

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION(C) NO. OF 2018

IN THE MATTER OF:

Vineet Dhanda

.....Petitioner

VERSUS

Union of India &Ors.

.....Respondents

[PAPER BOOK]

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DR. J.P.DHANDA : ADVOCATE FOR THE PETITIONER

LIST OF DATES AND EVENTS

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.

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 defencereasons.

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.

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:

What is Rafale?

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.

UPA deal

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.

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).

What was the deal finalised by Modi government?

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.

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.

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.

The Final deal

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.

The allegations

The Congress 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.

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.

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".

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.

The 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.

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.

The government's response

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.

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.

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.

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.

Through the public interest litigation, citizens seek judicial intervention in a number of matters having the interest of public at large.

Through this new jurisdiction, the judiciary has undertaken responsibility as critics and monitors of the Govt. and its various agencies and to give socio-economic justice to the underprivileged masses without actually interfering with political administrative field or in the legislative sphere.

S.P. Gupta vs. Union of India

AIR 1982 SC 49.

The Public Interest Litigation brings justice to the doorsteps of the weak, the unorganized and exploited sections of the society who have no access to the courts because of the prohibitive cost of litigation.

Public Interest Litigation is a means by which justice percolates down to the masses and made more accessible and available to the poor and victim of injustice.

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.

29.08.2018 That a news published in PTI/New Delhi on 29.08.2018 with the title "Rafale deal and all about the controversy" which clearly talks about the agreement, allegations of the Opposition and also Government's Response to the allegations. A copy of the news published in PTI/New Delhi on 29.08.2018 is annexed as **Annexure P-1**.

22.09.2018 That a news was published on 22.09.2018 on News Desk with the title "Rafale Deal: French Government Denies involvement in India's Choice of Partner after Ex-President's statement". A copy of the news published on 22.09.2018 in News Desk is annexed as **Annexure P-2**.

23.09.2018 That the News Published in News Central 24x7 dated 23.09.2018 with the title "BJP Misleads on Rafale, claims Reliance was Already Part of Agreement Finalized by UPAII in which it is stated that the Former President of France Francois Hollande

unleaded a political storm by stating on record that it was the Indian Government which had proposed Anil Ambani's as the partner for the set clause under the Current Rafale Agreement, and that the French Government had no say in the matter. But the Central Government has been firefighting allegations of massive corruption and cronyism over the mega defence deal which is gross miscarriage of justice. A copy of the News Published in News Central 24x7 dated 23.09.2018 is annexed as **Annexure P-3**.

24.09.2018 That there was an interview held with Arun Jetly by the online/newsnation which also clearly talks about the Rafale Agreement transparently. A copy of the Interview published in www.newsnation.in of Mr. Arun Jetly dated 24.09.2018 is annexed as **Annexure P-4**.

24.09.2018 That a news published in Business Today on 24.09.2018 in which it is clearly stated that French President Emmanuel Macron has given ammunition to the Narendra

Modi Government to counter the Opposition's charges of irregularities in the Rafale Jet deal. In an exclusive interview with India Today Group Editorial Director Raj Chengappa, Macron said the Narendra Modi Government bargained well and managed to safeguard India's Industrial interests. A copy the news article published in Business Today dated 24.09.2018 is annexed as **Annexure P-5**.

24.09.2018 That a news published in Indian Express.com on 24.09.2018 titled Rafale Controversy: Francois Hollande doing no service to country, says French Official" . A copy of the news published in Indian Express.com dated 24.9.2018 is annexed as **Annexure P-6**.

24.09.2018 That a news published in Times of India on 24.09.2018 titled "CAG will examine Rafale pricing, but deal to stand: Jaitley". The news was stated about that the Rafale deal would not be cancelled as allegations of a scam were farcical, Finance Minister Arun Jaitley answered the opposition on their question. A copy of the

news published in Times of India on 24.09.2018 is annexed as **Annexure P-7**.

Thus, the petitioner is filing the present petition in shape of Public Interest Litigation, seeks to invoke the extraordinary power of this Hon'ble Court as provided under Article 32 of the Constitution of India, for issuing necessary directions.

Hence the present Writ Petition.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION(C) NO. 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 400054.
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

AND IN THE MATTER OF:-

PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE
OF AN APPROPRIATE WRIT IN NATURE OF
MANDEMUS ORDER OR DIRECTION TO
THE RESPONDENTS.

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 a citizen of India and a practicing Advocate in the Hon'ble Supreme Court of India as well as High Court of Bombay and other High Courts in the country. The petitioner being a responsible citizen has keen interests in social work and read various news articles appeared in the leading newspapers regarding the _____ and the hardship caused to the people pursuant to the same.
2. That the present petition is being filed in the Public Interest as well as the interest of public at large in the country seeking directions to the Central Government to have a check and strict account of various

The petitioner has no personal interest in the present public interest litigation except to _____. The present writ petition is not guided by self-gain. But is in the interest general

citizen of the country. That the present petition under Article 32 of the Constitution of India is being filed by way of public interest litigation and the petitioner has no personal interest as far as any personal benefits are concerned.

