CASE COMMENTARY: THE RAFALE JET DEAL-MANOHAR LAL SHARMA V. NARENDRA DAMODARDAS MODI

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I. BACKGROUND & FACTS

The case is also known as the *"Rafale case"*. A bench consisting of the then Chief Justice of India Ranjan Gogoi, Justice Kurian Joseph and Justice S. K. Kaul gave the decision by considering vagaries of evidences and facts of the case. This case raised the questions of corruption, transparency and accountability on the Narendra Modi Govt. There were allegations made against the Govt. in front of the media and press by various political parties of the country. The Defense ministry issued the declaration and tenders for the purchase of 126 fighter aircrafts in accordance to the procedure set out by the DPP (Defense procurement procedure) in the year 2007. The Union will buy 18 Dassault Aviation fighter planes in 'fly-away' condition, while 108 would be built in India by Hindustan Aeronautics Limited (HAL) via a 'technology transfer' from a foreign business. Following a selection procedure which was very extensive, the center selected the French company Dassault. By 2015, pricing talks had reached a conclusion. However, in March 2015, Prime Minister Narendra Modi and French President Emmanuel Macron announced a fresh contract to buy just 36 Rafale combat planes. The tender for 126 aircraft was later rescinded, according to the Ministry of Defense. The new contract contained a 50 percent offset provision, requiring Dassault will reinvest 50% of the contract value in India by purchasing Indian goods and services together with other foreign companies like as Thales and Safran. Dassault Reliance Aerospace Ltd (DRAL) was formed in October 2016 by Anil Ambani's Reliance Group and Dassault, with Dassault indicating that it aims to invest $115 million to partially achieve its offset obligation. Attorney ML Sharma, AAP MP Sanjay Singh, lawyer Vineet Dhanda, politician Yashwant Sinha are among the claimants who have filed cases at the Supreme Court.in 2018, alleging severe procedural flaws in the Rafale Fighter Jet Deal. On November 14, 2018, the court postponed its decision. The court declined the appeal for a court-monitored probe a month later, on December 14th. The court found no irregularities in the decision-making process, price, or selection of an off-set partner, according to the court. The court came to its decision based on evidence presented by the State in sealed envelopes.

II. ISSUES FORMULATED

- Were there any anomalies in the decision-making process that caused the Union Government to acquire just 36 planes instead of 126?

- Is there any price irregularity in the Rafale Fighter Jet Deal, given that the current deal's per-unit cost is greater than what was previously agreed during the UPA government?

- Did the Union Government, in violation of Clause 8.6 of the Defense Offset Guidelines, propose Reliance Defense Ltd. as Dassault Aviation's Indian Offset Partner without the Minister of Defense's permission?[252]

[252]Kumar, A. P., *Supreme Court on Rafale Papers and Electoral Bonds*,< https://d1wqtxts1xzle7.cloudfront.net/61143883/CL_LIV_16_200419_Alok_Prasanna_Kumar20191106-30946-1ox0drx-with-cover-page-

- Is the Rafale fighter jet deal between India and France an inter-governmental agreement?

III. PETITIONER'S ARGUMENT

- The petitioners want to know if the requirements for entering into an IGA have been met. The French government's decision to provide simply a "Letter of Comfort," rather than a "Sovereign Guarantee," has been put to questions.

- The petitioners argued that the offset regulations compel the vendor to provide information about the Indian offset partner, but that a retroactive amendment to paragraph 8 of the offset standards was made to help the business group in question. A veil of secrecy is said to have been erected over the offset partner as a result of the stated alteration, allowing the vendor to release the information at a later date. Other components of the offset criteria, however, have not been amended, therefore the government cannot claim ignorance of the Indian offset partner as it claimed in the affidavit filed.

IV. RESPONDENT'S ARGUMENT

- The respondents have relied on paragraph 71 of the DPP 2013 for assistance.[253] Paragraph 71 of the DPP 2013, which pertains to the IGA, states that purchase from friendly foreign nations may be necessary owing to geostrategic benefits that the country is expected to get. In the conventional sense, such procurement would not follow the Standard Procurement Procedure or the Standard Contract Document, but rather would be based on mutually agreed-upon needs by both governments under the conditions of an IGA.
- In comparison to Dassault's MMRCA offer, the respondents claim that the INT finished its discussions and agreed at superior conditions in terms of pricing, delivery, and maintenance. This was then processed for inter-ministerial discussions, as well as the approval of the CCS, which led to the signature of the agreement. As stated in paragraph 72 of the DPP 2013, this was in accordance with the procedure.

