

IN THE SUPREME COURT OF INDIA

I.A NO 29248/2019

IN

WRIT PETITION [CRL] NO 298/2018

IN THE MATTER OF:

YASHWANT SINHA & ORS ...Petitioners

Versus

CENTRAL BUREAU OF INVESTIGATION & ANR

...Respondents

REPLY AFFIDAVIT ON BEHALF OF

RESPONDENT NO 2

1. I Apurva Chandra, S/O Shri Urvesh Chandra, aged about 54 years, working as Director General (Acquisition) in the Ministry of Defence at New Delhi, do hereby solemnly affirm and state as under.
2. That am working as Director General (Acquisition) In the Ministry of Defence and In such capacity am conversant with the facts of the case as derived from official records and am competent and duly authorized to file the present reply affidavit on behalf of the answering Respondent.



That the deponent has gone through the contents of the application filed by the petitioners under Sec 340 Cr.P.C for initiation of proceedings under

Sec 195 thereof, for alleged offences under Sec 193 IPC. Having gone through the contents and purport thereof, and grounds raised therein the answering respondent denies the same individually and specifically, except those which are matter of official record, and facts which have been specifically admitted in this affidavit. It is submitted that any fact and or issue raised in the application not specifically traversed in this reply affidavit may not be taken as admission on behalf of the answering respondent, but the same shall be deemed to have been traversed and denied unless specifically admitted.

PRELIMINARY SUBMISSIONS

4. That before giving paragraph wise reply, the answering respondent would like to submit at the outset that the application filed by the petitioners under Sec 340 Cr.P.C is not at all maintainable in law and on facts. In this regard, the following preliminary submissions are made.
5. That the Writ Petition [CrI] No 298/2018 filed by the petitioners was dismissed by this Hon'ble Court along with connected Writ Petitions on 14.12.2018 by a well reasoned judgement. The said judgement addresses the contentions

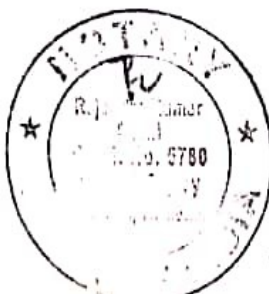


advanced by the petitioners in this case. The judgment, it is respectfully submitted, lays down the correct law and sets a forceful precedent to be followed if such cases arise in future.

6. That the following passages from the judgment dated 14.12.2018 highlight its unassailable reasoning and foundation, as well as the factual basis on which this Hon'ble Court rejected the misconceived writ petition filed by the petitioners herein:

"19. The stalemate resulted in the process of RFP withdrawal being initiated in March, 2015. In this interregnum period, adversaries of the country, qua defence issues, inducted modern aircrafts and upgraded their older versions. This included induction of even 5th Generation Stealth Fighter Aircrafts of almost 20 squadrons, effectively reducing the combat potential of our defence forces."
(emphasis supplied)

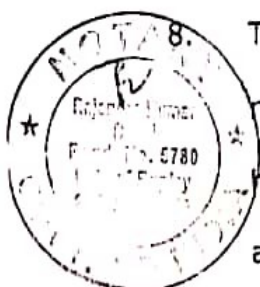
"22. We cannot sit in judgment over the wisdom of deciding to go in for purchase of 36 aircrafts in place of 126. We cannot possibly compel the Government to go in for purchase of 126 aircraft..... Our country cannot afford to be unprepared/



underprepared in a situation where our adversaries are stated to have acquired not only 4th Generation, but even 5th Generation Aircrafts, of which, we have none. It will not be correct for the Court to sit as an appellate authority to scrutinize each aspect of the process of acquisition."

7. That this Hon'ble Court also correctly concludes by holding as follows:-

"...34. In view of our findings on all the three aspects, and having heard the matter in detail, we find no reason for any intervention by this Court on the sensitive issue of purchase of 36 defence aircrafts by the Indian Government. Perception of individuals cannot be the basis of a fishing and roving enquiry by this Court, especially in such matters. We, thus dismiss all the writ petitions, leaving it to the parties to bear their own costs. We, however, make it clear that our views as above are primarily from the standpoint of the exercise of the jurisdiction under Article 32 of the Constitution of India which has been invoked in the present group of cases." [emphasis added].



That it is submitted that in view of dismissal of the main writ petition the present application which has been filed in a dismissed writ petition is not at all maintainable.

