

After correction of all defect party and cause of action
and final prayer

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION
Writ Petition (Crl.) D.NO. 9444 of 2021

IN THE MATTER OF

Manohar Lal Sharma Advocate
S.C.B.L.No.-1
Supreme court of India
New Delhi-01
Resident of , 31, Gyangudery

Vrindaban- Mathura , U.P.
VERSUS

Petitioner

1. Narendra Damodardas Modi
(at present prime minister of India)
Prime minister office
North Block , New Delhi
2. Sushen Mohan Gupta
c/o Defsys Solutions Pvt Ltd
Block I-B, Plot No. 35 A3,
KIADB Industrial Area, Hoskote,
Bangalore – 562114, INDIA (info@defsys.co.in)
3. Defsys Solutions Pvt Ltd
Through Chairman
Block I-B, Plot No. 35 A3,
KIADB Industrial Area, Hoskote,
Bangalore – 562114, INDIA (info@defsys.co.in)
4. Dassault Reliance Aerospace Limited (DRAL)
Through Chairman
Plot 3-1A, Dhirubhai Ambani Aerospace Park
(DAAP) SEZ, Mohan , Nagpur-
Maharastra-440019 (ishant.baranwal@dassaultrelianceindia.com)
5. Union of India
Through secretary
Ministry of Defence , South Block, Central secretariat
Rajpath Marg New Delhi-110011
6. Central Bureau of Investigation (C.B.I.)

Through Director
Plot no.5-B , 6th floor ,
CGO Complex Lodhi Road New Delhi 11,0003 Respondents

Writ petition (PIL) U/Art. 32, 21, 73 & 253 of the constitution of India r.w. s.420, 409 &120-B of IPC, P.C. Act 1988 and u/s. 3 of the official Secret Act 1923.

To,
The Hon'ble Chief Justice of India
And His Companion Judges of
The Supreme Court of India.

The Petitioner most respectfully Showeth:

1. That Petitioner, citizen of India & by profession an advocate practicing at above address, is filing the present writ petition (PIL) under Art. 32 of the constitution of India r.w. s.420, 409 &120-B of IPC & P.C. Act 1988, for invoking his fundamental right & to protect fundamental right of the citizen of India seeking writ of mandamus to cancel/ quash Rafale fighter deal being outcome of corruption and violation of Art 13, 21, 253 of the constitution of India couple with further writ of mandamus/ direction to C.B.I for investigation after registration of a F.I.R against the respondents no. 1 & 2 under PC Act of 1988 r.w. s. 409, 420 & 120-B of IPC couple with and u/s. 3 of official Secret Act 1923 and to file their report before this Hon'ble court for further action/ direction to prosecute them within the supervision of this Hon'ble court couple with further direction to issue appropriate writ for quashing inter government agreement dt. September 2016 being outcome of bribe / corruption being illegal, unconstitutional and arbitrary contra to the interest of the citizen of India.
2. That Petitioner has filed a complaint dt 6.04.2021 to the respondent no.5
Copy of the same is filed as Annexure P-10 herein.
3. That cause of Action arose to the file the present petition on 5.04.2021 knowing true facts that AFA (France CAG) investigation report declared that Dassault have given 1 million euro to Middlemen of India as bribe. Mr. Sushant secured secret defence papers for jet Fighter gave to Dassault in

securing Rafale contract 23.09.2021 @ 216 million Euro. Mr. Modi, instead of selected Eurofaghter jet @ 138 million euro each adopted Rafale deal. Due to Indian political pressure prosecution upon AFA's report has been suspended/ stayed. It's a serious offence under secret Act-1923, injuries financial and defence to the country. It's violated Art 21 and 13 of the constitution of India. AFA's Investigation report dt.4.5.2021/ Magistrate order dt. 5.4.2021 of France is also required to be called by this Hon'ble Court for that an application has been filed herein.

4. That respondent no.1 was holding the office of the Prime minister in the Government of India and have initiated/ executed impugned agreement dt. 23rd September 2016 for the purchase of 36 Rafale jet fighter and cancelling of notification dt 9th May 2006 for criteria of RUR by way of inserting guideline for IOP (India offset partner) without issuing of any notification. Said agreement attract procurement guideline issued by the Ministry of finance. The agreement was signed by the then defence Minister Mr. Parikar not by the R-1.

Copy of the impugned agreement is not filed as it is not available to the petitioner because it is not laid in the parliament.