V. JUDGEMENT

CJI Ranjan Gogoi wrote a uniform decision[254]. The scope of judicial review, according to the CJI, varies depending on the case's subject matter. Protecting India's sovereignty and integrity is, without a question, a top priority for the country. Keeping the above in mind. He stressed that the Court's judicial review authority is severely limited in this case since it involves a defense procurement deal. He emphasized that the Rafale procurement contract is a critical national security issue, thus the Court's review is limited to analyzing. Illegality, irrationality, and procedural impropriety have all been determined to be valid grounds for judicial examination.

The inquiry of the contract by the Court, according to CJI Gogoi, might have implications for India's national security and sovereignty. The Court cited 'Applications for Judicial Review, Law and Practice' from British jurisprudence.

However, many areas of government action, such as national security, are considered unfit by the courts to prove beyond a preliminary determination of whether

v2.pdf?Expires=1654017832&Signature=Ws2tw4Du1fGZpQ6fnbLRtYrEdsZQLvYqPMYheNAJb2vlRFEitEEFNAQ9oibvRbMHeiSY1UY4pcTVnWYNQtnJtwzvBsmBJA5hLdDIZqLYFIvyAzygbHlHkMXj7HdvNJbB3i18pqNU0l5UBzE6m8X~WCNaiozts7l5eocw~4weOpt9Ye7ZM9M~q3SY5576GxO2TAgLLzTfPnROUoY1VzcNSsY6AVEPU6rPPYqy4fzHk9HeE2S4GksXa1N70i6L0vC-2xqSZjQpZhFh784sR944pMKFuUqv-y4s9Xt1hPgZWnij6bkzKezrD4nEEx4u0pA6fHCqcGdA9T16Y8axVSUP-Q__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA> .

[253] *Defense Procurement Procedure*, (2013), https://cgda.nic.in/pdf/DPP2013.pdf.

[254] Tummala, K. K., *Constitutional corruption in India: an analysis of two Bharatiya Janata Party scandals*, Public Administration and Policy (2020), < https://www.emerald.com/insight/content/doi/10.1108/PAP-11-2019-0035/full/html>.

the Government's claim is legitimate. Judicial review is not wholly barred in this type of non-justiciable region, but it is severely constrained. It has also been claimed that royal prerogative powers are intrinsically unreviewable, however this is debatable in light of the House of Lords comments in *Council of Civil Service Unions v. Minister for the Civil Service*[255]. Lords Diplock, Scaman, and Roskili appeared to concur that while there is no general distinction between authorities, judicial review can be constrained by a single authority's subject matter, in this case national security, regardless of whether its source is statutory or prerogative. Many prerogative authorities, such as foreign affairs, are delicate, non-justiciable areas, although some are reviewable in theory, especially when national security is not a factor. The Attorney General's authority to determine whether to begin legal proceedings in the public interest is another non-justiciable power. The Court concentrated its limited judicial review powers on three issues: the decision-making process, pricing volatility, and the Indian Offset Partner (IOP).

A. DECISION MAKING PROCESS

The court is now examining whether the proper procedures were followed when 36 planes were purchased rather than 126. According to the court, the previous agreement was between the UPA administration and Dassault for the acquisition of 126 planes. According to the Court, the previous contract could not be concluded due to outstanding issues between Dassault and HAL. The problem was that Dassault Aviation was required to meet contractual obligations for 126 aircraft as a seller (18 direct fly away and 108 produced in India) in accordance with the request for purchase RFP standards.

Contractual obligations and responsibilities for 108 airplanes constructed in India were unable to be settled. The court stated that in March 2015, the Request for Acquisition (RFP) was withdrawn due to inconclusive negotiations for the purchase of the planes. In these conditions, the current administration signed an Inter-Governmental Agreement (IGA) to acquire 36 Rafale fighter jets. The Court acknowledged that the new agreement between the NDA administration and Dassault constituted a completely different process. The Court appeared to be convinced that the government had engaged in adequate consultations with the French government before to entering into a deal to purchase the 36 planes. The Court took note of the Indian Air Force's submissions.

"We have also had the opportunity of communicating with senior Air Force Officials who addressed Court inquiries in respect of several issues, including the purchase procedure and cost", the Court stated in paragraph 22 of its judgement. "We are confident that there is no reason to seriously dispute the procedure, and that slight deviations would not result in the contract being voided or needing a thorough examination by the Court." The Court decided that it was outside the scope of its judicial review to question the government's decision to buy 26 planes instead of 126.