9. That on facts as well, the contention of the petitioners that the officials of the answering respondent have made false statements and suppressed evidence while submitting information on 'decision making process', 'offsets' and 'pricing' pursuant to orders passed by this Hon'ble Court is completely false, baseless and an attempt to intimidate Govt. servants from performing their duty and on this ground alone, the application is liable to be dismissed.
10. In order to place facts in correct perspective and in context, it is submitted that it is necessary to refer to the relevant orders passed by this Hon'ble Court in the writ petitions including the connected writ petitions.
11. It is submitted that three Writ Petitions viz, W.P (CrI) No 225/2018; W.P (C) 290/2018 and 1205/2018, concerning this was initially listed for hearing on 10.10.2018, when this Hon'ble Court was pleased to pass the following order:-

" UPON hearing the counsel the Court made the following

ORDER

W.P.(C) No(s). 290/2018.



Learned counsel for the petitioner, on instructions, seeks permission to withdraw this writ petition. Permission granted. The writ petition is dismissed as withdrawn.

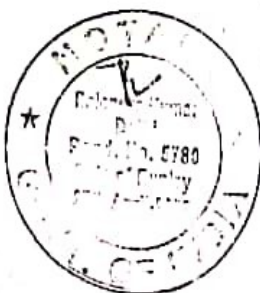
W.P.(Crl.) No.225/2018 and W.P.(C) No. 1205/2018.

Permission to argue in person is granted in Writ Petition (Crl.) No.225 of 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 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.

List the matters on 31st October, 2018."

12. That pursuant to the order extracted herein above, the answering respondent filed in three separate sealed covers forwarded vide letter no. 1(7)/US(DK)/D(Air-I)/2015 dated 26.10.2018 giving the "details of the steps in the decision making process leading to the award of 36 Rafale Jet-Fighters/Fighter Aircrafts". Therefore, when the cases came up for hearing on 31.10.2018, this Hon'ble Court was pleased to pass inter alia the following order:-

"UPON hearing the counsel the Court made the following

ORDER

After we had passed the order dated in W.P.(Crl.) No. 225/2018 and W.P.(C) No. 1205/2018, two more public interest litigations have been filed on the same issue i.e. W.P.(Crl.) Nos. 297/2018 and 298/2018.



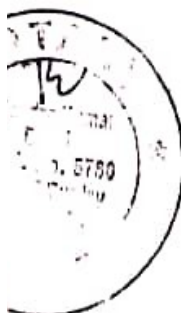
Having perused the same, we would like to observe that in none of the public interest litigations before us, the suitability of the equipment (fighter jets) and its utility to the Indian Air Force has been questioned. What has been questioned is the bona fides of the decision making process and the price/cost of the equipment at which the same is to be procured. On 10.10.2018, we had passed the following order:-

XXXXXXXXXXXX

Pursuant to the said order, a note giving the "details of the steps in the decision making process leading to the award of 36 Rafale Jet-Fighters/Fighter Aircrafts", has been submitted to the Court in a sealed cover.

We have perused the same.

At this stage, we would not like to record any finding or views with regard to the contents of the said report. Rather, we are of the opinion that such of the core information conveyed to the Court in the aforesaid confidential report which can legitimately be brought into the public domain be made available to the learned counsels for the petitioners in all the cases, as well as, the petitioners-in-person. Alongwith the said facts, further details that could legitimately come in the public domain with regard to the induction of the Indian offset partner (if any) be also furnished to the learned counsels for the parties, as well as, the petitioners in



person. Such of the details in this regard which may be considered to be strategic and confidential may, at this stage, be placed before the Court and may not be furnished to the learned counsels for the parties or the petitioners-in-person. The Court would also like to be apprised of the details with regard to the pricing/cost, particularly, the advantage thereof, if any, which again will be submitted to the Court in a sealed cover.

The necessary information/particulars be communicated to the learned counsels for the parties and the petitioners-in-person, and the rest of the details in terms of the present order be submitted to the Court in a sealed cover in the next ten days. The parties may file their response to the information that would be conveyed.

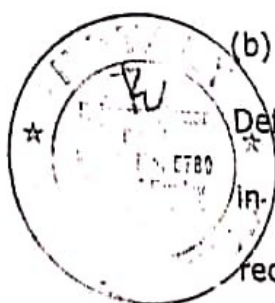
Let the matter be listed on 14.11.2018.

13. That pursuant thereto, the details with regard to pricing/cost of the aircraft were submitted to this Hon'ble Court in sealed covers forwarded vide letter no. 8(7)/US D(Air-I)/2018 dated 10.11.2018. The information relating to the details of the steps in the decision making process and the induction of offset partners deemed as not confidential, was provided to writ petitioners in terms of the order dated 10.11.2018 through

letter no. 8(7)/US D(Air-I)/2018 dated 10
09.11.2018.