3. That the petitioner declares that the facts pleaded in the petition have been verified by him personally and the same are based upon the documentary proofs obtained by the petitioner from the various news paper articles published in the online internet.
4. That the petitioner is a highly spirited and law abiding citizen of the country.
5. That the petitioner is the citizen of India and a social worker and practicing advocate before this Hon'ble Supreme Court of India as well as Bombay High Court. Annual Income : Approx. 3 Crores.. Pan card Number : AHVPD7813N, Aadhar Number 5157 3493 9134 The e-mail address of the Petitioner is veerswaraj@yahoo.in.
6. That the Petitioner has no personal interest in the Public Interest Litigation but being citizen of India he has full faith in the Institution.

7. That the present petition has no legal nexus with any civil, criminal or revenue litigation. The Petitioner has not filed any civil, criminal or revenue matter on his behalf which may have any nexus with the PIL.
8. That there is no alternative or equally efficacious remedy left in the hands of the Petitioner under the above mentioned compelling circumstances, but to move before this Hon'ble Court.
9. That by way of the instant public interest litigation the petitioner is also seeking the indulgence of this Hon'ble Court for direction seeking the central Government to frame _____
10. That 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.
12. That the present Public Interest Litigation is brought before this Hon'ble Court not for the purpose of enforcing the right of one individual against another, but it is intended to promote and vindicate public interest.

13. That the facts leading to filing the present Public Interest Litigation are given hereunder:

13.1 That a news published in PTI/New Delhi on 29.08.2018 with the title "Rafale deal and all about the controversy" which clearly talks about the agreement, allegations of the Opposition and also Government's Response to the allegations. A copy of the news published in PTI/New Delhi on 29.08.2018 is annexed as **Annexure P-1**.

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Central Government has been firefighting allegations of massive corruption and cronyism over the mega defence deal which is gross miscarriage of justice. A copy of the News Published in News Central 24x7 dated 23.09.2018 is annexed as **Annexure P-3**.

13.4 That there was an interview held with Arun Jetly by the online/newsnation which also clearly talks about the Rafale Agreement transparently. A copy of the Interview published in www.newsnation.in of Mr. Arun Jetly dated 24.09.2018 is annexed as **Annexure P-4**.

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25. Thus, the petitioner is filing the present petition in shape of Public Interest Litigation, seeks to invoke the extraordinary power of this Hon'ble Court as provided under Article 32 of the Constitution of India, for issuing necessary directions.

GROUNDS

A. Because 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 CombatJets.

- B. Because 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 Company. What a sarcasm they have started calling the Prime Minister as a Thief. This has been in the news many times.
- C. Because in addition to this allegation there are several others allegations against the present Ruling Party and its had 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.
- D. Because 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 at least 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.

- E. Because in order to be little more acquainted with the controversies the details of the French Company and the agreement enter into between this Company and the Union of India is required to be given.
- F. Because 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.
- G. Because 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.

- H. Because 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).
- I. Because 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.

- J. Because 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.
- K. Because 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.
- L. Because 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.

- M. Because 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".

- N. Because 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.
- O. Because 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.
- P. Because 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.

Q. Because 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.

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.

Through the public interest litigation, citizens seek judicial intervention in a number of matters having the interest of public at large.

Through this new jurisdiction, the judiciary has undertaken responsibility as critics and monitors of the Govt. and its various agencies and to give socio-economic justice to the underprivileged masses without actually interfering with political administrative field or in the legislative sphere.

There is an infringement of Fundamental Rights under Article 14, 19 and 21 of the Constitution of India. There is a Fundamental Rights under Article 19 of the Constitution of India regarding Freedom of Speech but the way this Freedom has been misused in criticising the Prime Minister of India is misuse of Freedom of Speech.

That for the purchase of fighter jets indicated above the public money will be spent. But that money of the Public is properly utilized in the purchase of the fighter jets and the controversy surrounding this indicates as if the Union of India is effecting the purchase of fighter jets in its own way results in infringement of Fundamental Right under Article 14 and 21 of the Constitution of India.

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) 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 envelop.
- 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;

And

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

Drawn &
Vineet Dhanda
Advocate

Filed by

[DR. J.P.DHANDA]

Advocate for the petitioner

Drawn on : ____-08-2018

Filed on :

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION NO. OF 2018

IN THE MATTER OF:

Vineet DhandaPetitioner
VERSUS
Union of India &Ors.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 Writ Petition (Pages__ to__), List of dates and events (Pages__ to__) 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.
3. That the petitioner stated that there is no personal gain, private motive or oblique reason in filing the Public Interest litigation.
4. That all the annexures to the accompanying Public Interest Litigation are true copies.

DEPONENT

VERIFICATION:

Verified at Delhi on thisday of August 2018, 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