5. That R-2 & 3 are the middlemen who have secured secret Airforce defence documents to Dassault for Rafale deal and given 1 million bribes as per AFA's France investigation report dt. 4.4.2021 and magistrate order for non-prosecution of AFA report dt 4.4.2021 as reported in MEDIAPART of France. That R-4 is a joint venture with Dassault aviation Ltd France and represent Dassault or vice versa in India.
6. That Impugned agreement of 23rd September 2016 was signed by the defence ministers of India and defence Minister of France at New Delhi, called as "Rafale deal", in which India would pay about Rs. 58,000 crore or 7.8 billion Euros for 36 off-the-shelf Dassault Rafale twin-engine fighters couple with 15% advance payment of this cost. As per the deal, India will

also get spares and weaponry, including the Meteor missile, considered one of the most advanced in the world.

7. That the Present petition is being filed to decide also a serious Constitutional Question of law as follow; -

- i) Whether impugned agreement being outcome of bribe and stolen secret papers of Jet fighters from defence ministry is liable to be quashed or not?
- ii) Whether respondents are to be prosecuted or not u/s 3 of the official secret Act-1923 r.w. S.420, 120-B and 409 of IPC & pc Act 1988?
- iii) Whether impugned agreement dt September 2016 can be treated as a treaty between two countries or a valid International agreement within the Art.102 of the UN Charter?

8. That India and France both countries are member of the UNA.

9. That Agence Française Anticorruption (AFA) which functions in a capacity similar to India's Comptroller and Auditor General (CAG), was set up in 2017 with the aim of checking whether large companies implemented the anti-corruption procedures set out under Sapin 2, the French anti-corruption law. However, unlike CAG, the AFA also audits private firms. AFA did audit and disclose corruption of gift one million euro to the Indian Middlemen in the Rafale deal given by Dassault.

10. The Eurofighter Typhoon is a multinational fighter program between the United Kingdom, Germany, Spain and Italy

- a) Eurofighter Typhoon is a twin-engine, canard-delta wing, multirole fighter. The Typhoon was designed originally as an air superiority fighter and is manufactured by a consortium of Airbus, BAE Systems and Leonardo that conducts the majority of the project through a joint holding company, Eurofighter Jagdflugzeug GmbH formed in 1986. NATO Eurofighter and Tornado Management Agency manages the project and is the prime customer.

b) Eurofighter Typhoon is unique in modern combat aircraft in that there are four separate assembly lines. Each partner company assembles its own national aircraft, but builds the same parts for all aircraft (including exports); Premium AEROTEC (main centre fuselage, EADS CASA (right wing, leading edge slats), BAE Systems (front fuselage (including foreplanes), canopy, dorsal spine, tail fin, inboard flaperons, rear fuselage section) and Leonardo (left wing, outboard flaperons, rear fuselage sections).

11. That Dassault Aviation SA is an international French aircraft manufacturer of military, regional, and business jets, a subsidiary of Dassault Group. Shareholding of the company is (i) Dassault Group (62.17%) ,(ii) Airbus (9.93%) (iii)Dassault Aviation (0.46%), (iv) Private investors (27.44%).

12. That since 2001 India was looking jet fighter for their AIR Force and invited global tenders for the supply of required jet fighter. Six renowned aircraft manufacturers competed to bag the contract of 126 fighter jets, which was touted to be the largest-ever defence procurement deal of India. The Initial bidders were Lockheed Martin's F-16s, Boeing's F/A-18s, Eurofighter Typhoon, Russia's MiG-35, Sweden's Saab's Gripen and Rafale. All aircraft were tested by the IAF and after careful analysis on the bids, two of them i.e. Eurofighter and Rafale, were shortlisted. Dassault bagged the contract to provide 126 fighter jets, as it was the lowest bidder and the aircraft were said to be easy to maintain.

13. The Dassault Rafale jet fighter is a French twin-engine, canard delta wing, multirole fighter aircraft designed and built by Dassault Aviation. Equipped with a wide range of weapons,

a) On 18.08.2006 BBC reported that Saudi Arabia has confirmed it is to buy 72 Eurofighter Typhoon aircraft, in a deal that could end up being worth more than £6bn.

b) On 28th April 2011 defence ministry of India issued Request for Proposal (RFP) to the France's Dassault and Eurofighter to extend their commercial bids for a \$12 billion dollar contract for 126 fighter jet deal after shortlisting them out of 6 bidders.

i) India has shortlisted Dassault's Rafale and the Eurofighter Typhoon for a \$12 billion-dollar fighter jet deal, cutting out US giants Boeing and Lockheed, sources said Thursday.

c) Eurofighter did give a last-minute revised bid at 20% less value than cited, which was rejected by the UPA government as there was no provision for triggering a price war at any point in the stated DPP.

d) The RFP issued earlier for procurement of 126 Medium Multi Role Combat Aircraft (MMRCA) has been withdrawn. In this multi-vendor procurement case, the Rafale Aircraft met all the performance characteristics stipulated in the Request for Proposal (RFP) during the evaluation conducted by Indian Air Force."

e) On 4th July 2014 in reply to RFP of 2011 Eurofighter Typhoon, head of the Military Aircraft Airbus Defence and Space, issued a letter dt. 4th July 2014 to the Defence Minister of India Mr. Arun Jetley reducing price of Eurofighter offered to sale/ supply; -

i) @ 138.88 Euro million each Eurofighter (MMRCA) (Reduced tendered price by further 20%). Or

ii) @ 86 Euro Million each with immediate delivery. Reduced further price under NPV terms couple with further negotiation for price & terms.

iii) To provide International bank guarantee.

iv) To give complete Transfer of technology for the production of the Eurofighter Typhoon weapon system, to manufacture engine with Eurojet partners and E-Scan Radar technicians at Euro radar in India.

v) Life time warranty due to complete transfer of Technology for its production in India.