14. It is submitted that the Petitioners have filed an Application of perjury before the Supreme Court apparently in an attempt to get the case reopened by implying that the order of the Court on 14th December, 2018 was based on false statements made by the Government before the Court. The case of the Petitioners is based on some secret documents published in the media from files of the Ministry of Defence which were internal deliberations at an intermediate level but not a reflection of the final decision taken by the appropriate authority after considering all the facts on record and the opinions expressed during the internal deliberations at various levels.

15. It is respectfully submitted that all the averments made before the Supreme Court were based on (a) the final decisions taken by the Cabinet Committee on Security (CCS) and the CCS note which formed the basis of this decision, (b) final decisions by the Raksha Mantri (RM) and Defence Acquisition Council (DAC), (c) provisions in Defence Procurement Procedure, & (d) inputs received from the Indian Air Force and other



constituent offices of the Ministry of Defence. The Court had asked the Government to submit the decision making process. The decision making process for procurement is given in Para 6 of the statement filed before the Supreme Court which starts with the 'Preparation of Services Qualitative Requirements (SQRs)' and concludes with 'Award of Contract' followed by contract execution and post contract management.

16. It is stated that the submissions to the Court brought out the final conclusions of the process which led to the signing of the Inter Government Agreement (IGA) with Government of France. There is no act of perjury involved in the submissions made before the Supreme Court as the submissions are based on records. However, the Petitioners are relying on selective leaks in the media from MoD files, on opinions expressed by individual officers or a group of officers. These only present a selective and incomplete picture on matters relating to National Security and Defence.

The documents presented by the petitioners fail to bring out how the issues raised at different levels were addressed and resolved and necessary approvals of the competent authorities



were taken. The petitioners allege that the documents produced by them were not brought to the notice of the Supreme Court by the Government. The Petitioners have not brought out that the views expressed were accounted for in the final decision. As stated in the information submitted to the Hon'ble Supreme court and later shared with the petitioners, the process envisaged in Defence Procurement Procedure (DPP) was completed.

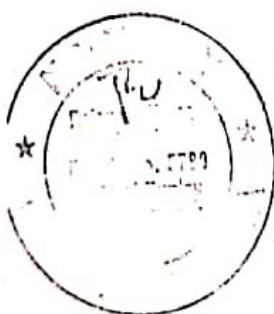
17. It is submitted that as mandated by the Defence Acquisition Council (DAC), the highest body in the Ministry of Defence in Defence Procurements, the INT undertook a collegiate process involving due deliberations and diligence at various levels during the negotiations. The concerns raised by members of the INT were deliberated and addressed, while ensuring utmost integrity and transparency in the process, allowing opinions to be freely expressed, recorded, discussed and if necessary modified. Aspects pertaining to the responsibility and obligations of French Government, pricing, delivery schedule, maintenance terms, offsets,



IGA terms, etc. were discussed and negotiated during these meetings.

18. It is stated that there are always cross section of views, opinions and expressions in the Collegiate process which adds value to the Decision Making Process and to the quality of the final decision.

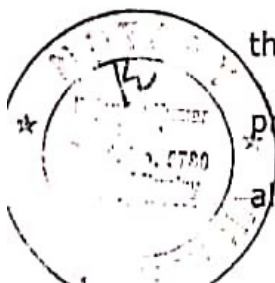
19. It is stated that all the requisite information as desired by the Hon'ble Supreme Court was provided to the Court and also to the petitioners as per directions of the Court and in the manner prescribed. The Information provided to the Court is after due approval of the competent authorities based on records, documents and decisions. Hon'ble Supreme Court did not require details of specific aspects or points of Decision Making or ask any specific question for which the Government did not respond or wrongly responded. The Government completely complied with the orders of Hon'ble Supreme Court in submitting the information.



20. The contents of the Briefs/ Responses were based on official records/ files/ inputs from various constituents/ affiliated entities within the MoD such as DoMW, DDP for offsets, the IAF and

the HQIDS which acts as the Secretariat of the DAC and the same were finalized after extensive deliberations at the highest levels in Government, after a series of meetings.

