

Reiterates Clean Chit To Modi Govt On Fighter Jet Deal, Dismisses Review Petition, Finds It To Be Without Merit **Rafale gets wings, Rahul gets sting in unanimous SC verdict**

No Need For FIR Or Roving Inquiry: Court

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New Delhi: The Supreme Court on Thursday said no case was made out for a CBI inquiry into the Rafale deal and threw out petitions seeking review of its December 14, 2018 clean chit to the NDA government in procuring 36 fully loaded Rafale fighter jets through an inter-governmental deal with France.

Noting that the price of the basic Rafale jet negotiated by the NDA government was, contrary to allegations by the opposition and others, marginally cheaper than that considered by the UPA government, a bench of Chief Justice Ranjan Gogoi and Justices Sanjay Kishan Kaul and K M Joseph unanimously dismissed the review petitions filed by three advocates — ML Sharma, Vineet Dhanda & Prashant Bhushan — and former BJP leaders Yashwant

FULL COVERAGE: P 12

Sinha and Arun Shourie.

Though not a petitioner, Congress president Rahul Gandhi, who had zealously fanned the charges through his "chowkidar chor hai" jibe at PM Narendra Modi during the election campaign, was a prominent casualty of the court's second exoneration of the Modi government. Rahul suffered an embarrassment on Thursday when the bench chastised him by asking him to be more careful in future while strongly disapproving his claim that the SC had endorsed his slogan.

"We find that there is no ground made out for initiating prosecution under Section 340 of the Criminal Procedure Code (by directing inquiry)," the court said.

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RAFALE'S FLIGHT PATH

Jan 26, 2016: India, France sign MoU for 36 Rafales during then Prez Francois Hollande's visit

Nov 18, 2016: Govt tells Parliament each Rafale to cost approximately Rs 670cr

Dec 31, 2016: Dassault's annual report reveals actual price paid for 36 jets about Rs 60,000cr

Oct 10, 2018: Hearing a PIL, SC asks Centre to detail decision-making process in sealed cover

Oct 24, 2018: Yashwant Sinha, Arun Shourie and Prashant Bhushan move SC seeking registration of FIR

Oct 31, 2018: SC asks Centre to place details of deal in sealed cover within 10 days

Nov 12, 2018: Centre shares price details and decision-making process with SC

Dec 14, 2018: SC dismisses all pleas seeking CBI FIR

Jan 2, 2019: Sinha, Shourie and Bhushan seek SC review

Mar 13, 2019: Govt tells SC documents filed by review petitioners are sensitive to national security

Nov 14, 2019: SC dismisses review pleas



THE JUDGMENTS

REVIEW PLEA REJECTED:

CJ Gogoi and Justice Kaul reiterated the SC's earlier decision not to embark on a 'roving and fishing inquiry'. However, Justice K M Joseph said if substantial material is discovered, an FIR can be lodged as "discovery of facts by officer carrying out investigation is different from findings of facts given in judicial review by a court"

RAHUL APOLOGY ACCEPTED, CASE CLOSED

It is unfortunate that without verification or perusing... the order passed, the contemnor deemed it appropriate to make statements as if this court had given an imprimatur to his allegations against the PM, which was far from the truth

— JUSTICE KAUL

“A biting reply to those leaders and parties who rely on malicious and baseless campaigns”

AMT SHAH TELLE MINISTED & BJP CHIEF

Justice Joseph has opened a huge door... A JPC must also be set up to probe this scam

RAHUL GANDHI

Chor comment by Rahul Gandhi was repeated several times for political gains... Called out for what it is, irresponsible

NIRMALA SITHARAMAN | FM

'No need for roving, fishing inquiry'

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Justice K M Joseph, in a separate 75-page concurring judgment on Rafale, agreed that the review petitions deserved to be dismissed. However, he gave a consolation to the petitioners and the opposition when he said the SC's dismissal of the PILs would not preclude a preliminary investigation into the case and that a regular case (FIR) could be lodged if substantial material was discovered. "Discovery of facts by an officer carrying out an investigation is completely different from findings of facts given in judicial review by a court. The entire proceedings are completely different," he said.

Significantly, CJI Gogoi and Justice Kaul reiterated the SC's earlier decision not to embark on a "roving and fishing inquiry", and said the court had elaborately ex-



CJI Gogoi and Justice Kaul said that the court did not feel it was necessary to direct registration of an FIR

amined the documents after rejecting the Centre's claim of privilege over them and did not feel necessary to direct registration of FIR.

"It is not the function of this court to determine the prices nor for that matter can such aspects be dealt with on mere suspicion of persons who decide to approach the court. The internal mechanism of such pricing would take care of the situation. On perusal

of the documents, we had found that one cannot compare apples and oranges. Thus, pricing of basic aircraft had to be compared which was competitively marginally lower. As to what should be loaded on the aircraft or not and what further pricing should be added has to be left to the best judgment of the competent authorities," it said.

On the differences within the price negotiation team over the purchase of 36 fully-loaded Rafale jets rather than the 126 fighters the UPA had negotiated but could not complete, the SC said, "We found that there were undoubtedly opinions expressed in the course of the decision-making process, which may be different from the decision taken, but then any decision-making process envisages debates and expert opinion and the final call is with the competent authority, which so exercised it."

The petitioners had cited the dissent expressed by the minority group in the negotiation team to allege that the PMO had forced the decision to buy Rafale fighter jets on the defence ministry.

While rejecting the contention, the court made a not-so-pleasant observation about the petitioners. "It does appear that the endeavour of the petitioners is to construe themselves as an appellate authority to determine each aspect of the contract and call upon the court to do the same. We do not believe this to be the jurisdiction to be exercised... It would well-nigh become impossible for different opinions to be set out in record if each opinion was to be construed as to be complied with before the contract is entered into. It would defeat the very purpose of debate in the decision-making process."

Full report on www.toi.in

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