True Scan copy of the letter dt. 4th July 2014 of Eurofighter Typhoon is being filed as **Annexure P-2 (22-26)**

14. That in the first report of a three-part investigation, *Mediapart* said that in mid-October 2018, French anti-corruption agency, Agence Française Anticorruption, first spotted the payment and asked Rafale manufacturer Dassault for an explanation.

a) Soon after the Rafale deal was finalised on September 23, 2016, Dassault had agreed to pay the amount to one of its sub-contractors in India, Defsys Solutions. Dassault said that money was used to pay for the manufacture of 50 large replica models of Rafale jets, *Mediapart* reported. The French company was, however, not able to provide any proof to the AFA to show that the models were actually made.

15. That Petitioner had filed a complaint with the C.B.I. DT. 6.04.2021 in this regard. True copy of the complaint dt. 6.04.2021 is being filed as **Annexure P-10 (36-40)**

16. That the petition is being filed on the following amongst other

GROUND

a) Because impugned agreement has been procured out of corruption as disclosed recently by the France “Media part”. It’s a matter of corruption and is liable to be cancelled with cost and penalty within the rule framed/ issued by the ministry of finance within procurement rule of 2017 (P-1).

b) Because impugned agreement is a private agreement between defence Minister of the Government of India and Dassault. It is declared by the respondents as an inter-governmental deal but it was not. In case of Intergovernmental deal, it is covered by sovereign guarantee from

France. In fact, government settled said contract for a letter of comfort, which isn't really enforceable by law against the France government.

- c) Because impugned agreement is illegal being not registered agreement with the UN under Art.102. It cannot be enforced under the UN Arbitration by any one of the parties.
- d) Because impugned agreement is a fraud upon the constitution of India therefor it is liable to be quashed couple with further direction for investigation about the bribery given and taken directly and indirectly by the respondent no.1 and his party through middlemen as is disclosed by the AFA report.
- e) Because a contract procured by fraud & corruption is void ab-initio.
- f) Because contract has been signed by the defence Minister on the behest of the respondent no.1. while international contract is signed either by the finance minister, President or Prime Minister.
- g) Because said agreement was also not ratified either by the parliament of India or by the France parliament. Therefore, it is not a treaty between two countries. It's a simple private commercial illegal agreement between two parties which is liable to be quashed with penal cost/interest as per law.

17. That Petitioner has not filed any Petition before this Hon'ble Supreme court or in any High court for the relief prayed herein.

- a) That due to corona scenario unattested affidavit is being filed in support of the present writ petition and attested affidavit will be filed after corona scenario will be over.

PRAYER

Therefore, within the aforesaid facts and circumstances and in the interest of justice, equity and fair play this Hon'ble court be pleased to issue appropriate writ of mandamus/ proper writ direction

- 1) for registration of F.I.R. u/s 409, 420 & 120-B of IPC r.w. PC Act 1988 r.w. S.3 of the Official Secret Act,1923, to securing secret papers from defence ministry and to secure Rafale deal and One million Euro given as bribes for Rafale deal 23.09.2016 jointly and severally by the respondent no.1 to 4, to initiate investigation within the supervision of this Hon'ble court and to file their report before this Hon'ble court for further appropriate directions for prosecution of the respondents no 1 to 4 & others couple with seizure / recovery of the public money with interest, jointly and severely, from them in accordance of law in the interest of justice. AND
- 2) Be also pleased to issue appropriate writ direction for cancelling /quashing impugned agreement Dt. 23rd September 2016 for purchase of 36 Rafale jet fighters from Dassault France, being hit by fraud , corruption and offence under the official secret Act 2913 and to recover entire advanced money with penalty and to black list the Dassault aviation to supply in future defence del in accordance of law in the interest of justice to the citizen of India. AND
- 3) Pass such other order or further orders, as this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS ARE DUTY BOUND SHALL EVER PRAYS.

Drawn & settled by:

Manohar Lal Sharma Advocate

Drawn on : 6.04.2021

Filed on : 6.04.2021

Filed by: Manohar Lal Sharma Advocate

Petitioner-in-person