21. From the aforesaid, It is abundantly clear, that the petitioners are deliberately providing incomplete and selective information and deliberately altering the sequence of events of the procurement process to mislead the Hon'ble Supreme Court and the public. Instead of quoting the Report of CAG who has a constitutional mandate to scrutinize this procurement and who have gone through in details all concerned files, records and documents and took almost two years to complete the audit and presented a Report to the Parliament on 13th February, 2019, the petitioner's continued reliance upon selective presentation and media reports and truncated official notings is clear attempt to mislead the court. The Petition of Perjury has been filed on 15.02.2019 but has totally ignored the findings of the CAG. The CAG Report has clearly brought out that the entire package price of the 36 Rafale procurement is 2.86% lower than the audit aligned price compared to MMRCA process. The



petitioners main contention of over-priced deal is not supported by CAG report.

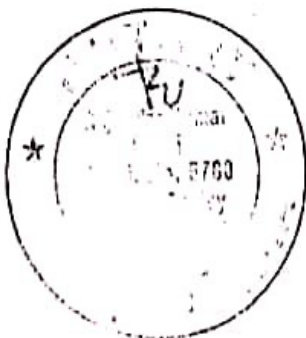
22. That it is submitted that the note containing the details on various aspects submitted before this Hon'ble Court were based on available official records held with the answering respondent and the same were submitted with the approval of the competent authority. It is submitted that there was no direction to submit the information/documents by way of an affidavit and the information provided to the writ petitioners were similar as submitted to this Hon'ble Court in sealed covers, except the classified information.

23. It is reiterated that the information/documents provided in sealed covers forwarded under official letter no. 8(7)/US D(Air-I)/2018 dated 10.11.2018, signed by the concerned Under Secretary to this Hon'ble Court were based on official records of the answering respondent and not false as claimed by the petitioners. Whatever information/document that the Hon'ble Court had directed the answering respondent to produce/provide, the same was duly complied with.



PARAWISE REPLY

1. That in reply It is denied that the officials of the answering respondent have made false statements and suppressed evidence while submitting information on 'decision making process', 'offsets' and 'pricing' pursuant to orders passed by this Hon'ble Court.
2. That the contents are matter of record.
3. That the filing of the Writ Petition (Crl) No 298/2018 and prayer made therein are matter of court record.
2. [Paragraph wrongly marked as 2]. In reply, It is submitted that this Hon'ble Court had satisfied itself from the material produced before it that there has been no case made out for interference. In this context, the following conclusions reached by this Hon'ble Court In its judgement dated 14.12.2018 are Important:- .



'22.....We have studied the material carefully. We have also had the benefit of interacting with senior Air Force Officers who answered Court queries in respect of different aspects, including that of the acquisition process and pricing. We are satisfied that there is no occasion to really doubt the process, and even if minor deviations have occurred, that

would not result in either setting aside the contract or requiring a detailed scrutiny by the Court. We have been informed that joint exercises have taken place, and there is financial advantage to our nation. It cannot be lost sight of, that these are contracts of defence procurement which should be subject to different degree and depth of judicial review,.....**It will not be correct for the Court to sit as an appellate authority to scrutinize each aspect of the process of acquisition.**" [emphasis added].

" 26. **We have examined closely the price details and comparison of the prices of the basic aircraft along with escalation costs as under the original RFP as well as under the IGA. We have also gone through the explanatory note on the costing item wise.** Suffice it to say that as per the price details, the official respondents claim that there is commercial advantage in the purchase of 36 Rafale aircrafts. The official respondents have claimed that there are certain better terms in IGA qua the maintenance and weapon package. **It is certainly not the job of this Court to carry out a comparison of the pricing details in matters like the present. We say no more as the material has to be kept in a confidential domain.**" [emphasis added].

" 33. Once again, it is neither appropriate nor within the experience of this Court to step

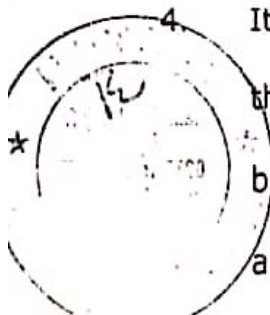


into this arena of what is technically feasible or not. The point remains that DPP 2013 envisages that the vendor/OEM will choose its own IOPs. In this process, the role of the Government is not envisaged and thus, mere press interviews or suggestions cannot form the basis for judicial review by this Court, especially, when there is categorical denial of the statements made in the Press, by both the sides. **We do not find any substantial material on record to show that this a case of commercial favouritism to any party by the Indian Government, as the option to choose the IOP does not rest with the Indian Government."** [emphasis added].

It is therefore, submitted that no necessity was felt by this Hon'ble Court to order an Independent investigation/report. It is denied that the conduct of the Union of India was in question which is perception of the petitioners to say the least. It is reiterated that the information was provided to the petitioners in terms of the order dated 31.10.2018 passed by this Hon'ble Court.

