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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: August 20, 2015

% Pronounced on: November 03, 2015

+ W.P.(C) 3997/2015

DEEPAK MALHOTRA Petitioner

Through: Mr.Meet Malhotra, Sr. Advocate with
Mr.Ravi S.S.Chauhan & Ms. Pallak
Singh, Advs.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr.Jasmeet Singh, CGSC for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present public interest litigation is filed by the petitioner seeking a writ, direction or order to command the respondents to forthwith in a time bound manner withdraw the INSAS rifles from active duty/service and replace the same with a suitable modern firearm. The petitioner is a retired Lieutenant Colonel of the Indian Army, commissioned in Garhwal Rifles in 1970. He states that he is familiar with basic firearms of the infantry.

2. It is averred that the INSAS (Indian Small Arms System) is a family of infantry arms consisting of an assault rifle and a light machine gun. It is manufactured by the Ordnance Factories Board at Ordnance Factories in Tiruchirappalli, Kanpur, etc. It is further averred that the INSAS assault rifle is the standard infantry weapon of the Indian Armed Forces. It is stated that the rifle was designed and manufactured to be a

world class assault rifle but it has major design and metallurgy problems.

3. It is the contention of the petitioner that the armed forces have registered a protest against the defective weapon but still these rifles are being continued. Reliance is placed on a statement alleged to have been made by the Director General, CRPF (wrongly described as Director CRPF) which is reported in the press that the INSAS's metallurgy is inferior to foreign rifles and further that the magazine used therein is made of plastic and it often cracks. It is further averred that the INSAS, as per the statement of the Director General, CRPF, has a higher error percentage. Copy of the newspaper report is annexed.

4. Reliance is also placed on a newspaper report which appeared in 2012 which contained the statement of the then Defence Minister made in the Rajya Sabha that the INSAS rifles are defective and outdated and a project to replace the INSAS rifle was underway.

5. The petitioner further states that the INSAS rifle is heavier and longer than AK-47 and thus inconvenient to use. Further it is averred that the ammunition used in AK-47 is better and more powerful than the INSAS rifle.

6. When the matter came up before this court on 22.04.2015, directions were passed to respondent No.2 i.e. Ministry of Defence to consider the issues raised in the petition and place the order thereon before this court.

7. On the last date of hearing i.e. 20.08.2015, the learned counsel appearing for the respondent has filed in court a communication dated 04.08.2015 issued by respondent No.2 which is addressed to the petitioner and which has dealt with the various contentions raised by the petitioner in the present writ petition. Copy of the said communication

was taken on record.

8. As per the said communication sent by respondent No.2 dated 04.08.2015 to the petitioner, the submissions of the petitioner have been refuted. The said communication states the following salient points:-

(i) The 5.56 mm INSAS rifle was inducted in 1992-93 after extensive user trials. After induction, based on the feedback from user, the rifle has undergone three cycles of upgradation from version 1A to 1A-1 to 1B and finally to 1B-1. Hence, upgradation has been made.

(ii) Further, regarding the contention of the petitioner of jamming of the weapon, it is stated that in isolated cases jamming/stoppages after sustained firing is unavoidable in any weapon system and troops are trained to swiftly remove the jamming. On cracking of magazines, it is stated that the issue has been resolved and the magazines currently in use are of satisfactory standard.

(iii) As far as the stated superiority of AK-47 rifle is concerned, it is stated that the two weapons namely, the 5.56 mm INSAS rifle and AK-47 rifle belong to two separate class of weapons. The INSAS rifle employs 5.56 mm ammunition and has an effective range of 400 meters. AK-47 rifle employs 7.62 mm ammunition and gives an effective range of 300 meters. Both the weapons, it is stated, are effective in different features. The elite forces like NSG on account of their different requirements, use the AK series, Hechler & Koch and other weapons of assault category as their usage is for short distances. Hence, it is stated that the comparisons are misplaced.

(iv) Regarding the alleged remarks of the Director General, CRPF, it is stated that there is no such report on the record of the Ministry of Home Affairs or CRPF.

(v) Regarding the statement made by the Defence Minister in the Rajya Sabha on 19.12.2012, it is stated that the statement merely stated that there were plans to replace the INSAS rifle with a new assault rifle. The Ministry is in the process of procuring a new assault rifle through global route with transfer of technology to Ordnance Factory Board. This is not on account of the INSAS rifle technology being outdated or defective but only an endeavour on the part of the Government for ensuring availability of latest and modern weapon to its forces.

(vi) None of the Court of Inquiries conducted pursuant to the Naxal strikes in Dantewada district of Chhatisgarh has blamed INSAS rifle for the death of the soldiers.

9. The said communication further concludes that the contentions of the petitioner appear to be based on unauthentic newspaper/media reports and not substantiated by any credible facts.

10. A perusal of the above facts show that the case of the petitioner is based primarily on his own personal experience, unsubstantiated reports allegedly made in the press by the Director General, CRPF and a statement made before the Rajya Sabha by the then Defence Minister. The respondents have clarified that there is no statement available in its record from the Director General, CRPF on the functioning of the INSAS rifles. It has been further clarified that the statement of the Defence Minister in Rajya Sabha pertained only to an attempt to upgrade the weapons which is an ongoing process. These unsubstantiated news paper

reports cannot normally be a basis for a PIL.

11. In the above context reference may be had to the judgment of the Supreme Court in the case of *Kushum Lata vs. Union of India and Others, (2006) 6 SCC 180*. The Supreme Court in connection with the PIL filed on unconfirmed newspaper report noted as follows:-

“13....It is also noticed that petitions are based on newspaper reports without any attempt to verify their authenticity. As observed by this Court in several cases newspaper reports do not constitute evidence. A petition based on unconfirmed news reports, without verifying their authenticity should normally not be entertained. As noted above, such petitions do not provide any basis for verifying the correctness of statements made and information given in the petition. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore- stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.”

12. The petition clearly lacks any material or substantial details to show any shortcoming in the INSAS rifle as to warrant any interference or directions by this court in public interest litigation.

13. We see no reason to pass any orders in the present public interest litigation. The petition is accordingly dismissed.

**(JAYANT NATH)
JUDGE**

(CHIEF JUSTICE)

NOVEMBER 03, 2015
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