

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.720 OF 2016

SWARAJ ABHIYAN AND ANR. ...Petitioners

VERSUS

UNION OF INDIA AND ORS. ...Respondents

WITH

WRIT PETITION (CIVIL) NO.753 OF 2016

T.S. SINGHDEO AND ANR. ...Petitioners

VERSUS

UNION OF INDIA AND ORS. ...Respondents

WITH

WRIT PETITION (CIVIL) NO. 973 OF 2016

RAKESH KUMAR CHOUBEY ...Petitioner

VERSUS

THE STATE OF CHHATTISGARH AND ORS. ...Respondents

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. This order will dispose of Writ Petition (Civil) Nos.720, 753 and 973 of 2016. All the three writ petitions involve the same issue. Writ Petition (Civil) No. 720 of 2016 has been filed by

Swaraj Abhiyan, a political party along with petitioner No. 2 who is said to be an office bearer of a N.G.O., seeking direction for investigation into the purchase of A-109 power E-helicopter by the State of Chhatisgarh and also into the alleged bank accounts in British Virgin Islands (UK) linked with the son of Chief Minister of Chhattisgarh. The said son of the Chief Minister is not a party to the petition.

2. The plea set out in the petition is that the State of Chhattisgarh entered into an agreement dated 26th October, 2017 with Sharp Ocean Investments Limited and acquired a helicopter without following the due process and caused loss to the government. It is also alleged that an account was opened by the son of the Chief Minister 6 months after the bulk payment was made by the Government for the said purchase. The database compiled by the International Consortium of Investigative Journalists (ICIJ) shows Abhishak Singh as the shareholder of Quest Heights Limited (incorporated in British Virgin Islands on 3.7.2008) and Sharecorp Limited. The CAG report stated that loss

of Rs.65 lakhs was caused to the exchequer in the procurement of the helicopter.

3. Writ Petition (Civil) No.753 of 2016 has been filed jointly by the leader of the opposition of the Chhattisgarh Assembly and a publisher of a journal seeking direction to conduct enquiry into the helicopter purchase deals of the States of Chhattisgarh, Jammu & Kashmir, Punjab, Rajasthan and Jharkhand.

4. Writ Petition (Civil) No.973 of 2016 has been filed by Mr. Rakesh Kumar Choubey claiming to be a social activist seeking direction to conduct an enquiry into the British Virgin Island Companies of Abhishak Singh and the links of these companies in receiving kickbacks from Sharp Ocean Investments, OSS Air Management Pvt. Ltd. and Agusta Westland and also enquiry into the procurement of the helicopter by the State of Chhattisgarh.

5. A copy of the first petition was directed to be served on the Central Agency so that the Union of India could put in appearance. As recorded in order dated 2nd December, 2016,

learned Attorney General raised an objection that the issue was of political nature in the guise of a public interest litigation to settle political scores. Again, vide order dated 19th April, 2017, this Court observed that the said objection of the Attorney General was required to be heard first.

6. However, since on a later date, this Court was of the view that the objection of the Attorney General did not bar the jurisdiction of this Court and the matter may be required to be considered on merits, the State of Chhattisgarh filed counter affidavit, produced the original files and also filed photocopies of the same. A rejoinder affidavit has also been filed.

7. We have heard Shri Prashant Bhushan appearing for the petitioners in Writ Petition (Civil) Nos. 720 and 753 of 2016, Shri Sanjay R. Hegde, Senior Advocate, appearing for the petitioner in Writ Petition (Civil) No. 973 of 2016, Shri Mahesh Jethmalani, Senior Advocate for the State of Chhattisgarh, Shri Tushar Mehta, ASG and Ms. Pinky Anand, ASG for the Union of India.

8. We have perused the record and considered the submission of the petitioners that the helicopter was purchased by Chhattisgarh Government by floating a sham tender and that in the process loss was caused to the public exchequer. We have also considered the further contention that Abhishak Singh, son of Chief Minister of Chhattisgarh could be the beneficiary in the transaction.