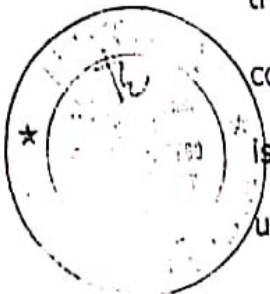
3. That the contents are matter of court record.

4. It is denied that the answering respondent misled this Hon'ble Court on various counts and that the basis of judgement is more than one untruth as alleged by the petitioners. No untruth was



submitted and no pertinent information was suppressed. It is denied that the answering respondent has committed perjury and contempt as alleged by the petitioners.

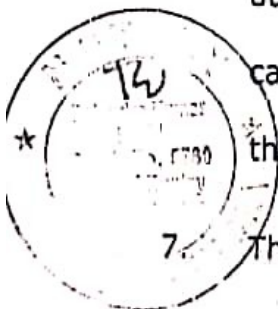
5-6. In reply it is denied that there is any untruth or suppression of information as alleged. It is submitted that placing reliance on some media reports and some incomplete internal file notings procured unauthorisedly and illegally, the petitioners cannot seek to re-open the whole matter by filing false and frivolous applications and terming it as 'perjury' and attempt to get a fishing and roving enquiry ordered, which this Hon'ble Court has specifically declined to go into based on perceptions of individuals. That it is submitted that media reports cannot form the basis for seeking initiation of 'perjury proceedings since it is well settled that Courts do not take decisions on the basis of media reports. That the articles apart from expressing view point of functionaries/individuals are not final decision of the Union Government nor do they in any manner convey the complete official stand of the Union. It is submitted that on the strength of these unsubstantiated media reports, the petitioners



cannot allege that Union of India has submitted false and suppressed information.

That similarly, internal file noting from the Secret File of the Ministry of Defence wherein various views and legal advice rendered by different agencies at different stages of the procurement process have been reflected/recorded. It is submitted that these are incomplete file notings containing views expressed by various functionaries at different times and not the final decision of the competent authority of the Union Government. It is well settled by this Hon'ble Court that in governmental functioning files are generally examined/seen by various agencies and functionaries in the hierarchy. The final decision in important matters rests with the Minister or the Cabinet. While doing so there is free and frank expression of views /candor of opinion expressed by the functionaries. These internal file notings and views contained therein are expressions of opinion/views for consideration of the competent authority for taking final decision in the matter. It cannot form the basis for a litigant to allege that the same amounts to perjury.

7. That the contents are matter of court record.



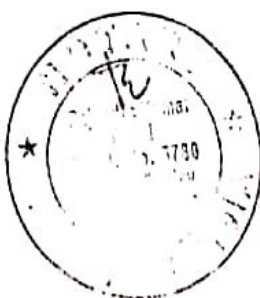
8. In reply it is submitted that note on pricing was not required to be shared with the applicants since it is classified information/document. It is denied that there is untruth and suppression in the notes regarding 'decision making process' and 'offsets'. It is reiterated and denied that this Hon'ble Court was misled in any manner as these are perceptions of the applicants devoid of merit. It is submitted that column 3 of the table under the head 'OBSERVATION' are applicants own interpretation and or presenting facts in a misleading manner.

Regarding submissions made by the applicants under the head CAG Report it is submitted that this Hon'ble Court delivered its judgement on 14.12.2018. On perusal of the detailed order a mismatch was observed in some contents of Para 25 of the judgement as compared to the details submitted to this Hon'ble Court in a sealed cover along with pricing details in a separate sealed cover. However in order to correct the mis-match vis-a vis the factual position submitted to this Hon'ble Court necessary Application for Correction was filed on 15.12.2018 i.e. on the very next day of the judgment on behalf of the Union of India



and the same is pending consideration of this Hon'ble Court. It is submitted that in any case the mismatch does not in any manner either directly or indirectly affect the main judgement and it is not a substantial error as contended since the fact of the matter is that there is no fault found either in the decision making process or in the matter of pricing as concluded by the CAG in its report submitted subsequent to the judgement. Therefore, the assertions made by petitioners regarding falsity etc. are denied. In fact while filing this petition on 15.02.2019, the petitioners have ignored the CAG report tabled in Parliament on 13.02.2019.