B. PRICE VARIATION

The petitioner also claimed that the planes were overpriced. He claims that expenses are skyrocketing and that there is a lot of corruption going on. The court stated that the price of the aircraft is presented to the court in a sealed envelope in order to protect the country's national security. The government's concerns that sharing the cost details of planes would jeopardize national security and that there would be a heightened threat from other nations if they knew our security had such equipment and would be able to counter it were accepted by the court. It would also be a violation of Article 10 of the Inter-Governmental

[255] [1985] AC 374.

Agreement. The official answers argue that purchasing 36 Rafale fighter jets has a commercial benefit.

The court held that, "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."

C. INDIAN OFFSET PARTNER

This lawsuit was sparked by the topic of Indian Offset Partner (IOP). The Defense Offset Guidelines of DDP 2013 were said to have controlled the offset contract. The government is also reported to have no part in the selection of the IOP. The OEM is permitted to choose any Indian business as its IOP, according to the Defense Offset Guidelines. The Reliance Defense-Dassault joint venture is primarily a business deal between the two private corporations. Former French President François Hollande claimed that the Indian government pressured Dassault to pick Reliance as an offset partner, but the Court dismissed his claims. All parties (Dassault, Reliance, and the Indian government) have explained that President Hollande's charges are untrue, according to the Court.

The court observed that, "We do not find any substantial material on record to show that this is a case of commercial favoritism to any party by the Indian Government, as the option to choose the IOP does not rest with the Indian Government."

VI. RATIO DECIDENDI

The ratio of this case is that the, Perception of individuals cannot be the basis of a fishing and roving enquiry by this Court, especially in , such matters being the matters of national security and international agreements. The claims were found to be nothing more than "individual perceptions," according to the decision. The court declined to conduct a "fishing investigation." It ruled out any indication of "commercial favoritism" in favor of Reliance Defense because India had no say in the IOP selection. The petitions were stated to be "taking advantage" of Mr. Hollande's words, according to the statement. There were no reservations regarding the Rafale planes' fitness, according to Chief Justice Gogoi's decision. The petitioners have the option of filing a review petition, which will be heard by the same Court. In the next months, the corrective application might be heard in open court.

VII. CRITICAL ANALYSIS

The Supreme Court's rejection of an inquiry into allegations of corruption and irregularity surrounding the tumultuous Rafale purchase puts an end to the political wrangling that had been plaguing India's attempts to replace its ageing combat aircraft fleet. It continued to raise concerns about accountability, stalling reforms aimed at streamlining the procurement system, as the Rafale had come to represent.[256]

"Our country cannot afford to be unprepared/underprepared in a situation where our adversaries have acquired not only fourth generation, but even fifth generation aircraft, of which we have none," the court said. "It will not be correct to sit as an appellate authority to scrutinize each aspect of the process of acquisition."

The verdict establishes a precedent in Indian military spending and procurement procedures, allowing the government of the day to lessen transparency and accountability by arguing "operational need" and "immediate danger perceptions." The dispute is boiled down to two paragraphs in paragraph 25[257] of a three-judge Bench led by Chief Justice of India Ranjan Gogoi's decision. "However, the price data have been shared with

[256]Rajagopalan, R. P., *India's big defense acquisition challenge*, (2018), https://policycommons.net/artifacts/1347723/indias-big-defense-acquisition-challenge/1959882/.

[257]Manohar Lal Sharma v. Narendra Damodardas Modi, WP(Cri.) 225/2018; RP(Cri) 46/2019.

the Comptroller and Auditor-General (CAG), and the CAG's report has been evaluated by the Public Accounts Committee (PAC)," states the first sentence. "Only a redacted section of the study was brought before Parliament and is in the public domain," the second line reads. The CAG report appears to have been presented to the PAC, according to the verdict. The government explained in its rectification application that the lines in the ruling were an incorrect replication of those used in the memo. "The government has previously shared the pricing details with the CAG," the sealed cover letter stated. The CAG's report is scrutinized by the PAC. Only a redacted version of the report is presented to Parliament and made available to the public." According to the administration, the message just specified "procedure," implying that the CAG report would be presented to the PAC once it was completed. In addition, for national security reasons, a portion of the CAG report is redacted and put in Parliament and the public domain. According to the court, a simple "is" was converted into a considerably more difficult "was."

VIII. CONCLUSION

The court found no cause on this delicate topic of the government of India purchasing 36 defence aircrafts, based on the conclusions of all concerns and a thorough examination of the case. Individual perceptions cannot form the foundation of a court's rising and roaming inquiry, especially in such cases. As a result, the court rejected all of the writ petitions, allowing the parties to incur the expenses on their own while giving clean chit to the Modi Sarkar while the decision of the honorable SC could have been clear and transparent.

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