9. Shri Jethmalani explained the factual position with reference to the record. He submitted that in the year 2002, the State of Chhattisgarh had purchased a Eurocopter (EC135) which crashed on 14th July, 2007 and became unusable. Before the sad crash, on 19th December, 2006, the Chief Pilot and Quality Control Manager of the Aviation Department of the State recommended purchase of a “twin engine Helicopter” which can carry at least four passengers with maximum fuel load across the State without refueling mid-way and still having enough power margin, efficient performance and least maintenance cost. This was to meet the security concerns of the State affected by extremist’s violence. This proposal was also on account of high cost of maintenance of

the existing helicopter. The State, on 6th January, 2007, constituted a three-member Committee comprising the Additional Chief Secretary (Aviation), the Principal Secretary to the Chief Minister and the Principal Secretary (Finance) to take an informed decision in the matter. The Committee, on 12th January, 2007, recommended purchase of Agusta A-109 Power helicopter. Correspondence was exchanged between the State and the Agusta. The Agusta, vide letter dated 27th January, 2007, informed that the company could give delivery of A-109 Power helicopter by middle of 2009. The price will be in the region of US \$ 6.0 million. However, if the State wanted early delivery, the company had already pre-sold some helicopters to their dealers of the region M/s. Sharp Ocean Investments Limited, Hong Kong who could be contacted. The service provider of the company in India was Mr. V. Krishnan, who could assist in this regard.

10. Accordingly, a delegation of the State went to Hong Kong and negotiated with M/s. Sharp Ocean Investments Limited, Hong Kong and gave its report on 15th February, 2007 to the effect that the helicopter could be supplied on negotiated terms for US \$ 6

million in six months. Thereafter, a note was put up on 4th April, 2007 by the Director of Aviation that efforts should be first made to acquire the helicopter at 2005 price (about Rs.24 crores). Since this proposal could not materialize as vide letter dated 5.4.2007, the OSS Air Management Pvt. Ltd. that price of US \$ 6 million + services was final price, global tender was published. Three proposals were received and the High Level Committee after evaluation on 7th July, 2007, recommended acceptance of tender submitted by M/s. Sharp Ocean Investments Limited, subject to delivery being made by December, 2007. Accordingly a decision was taken and purchase order was placed and thereafter delivery was effected. Payments were made as follows:

- “(a) USD 1,324,000 to Sharp Ocean (i)n consideration of procuring the sale of the Helicopter by Agusta to the Purchaser and to assign, transfer and set over to the Purchaser, Sharp’s rights under the Sale Contract.
- (b) USD 1,573,800 to Sharp Ocean as reimbursement of the monies “that Sharp has already paid as part consideration towards the purchaser of the Helicopter to Agusta in accordance with the Sale Contract.

(c) USD 3,672,200 to Agusta as the balance amount at the time of the scheduled acceptance of the helicopter.”

11. In support of the above, following documents have been referred to :

Document dated 19th December, 2006

COMPARATIVE STATEMENT OF LIGHT TWIN ENGINE HELICOPTER

S.N o.	PARAMETER	UNITS	A-109 POWER	B-427	EC-135 TI
1.	Delivery Schedule	Months	18-24	12-18	18-24
2.	No.of Aircraft in India		04	Nil	01
3.	Maintenance facility in India		Available	Nil	Nil
4.	Spares Inventory in India		Held	Not held	Not held
5.	Technical trained manpower		Yes	No	Very less
6.	Engine Power	SHP	900	800	826
7.	Engine Life	HRS	3500	3000	3000
8.	Operation, Maintenance and customer support		Available	Not available	Not available
9.	Operation at Night		Yes	No	Yes

Document dated 29th December, 2006

“Presently only three Helicopter are leading in the market in the light twin engine category which can be utilized by State Govt. for VIP operation.

1. Agusta A 109
2. EC-135

3. Bell-427

Out of these three Helicopters EC-135 is already being used by Govt. of Chhattisgarh has power limitation and excessive maintenance cost while operating in Indian environmental conditions. Bell 427 also has certain limitations for the kind of operation required for our State Govt. Bell 427 is a VFR category Helicopter, can operate only in day light and cannot fly after sunset.

Therefore, considering suitability of Helicopter for VIP operation for State Govt. and technical data performance Agusta A-109 is most suitable for State Govt. VIP operation.

Technical information comparison statement is submitted for you kind reference please.

Sd/-
29.12.06
Gauri Shanker Godara
Sr. Engineer (Helicopter)"

Document dated 2nd January, 2007

"... ..As you are aware, the world helicopter market is extremely tight and manufacturers including Agusta are not in a position to deliver a light twin engine helicopter before January, 2010. However, we, as Service Providers for Agusta in India are in a position to secure the delivery of a A-109 Power helicopter in 6 seat VIP Elite configuration for a confirmed delivery in August/September 2007 itself from their distributors M/s. Sharp Ocean Investments Limited, Hong Kong who have pre-bought this machine. The purchase price will be as follows:

Amount payable to Agusta Westland, Italy	US	\$
3,673,000		

Amount payable to M/s. Sharp Ocean Investment Ltd., Hong Kong	<u>US \$ 2,642,000</u>
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Total amount payable	<u>US \$ 6,315,000</u>
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Payment Schedule:

Down payment of US \$ 2,642,000 to M/s. Sharp Ocean Investments Limited, Hong Kong at the time of order placement / contract signature on or before 31st January,

2007. The balance amount of US \$ 3,673,000 will be payable to Agusta S.p.A., Italy in August 2007 at the time of "acceptance" of the helicopter by the Government of Chhattisgarh in Milan, Italy.