Regarding observations under the heading "2012 arrangement between Dassault & Parent Company of Offset Beneficiary", the petitioners have drawn attention to Press Release of Ministry of Defence dated 22.09.2018. In para 5 of the Press Release MoD had stated the following based on media reports:-

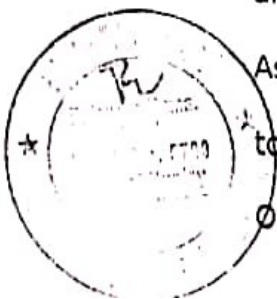


"It has been reported that a JV between Reliance Defence and Dassault Aviation came into being in February, 2017. This is a purely commercial arrangement between two

private companies. Incidentally, media reports of February, 2012 suggest that Dassault Aviation, within two weeks of being declared the lowest bidder for procurement of 126 aircraft by the previous Government, had entered into a pact for partnership with Reliance Industries in Defence Sector".

Therefore, the answering respondent has no record and the same is denied for want of knowledge. As per records, the Government of India has no role in the selection of Indian Offset Partner which is a commercial decision of the OEM. The two offset contracts with M/s Dassault Aviation and M/s MBDA who are the French industrial suppliers of the Aircraft Package and Weapon Package Supply Protocols have a period of performance comprising seven years. It has been indicated in the offset schedule that details of IOPs/ products will be confirmed by vendors either at the time of seeking offset credits or one year prior to discharge offset obligations. There are no offset obligations in the first three years.

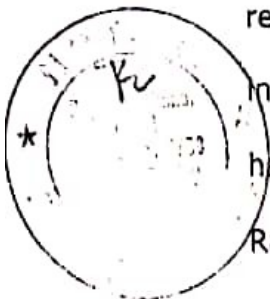
As per the contract, vendor's offset obligations are to commence from the fourth year, i.e. from October, 2019 onwards. The vendor/ OEM is yet to



submit a formal proposal in the prescribed manner indicating details of IOPs and products for offset discharge. There is no violation of the provisions of DPP in this regard. The petitioners are again trying to create unnecessary controversy in this regard. Various references to annexures filed with writ petition are not documents of the answering respondent and hence the same are denied for want of knowledge.

Regarding the observation under the heading 'Parallel Negotiations' it is submitted that monitoring of the progress by PMO of this Government to Government process cannot be construed as interference or parallel negotiations. The then Hon'ble Raksha Mantri had recorded on file that ..."It appears that PMO and French President's office are monitoring the progress of the issues which was an outcome of the summit meeting. Para 5 appears to be an over reaction."

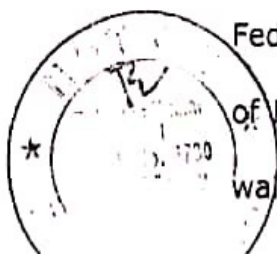
Similarly, there is a misleading attempt by the petitioners to link routine administrative matters regarding transfer, posting of officers with the internal processing of this case. The petitioners have made a totally false allegation that Shri Rajeev Verma, Joint Secretary & Acquisition



Manager (A/r) who was one of the three officers who had highlighted the issues of concern, had proceeded on leave because of this. In fact, Shri Rajeev Verma signed the Note for the Cabinet Committee on Security (CCS) in the instant case. At the time of the signing of the Contract, Shri Rajeev Verma had proceeded on Official Training abroad of Department of Personnel & Training for which he had applied and the training was approved several months earlier.

Regarding the issue of Bank Guarantee, Arbitration seat etc, it is submitted that the applicants are trying to bring out contents of file noting of some functionaries in the government of India selectively and the applicants are not bringing out the subsequent actions taken and how the concerns were addressed and decisions taken by the competent authority .

It is submitted that waiver of Sovereign / Bank Guarantee in Government to Government Agreements / Contracts is not unusual. It is submitted that in Contracts concerning Russian Federation contracts signed with Rosoboronexport of Russia, the requirement of Bank Guarantees is waived off in view of the assurance provided



through a 'Letter of Comfort' signed by the Government of the Russian Federation. Similarly, in Foreign Military Sales (FMS) Cases with US Govt. no Bank Guarantee / Sovereign Guarantee is provided for Foreign Military Sales (FMS) Contracts signed between the Government of India and US Government.

In the 36 Rafale procurement, the French Government has proposed that they are providing '*outstanding Guarantees*' through Article 4.4 of the IGA along with the 'Letter of Comfort' signed by the French Prime Minister. The Letter of comfort states that:-

(a) Government of the French Republic is fully committed in doing whatever is necessary to make sure that Industrialists Dassault Aviation and MBDA France, each in their own respect, do their utmost to fully respect all their obligations in accordance with aforesaid intergovernmental agreement and annexed supply protocols.

