of the French Company and the agreement entered into between this Company and the Union of India is required to be given.

H. Because the error apparent on the face of the record that as the controversy surrounding Rafale deal escalates, here is an explainer and a timeline relating to India's purchase of 36 combat jets from France for an estimated Rs 58,000 crore. Rafale is a French twin-engine multi-role fighter jet designed and built by Dassault Aviation. The Rafale jets are considered one of the most potent combat jets globally.

I. Because the error apparent on the face of the record that now India began the process to buy a fleet of 126 Medium Multi-Role Combat Aircraft (MMRCA) in 2007 after the Defence Ministry, headed then by Congress leader A.K. Antony, cleared the proposal from the Indian Air Force. The contenders for the mega deal were Lockheed Martin's F-16s, Eurofighter Typhoon, Russia's MiG-35, Sweden's Gripen, Boeing's F/A-18s and Dassault Aviation's Rafale.

- J. Because the error apparent on the face of the record that after a long-drawn process, bids were opened in December 2012 and Dassault Aviation emerged as L-1 (lowest bidder). In the original proposal, 18 planes were to be manufactured in France and 108 in India in collaboration with the Hindustan Aeronautics Ltd. There were lengthy negotiations between the then UPA government and Dassault on prices and transfer of technology. The final negotiations continued till early 2014 but the deal could not go through. Details of the negotiated price per Rafale were not officially announced, but it was suggested by the then UPA government that the size of the deal would be USD 10.2 billion. The Congress claimed per aircraft rate including avionics and weapons was zeroed in at Rs 526 crore (As per Euro exchange rates prevailing then).
- K. Because the error apparent on the face of the record that during his visit to France, Prime Minister Narendra Modi on April 10, 2015, announced India will purchase 36 Rafale jets in a

government-to-government agreement. After the announcement, questions were raised by the Opposition on how the PM finalised the deal without approval of the Cabinet Committee on Security.

- L. Because the error apparent on the face of the record that a joint statement issued on April 10, 2015, after talks between Modi and then French President Francois Hollande, said they agreed to conclude an Inter-Governmental Agreement for supply of 36 Rafale jets on terms that would be better than conveyed by Dassault Aviation as part of a separate process underway.
- M. Because the error apparent on the face of the record that aforesaid statement said the aircraft and associated systems and weapons would be delivered on the same configuration as had been tested and approved by Indian Air Force, in clear reference to negotiations and testing process for the Rafale jets under the UPA government.
- N. Because the error apparent on the face of the record that India and France signed an Euro

7.87-billion (Rs 59,000 crore approximately) deal on September 23, 2016 for 36 Rafale jets. The delivery of the aircraft will start from September 2019. The deal was finalised on the basis of the procurement procedure followed under the UPA government.

O. Because the error apparent on the face of the record that the opposition parties have been accusing massive irregularities in the deal, alleging that the government was procuring each aircraft at a cost of over Rs 1,670 crore as against Rs 526 crore finalised by the UPA government. The party has also demanded answers from the government on why state-run aerospace major HAL was not involved in the deal. The Congress Party has also sought to know price details of the aircraft and how the rate per aircraft has gone up from Rs 526 crore to Rs 1,670 crore. The government has refused to share the details, citing a secrecy clause of a 2008 pact between India and France.

Congress' A K Antony, who was defence minister in 2008 when India and France inked an

inter-governmental agreement on defence procurement, said the government's claim that the secrecy clause was forcing it to not reveal price details of the deal was "totally wrong".