Invoice Price

Payable to manufacturer – Agusta Westland, Italy towards:

Price of the Helicopter US \$ 5,131,000

Services* US \$ 115,000

US \$ 5,246,000

Payable to M/s. Sharp Ocean Investments
Ltd Hong Kong towards:

Pre-booking cost US \$ 1,069,000

Total US \$ 6,315,000

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* includes dis-assembly; packing and preservation; freight; insurance; re-assembly and test flight in India prior to handing-over

The helicopter will be invoiced and delivered by Agusta Westland directly to the Government of Chhattisgarh. The confirmed order with down payment will have to be released on or before 31st January, 2007."

Document dated 13th March, 2007

"Agusta Westland
Finmeccanica Company

A

The Director Aviation
Government of Chhattisgarh
RAIPUR
India

Dear Sir:

We thank you very much for the kind courtesies extended to our Service Providers representative in India Mr. V. Krishnan when he called on you on 22nd December, 2006 to make a presentation on the suitability of our helicopters the AW 139 and the A 109 Power for your requirements.

In this regard, we are pleased to confirm the following information in response to your e-mail today:

- (a) The earliest delivery we can offer from the Company for the A109 Power is today middle 2009.
- (b) The ROM price for the Elite configuration you are looking for will be in the region of US \$ 6.0 Million.
- (c) The initial deposit at the time of booking will be US \$ 100,000. The down payment will be equivalent to 30% payable within 60 (sixty) days from the date of contract signature or to the import license obtaining whichever come first. Final payment of 70% will be at the time of "acceptance" of helicopter at Milan.

If you are looking for an early delivery, please note that we have pre-sold some helicopters to our dealers for your region M/s. Sharp Ocean Investments Limited, 1402, One Duddell Street, Central, Hong Kong who will be in a position to offer you earlier deliveries of the helicopters booked by them on behalf of their customers in India. Our Service providers representative in India Mr. V. Krishnan (Mob. + 91 98183 55544) can assist you in this regard.

Thanking you

Yours faithfully,

Sd/-
Umberto Fontanella
Head of Region
Agusta Westland"

Report of the CAG

“Having failed to sign the contract by the due date, the Government floated (May 2007) a global tender for purchase of Agusta A 109 Power helicopter. Out of the five bids received, the Cabinet approved (August 2007) the bid of the same Hong-Kong based dealer, who had offered to supply the helicopter earlier, and signed (October 2007) the agreement for US \$ 65.70 lakh (Rs.25.96 crore as per prevailing exchange rates). The supply of helicopter was received in December 2007 and payment of Rs.25.96 crore was made. Thus, due to avoidable delay in taking decision on signing the contract by due date for purchase of new helicopter at the first instance, the Government had to purchase the same helicopter model from the same dealer at an extra cost of Rs.65 lakh (Rs.25.96 crore - Rs.25.31 crore) as detailed in Appendix-2.1”

12. The objection on behalf of the petitioners is that in all the three offers, it was the same person who negotiated. Other helicopters were not considered. Excess price was paid to benefit the son of the Chief Minister. Question is whether the allegations are substantiated. Even though the submission initially appeared to require consideration on account of which the State was directed to produce the record and explain the position after due consideration, we find it difficult to accept the same.

13. Son of the Chief Minister is not personally a party. Disclosure in Panama Papers is a matter which is still under investigation by

Multi Agency Group constituted by the Government of India on 4th April, 2016 which is to give its report to the Special Investigating Team constituted by this Court vide order dated 4th July, 2011 in Writ Petition (Civil)No. 176 of 2009¹.

14. On merits, as depicted in the comparative statement dated 19th December, 2006 signed by the Senior Helicopter Engineer and Chief Pilot (H), on comparison of A-109 Power, B-247 and EC-135 T1, parameters of Delivery Schedule, Number of Aircrafts in India, Maintenance facility in India, Spares Inventory in India, Technical trained manpower, Engine Power, Engine Life, Operation, Maintenance and customer support and Operation at Night were in favour of A-109 Power. Letter dated 2nd January, 2007 addressed to the Director, Aviation, Government of Chhattisgarh shows that Agusta itself was not in a position to deliver the light twin engine helicopter before January, 2010. However, it stated that the same could be secured in August/September, 2007 from the distributors M/s. Sharp Ocean Investments Limited, Hong Kong at a total amount of US \$

¹ This issue has been dealt with in the order of this Court dated 9th October, 2017 in W.P. No.65 of 2016

6,315,000. Prior to this, on 29th December, 2016, recommendation was made by the Senior Engineer (H) that Agusta A-109 was suitable for operation for State Government VIP operations. Thus, for quick delivery, the State negotiated with M/s. Sharp Ocean Investments Limited. Final payment made is of 6,570,000 (Six million five hundred seventy thousand). Contention that the price of the Helicopter was US \$ 5,246,000 as shown by the invoice of the Agusta Westland dated 30th October, 2007 and thus, the remaining amount was by way of commission cannot be accepted in view of contents of the Agreement dated 9th October, 2007 and the correspondence. The said agreement shows that Agusta had entered into agreement dated 24th May, 2006 for sale of Agusta Helicopter Model A-109 to Serum Institute of India Limited. The sale was assigned by the said Serum to Sharp and Sharp had made certain advance payments to Agusta. Sharp had claimed its holding charges. Agusta itself made it clear that the price was US \$ 6 Million if delivery time was more. For earlier delivery, pre-sold Helicopter could be purchased from its distributor at a higher price. Thus, it cannot be said that there was an excess payment for extraneous reason. Comparison with

the price at which Jharkhand proposed to purchase helicopter has no relevance as that was a deal in the year 2005 at which price the helicopter was not available at the relevant time as noted earlier. Price in Jharkhand deal was US \$ 5.591 million and the said transaction is dated 5th August, 2006. Obviously, it is difficult to accept the contention that real value in the present transaction was US \$ 5.246 million on 26th October, 2017 when the company itself vide letter dated 13th March, 2007 showed inability for early disposal and stated that the price was US \$ 6.0 million if delivery period was more than two years.

15. It cannot be disputed that the State Government was entitled to make a choice to purchase the Helicopter in question. There is nothing on record to show that the Helicopter could have been procured for lesser price. No person claiming to give a better deal has come forward. Thus, in absence of clear evidence that loss was caused to public exchequer by way of commission payment to Sharp Ocean Investments Limited which was only a route to send the payment to the son of the Chief Minister, interference by this Court is not called for. There is a tripartite

agreement dated 26th October, 2007, between Sharp Ocean Investments Limited, the State of Chhatisgarh and Agusta to the effect that Sharp Ocean Investments Limited was entitled to retain payment made by it to Agusta to the extent of US \$ 100,000 (As per Article 4.1.A of Agreement dated 24th May, 2006 read with Agreement dated 13th November, 2006 in favour of Sharp Ocean Investments Limited) and US \$ 1,473, 800 under Article 4.1.B of the Contract. The CAG report does not attribute any extraneous consideration in the deal.

16. There is no material to *prima facie* hold that beneficiary of transaction was Abhishak Singh. We do not consider it necessary to go into the allegation of mere procedural irregularities. We broadly find that no case is made out for interference by this Court for issuing a direction as sought in absence of allegation of extraneous consideration being substantiated.

17. Having considered the merits, we need not go into the objection raised on behalf of the respondents that the petition was for political gains and should not be looked into in view of

S.P. Gupta versus Union of India², ***Janata Dal versus H.S. Chowdhary***³, ***Rajiv Ranjan Singh ‘Lalan’ (VIII) versus Union of India***⁴, ***Ashok Kumar Pandey versus State of West Bengal***⁵, ***Kunga Nima Lepcha versus State of Sikkim***⁶, ***Kishore Samrite versus State of U.P.***⁷, ***Alagaapuram R. Mohanraj versus T.N. Legislative Assembly***⁸ and ***Santosh Singh versus Union of India***⁹. There is no doubt about the legal position enunciated in the said decisions cautioning the Court against interference with decisions of the Executive without there being clear issue of genuine public interest. However, they do not create a jurisdictional bar, if conscience of the Court is pricked in a given case. A petition under Article 32, without clear element of public interest, cannot be entertained at the instance of a political rival merely on account of an alleged procedural irregularity in the decision making which can be challenged at appropriate forum by the aggrieved party.

2 1981 (Supp) SCC 87
3 (1992) 4 SCC 305
4 (2006) 6 SCC 613
5 (2004) 3 SCC 349
6 (2010) 4 SCC 513
7 (2013) 2 SCC 398
8 (2016) 6 SCC 82
9 (2016) 8 SCC 253

Accordingly, we do not find any ground to grant prayer as sought in the petitions which hereby stand dismissed. No costs.

.....J.
[ADARSH KUMAR GOEL]

.....J.
[UDAY UMESH LALIT]

NEW DELHI;
FEBRUARY 13, 2018.