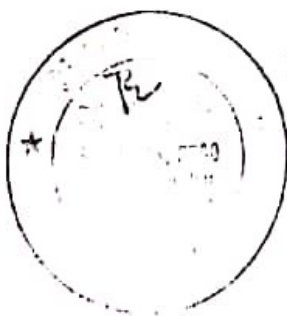
(b) Furthermore, assuming that Dassault Aviation or MBDA France meet difficulties in the execution of their respective supply protocols and would have to reimburse all or



part of the intermediary payments to the Government of the Republic of India, the Government of French Republic will take appropriate measures so as to make sure that said payments or reimbursements will be made at the earliest.

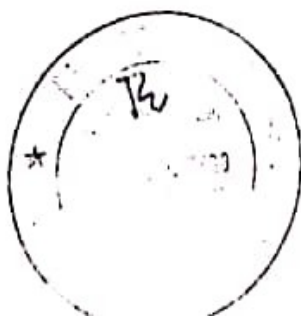
It has also been brought out to the CCS that the French side has indicated that "the proposed Letter of Comfort along with the guarantees proposed through the IGA, constitute a unique and unprecedented level of involvement of the French Government in coherence with the strategic partnership between both countries".

While providing Legal Vetting, MoL&J made the following remarks :- "...the revised draft of Inter Governmental Agreement (IGA) and revised draft Supply Protocol which has been finalised by the parties appear to be formally in order as it is an agreement between sovereign nations." Therefore, legal vetting of MoL&J and the approval of CCS, the highest decision making authority has been taken.



Regarding the observation under the heading 'INT REPORT' It is submitted that as mandated by the DAC, the INT undertook a collegiate process involving due deliberations and diligence at various levels during the negotiations. The concerns raised by members of the INT were deliberated, recorded and addressed, while ensuring utmost integrity and transparency in the process, allowing opinions to be freely expressed, recorded, discussed and if necessary modified. All the concerns raised were addressed in a collegiate manner. Aspects pertaining to the responsibility and obligations of French Government, pricing, delivery schedule, maintenance terms, offsets, IGA terms, etc. were discussed internally and negotiated with the French side during the INT meetings.

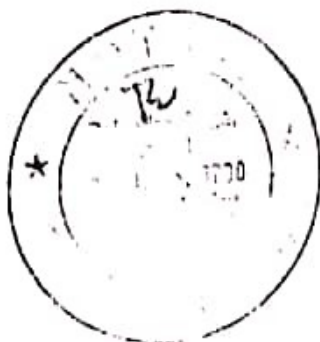
After the concerns were raised on 01 June 2016, two more INT meetings were held between the members of the INT on 09-10 June 2016 and 18 July 2016 respectively. Certain concerns raised by the three members were also referred to the DAC. The



INT report also indicated better terms and conditions arrived at as a result of negotiation as compared to 126 MMRCA case and achievements of Negotiating Team. The then JS & AM (Air), was one of the three signatories to the note bringing out some concerns. The same Officer subsequently has signed the note for CCS approval. Therefore, the contentions advanced by the petitioners are inconclusive and based on incomplete file notings.

The CAG has already brought out in its report the unrealistic benchmark price fixed by INT and better price arrived at in 36 Rafale procurement case as compared to MMRCA process.

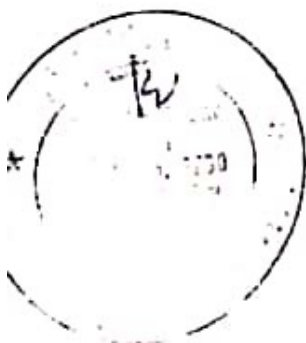
The DAC on 28 August - 01 September 2015 had directed that better terms should be in terms of price, delivery schedule and maintenance. The better price in case of 36 Rafale as compared to 126 MMRCA has been acknowledged by the CAG audit. The price discovery of 126 MMRCA was determined out of a global competitive tender. The reasonability of the price for 36 Rafale



through the IGA has been established by CAG audit.

It is pertinent to note that the CAG conducted performance audit of the procurement of Medium Multi Role Combat Aircraft (MMRCA) including the procurement of 36 Rafale aircraft. Full access to all files, notings, letters, etc related to the said procurement, including the full pricing details, have been shared with the CAG audit team which scrutinized the records and took about two years and prepared their report. The initial observations and findings of the audit were clarified through additional information and discussions. Face to face discussions were also conducted to bring clarity in the procurement process and related aspects.

The observations of the CAG as mentioned in the above paragraphs clearly negates the submissions put forward by the applicants. The issue of Rafale procurement was also thoroughly debated in the Lok Sabha and Hon'ble Raksha Mantri gave a detailed reply on 04.01.2019 suitably addressing all the



issues. It is submitted that the Government has moved in a very decisive manner for 36 Rafale procurement in view of critical operational necessity. While the past process of 126 MMRCA could not come to a conclusion in 15 years (Also commented by CAG audit report), government could conclude 36 Rafale procurement process in about one and half years. The Implementation of 36 Rafale procurement is on schedule with the deliveries of the aircraft commencing September, 2019. Training for the team has already commenced in France. The issues raised by the applicants regarding sovereign guarantee etc. under the heading 'Ministry of Defence, Ministry of Law & Justice, INT concerned that this agreement did not meet the requirements of IGA' it is submitted that these are already replied in the preceding paragraphs and the same are reiterated.

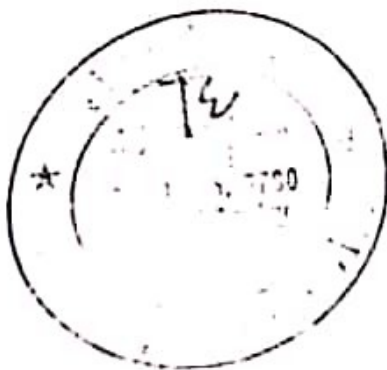
It is further submitted that the provisions/ clauses alleged to have been waived actually exist in the offset contracts. This makes it

evident that the petitioners are continuing to rely on unsubstantiated media report.

That CAG report has also brought out that the delivery is better and also brought out the fact that Non Firm & Fixed (F&F) bids as done in the 36 Rafale IGA may be more advantageous than F&F as done in other contracts.

CAG in its Audit Report under Chapter 5 at Para 5.3 on Page 22 has mentioned as under:

"Audit also noted that only in case of MMRCA, Indian Negotiation Team (INT) advised M/s Dassault Aviation to provide a Non-Firm & Fixed offer in 2016, although the RFP of 2007 had invited firm and fixed prices. This change proved to be more beneficial. Initially (15 January 2016) Firm & Fixed price bid was invited by the Ministry and M/s DA had quoted 'AX13' Million Euros. This was found to be too high and Ministry called (21 January 2016) for Non-Firm & Fixed price bid. The firm had quoted 'T' Million Euros. Audit noted



that at this price the total outgo of cash payments to the vendor till the completion of the contract would have been 'EU' Million Euros (applying the vendor's price variation formula). Therefore, when compared to the Firm & Fixed offer of 'AX13' Million Euros the cash outgo was 'BX' billion Euro lesser in case of Non Firm & Fixed Offer."

This benefit is in addition to the 2.86% lower price compared to the audit aligned price of CAG.

9-11. That the contents are matter of court record. It is however denied that the government had told untruths regarding decision making process and suppresses crucial information. It is submitted that the stand of the applicants are vacillating and self-contradictory. It was submitted before this Hon'ble Court by the petitioners/applicants that the CAG ought to examine the whole issue, and now that the CAG has examined the matter in great detail by going into voluminous files and records made available by the Ministry of Defence and ruled out any irregularity in various aspects of the deal, and has submitted its report to the

...ment, the petitioners have now taken a different stand that the Information/ material provided by the answering respondent is untrue and material facts have been suppressed. It is submitted that the applicants cannot be allowed to blow hot and cold in the same breath. Now that the CAG has submitted its report and the conclusions reached by the CAG has clearly brought out that the entire package price of the 36 Rafale procurement is 2.86% lower than the audit aligned price compared to MMRCA process, the present application is completely misconceived and liable to be dismissed. Prayed accordingly.



VERIFICATION:

I, the above named Deponent do hereby verify that the contents of my foregoing affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this 29th day of May, 2019.

09 MAY 2019

Apurva Chandra
DEPONENT

(APURVA CHANDRA)
Director General (Acquisition)
Ministry of Defence, New Delhi
Telephone : 23014219

Apurva Chandra
DEPONENT

(APURVA CHANDRA)
ATTESTED Director General (Acquisition)
Ministry of Defence, New Delhi
Telephone : 23014219
RAJENDRA KUMAR
NOTARY, DELHI
GOVERNMENT OF INDIA
SUPREME COURT OF INDIA
COMPOUND, NEW DELHI
Register Pg. No. 1319

DECLARED THAT THE CONTENTS EXPLAINED TO THE
DEPONENT BY THE EXECUTIVE DEPENDENT WHO HAS
SIGNED IN MY PRESENCE
IDENTIFIED BY
09 MAY 2019

09 MAY 2019

IDENTIFIED