- P. Because the error apparent on the face of the record that the party claimed that Qatar had purchased 12 Rafale fighter jets in November 2017 for USD 108.33 million per aircraft (Rs 694.80 crore). The Congress has also alleged the government was benefitting the Reliance Defence Ltd (RDL) through the deal as the company has set up a joint venture with Dassault Aviation to execute the offset obligation for the Rs 59,000 crore deal which is also a frivolous allegation against the Ruling Party.
- Q. Because the error apparent on the face of the record that under India's offset policy, foreign defence entities are mandated to spend at least 30 per cent of the total contract value in India through procurement of components or setting up of research and development facilities. On October 3, 2016, RDL and Dassault Aviation

announced a joint venture (JV) in the aerospace sector and a year later, foundation stone of a manufacturing facility was laid in Mihan, Nagpur.

R. Because the error apparent on the face of the record that around two years back, Minister of State for Defence, while replying to a question in Parliament, had said the cost of each Rafale aircraft is approximately Rs 670 crore but did not give details of prices of associated equipment, weapons and services for the security reasons. Later, the government refused to talk about the prices. It has been maintaining that the cost of 36 Rafale jets cannot be "directly compared" with the original proposal to buy 126 combat aircraft as "deliverables" were significantly different.

S. Because the error apparent on the face of the record that Finance Minister Arun Jaitley wrote a Facebook post today, accusing Congress and its leader Rahul Gandhi of "peddling untruth" and carrying out a "false campaign" on the deal. He said the deal signed by the NDA government was

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on better terms than the one agreed to in 2007
under the UPA regime.

29. The petitioner has not filed any other Review
Petition or other proceeding before this Hon'ble Court
against the impugned order.

PRAYER

In the facts and circumstances of the case it is
therefore most respectfully prayed that this Hon'ble
court may be pleased to:-

- a) Review the order dated 14.12.2018 passed by
this Hon'ble Court in Writ Petition (C) No. 1205
of 2018.
- b) Pass any such other further order or orders as
this Hon'ble Court may deem fit and proper in
the circumstances of the case;

And

FOR THIS ACT OF KINDNESS THE PETITIONER
AS IN DUTY BOUND SHALL EVER PRAY.

Drawn by
Vineet Dhanda
Advocate

Filed on:09.03.2018

Filed by

[DR. ASHUTOSH GARG]
Advocate for the petitioner

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

REVIEW PETITION (C) NO. _____ OF 2019

IN

WRIT PETITION (C) NO. 1205 OF 2018

IN THE MATTER OF:

Vineet Dhanda

.....Petitioner

VERSUS

Union of India &Ors.

.....Respondents

CERTIFICATE

Certified that the Review Petition is confined only to the pleadings before the Court whose Order is challenged and the other documents relied upon in those proceedings. No Additional fact/grounds has been taken in the present petition. It is further certified that the copies of the documents/ annexures attached to the Review Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Review Petition for consideration of this Hon'ble Court. This Certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Review Petition. That this is the first Review Petition which is being filed by the petitioner against the impugned order.

Filed on:

[DR. ASHUTOSH GARG]

ADVOCATE FOR THE PETITIONER

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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
REVIEW PETITION (C) NO. _____ OF 2019
IN
WRIT PETITION (C) NO. 1205 OF 2018

IN THE MATTER OF:

Vineet Dhanda

.....Petitioner

VERSUS

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.....Respondents

AFFIDAVIT

I, Vineet Dhanda S/o Jai Prakash Dhanda, Age: 38 Years, Occupation: Advocate, Resident of Flat No. 401, Sohag Building, Linking Road, Santacruz West, Mumbai, Maharashtra-400 054, do hereby solemnly affirm and declare as under:

1. That I am the petitioner in the abovementioned matter and I am fully conversant with the facts and circumstances of the matter and as such I am competent to swear the present affidavit.
2. I state that I am an Advocate, Supreme Court and have instructed the drafting of the petition. That the accompanying Review Petition and application(s) have been drafted by the counsel on my instructions. The contents of the same have been read over and explained to me in my language and the same are true and correct to the best of my knowledge and no part of it is false and nothing material has been concealed there from.

DEPONENT

VERIFICATION:

Verified at Delhi on this 9TH day of March, 2019, that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT