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

+ **W.P.(C) 13751/2024**

SWASTIK OIL PRODUCTS MGF NAVSARI PVT LTD

.....Petitioner

Through: Mr. S.K. Chaturvedi, Advocate.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Rohan Jaitley, CGSC with
Mr. Hussain Taqvi, GP with Mr. Dev
Pratap Shahi, Mr. Yogya Bhatia and
Ms. Ranjana Jetley, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **06.11.2024**

CM APPL. 64911/2024 (seeking early hearing)

1. For the grounds and reasons stated in the application, the same is allowed and with the consent of the counsel of the partes the main writ petition is called on board today itself.
2. Accordingly, the application is disposed of.

W.P.(C) 13751/2024

3. The Petitioner asserts that it is an MSME unit which indigenously developed the high-performance Aviation lubricants, particularly SWAST-51H (OM-15), SWAST-510H (OM-150), SWAST-11 (OM-11). After due compliance of the respective governing specification(s), Respondent No. 2 – Chief Executive (Airworthiness), Centre for Military Airworthiness and



Certification¹, Defence Research and Development Organisation², approved the Qualification Test Schedule³ for the aforesaid products. Thereafter, in line with applicable guidelines, the Petitioner applied to Respondent No.2 for grant of the Provisional Clearance Certificates⁴.

4. When the Respondents initially did not grant the PCCs for the aforementioned three products, the Petitioner had approached this Court through an earlier writ petition being W.P.(C). 5521/2022. In the said petition, pursuant to orders dated 20th July, 2022 and 23rd August, 2022, the PCCs for three products issued by Respondent No. 2. However, the Petitioner contends that when it later sought an extension of the PCCs for an additional two-year term, Respondent No. 2 declined to grant extensions for all three products, prompting the Petitioner to file an interim application seeking Court intervention. In response, Respondent No. 2 extended PCC for two of the Petitioner's products, namely - SWAST-510H (OM-150), SWAST-11 (OM-11), however, denied extension for the product SWAST-51H (OM-15).

5. Pertinently, during the course of the proceedings in the earlier writ petition - W.P.(C). 5521/2022, Respondent No. 2, through their counter affidavit had apprised the Court that considering the user requirement, the field establishment of Respondent No. 2 – CEMILAC, i.e., RCMA (H/c), along with other stakeholders decided to carry out a ground level 'rig test' for the SWAST-51H product in RWRDC (Military Helicopter Designer/OEM) in Hindustan Aeronautics Ltd., Helicopter Division,

¹ "CEMILAC"

² "DRDO"

³ "QTS"

⁴ "PCCs"



Bangalore⁵. Respondent No. 2 further submitted that during the said rig test, the Petitioner's SWAST-51H (OM-15) product failed the corrosion and flash point tests thereby demonstrating substandard quality of the product which is a serious flight safety concern. In such circumstances, the Respondents decided not to extend the pre-production clearance in respect of SWAST-51H (OM-15).

6. This Court disposed of the earlier writ petition - W.P.(C). 5521/2022 by order dated 17th September, 2024 on the following grounds:

"11. The Court has noted the facts and contentions of the parties. Respondents have issued extension of the provisional clearance to the Petitioner in respect of SWAST-510H (OM-150) and SWAST-11 (OM-11). A copy thereof has been supplied to the Petitioner. As regards SWAST-51H (OM-15), the Respondents have denied the extension on account of the product having failed in the rig test.

12. The Pre-Production Clearance is a crucial step that ensures the products meet stringent defence specifications before they can be procured for use by the Armed Forces. The Indian Air Force, given the high-stakes nature of its operations, is justifiably cautious in granting unconditional approval for products that are yet to be fully proven in diverse and demanding environments. Nevertheless, in the Court's opinion, the primary relief sought in this petition was effectively addressed when the Provisional Clearance Certificates were issued to the Petitioner on 13th September, 2022. However, since the provisional clearance was due for renewal, the Court awaited the Respondents' decision on the matter. While the Petitioner has raised several grounds challenging the denial of the extension, as well as the conditions and limitations imposed on two of the products, the Court finds that these issues fall outside the scope of the present petition. Such challenges should form the basis of a separate and comprehensive legal action, as no decision on these matters can be rendered within the present cause of action.

13. Accordingly, the Petitioner is at liberty to pursue any legal remedies available to them with respect to the afore-mentioned issues, if so advised.

14. The Court has refrained from making any determinations on the

⁵ "HAL, Bangalore"



merits of the contentions raised by either party. All rights and contentions in this regard, are expressly left open.

15. *The present petition along with pending applications, is disposed of.”*

7. Availing the liberty granted, the Petitioner through instant writ petition challenges Respondent No. 2's refusal for extension of PCC dated 13th September, 2022, specifically for the product SWAST-51H (OM-15).

The Petitioner seeks the following reliefs:

“a) Quash the impugned report dated 09.09.2023 on the basis of which the respondent No.2 have illegally and arbitrarily denied the extension of provisional clearance for the product SWAST-51H (OM-15).

b) Issue appropriate writ / direction to respondent No.2 to grant the extension of provisional clearance for SWAST-51H (OM-15) for two more years (i.e. till 12.09.2026) in terms of Clause ‘C’ of Point No. 21.C3.1.15 of Subpart C3 of the IMTAR-21 version 1.0.

c) Permit the petitioner to participate in the upcoming limited tender enquiry to be floated by respondent No. 6 during the pendency of this Writ Petition.

d) Pass such other and further orders which will prevent respondent no.2 to act vindictively in future against the petitioner as may be deemed fit and proper in the facts and circumstances of the case.”

8. Mr. S.K. Chaturvedi, counsel for the Petitioner, argues that the rig test report dated 9th September, 2023, which served as the basis for denying the extension of the PCC for SWAST-51H (OM-15), is both illegal and arbitrary. His arguments are summarized as follows:

8.1 The impugned rig test report dated 9th September, 2023 (Annexure P-12 of the present writ petition) which involved testing the flash point and copper strip corrosion was conducted on ‘**used oil**’ as is evident from the report itself. This compromises the validity of the test, as results based on used oil lack credibility and do not reflect the actual quality of the product.



8.2 The Petitioner has been selectively subjected to the rig test, while no similar test was required for products supplied by other vendors currently supplying the Respondents. This selective treatment, he argues, is indicative of arbitrariness on the part of the Respondents.

8.3 The Petitioner, along with Respondent No. 4 – Directorate General of Aeronautical & Certification⁶ coordinated a test report No. SOPMNPL/QC/SWAST-51H/2023-24/003 for extension of shelf life of the SWAST-51H (OM15) product on 12th December, 2023 [*attached as Annexure P-10(Colly) to the present writ petition*] as per the requirements of the Acceptance Test Procedure⁷ which is one of the governing specifications for the product. This joint test report dated 12th December, 2023 indicates that the product SWAST-51H (OM15) complies with the requirements of the Respondents, especially with regards to the flash point and copper strip corrosion test. The timing of this joint report dated 12th December, 2023 is close to the impugned report dated 9th September, 2023, which also denotes arbitrariness.

8.4 The Respondents' own guidelines, specifically Clause 'C' at Point No. 21.C3.1.15 of Subpart C3 of the IMTAR-21 version 1.0, entitles the Petitioner to two years PCC extension. Since the product meets all applicable specifications, including the approved QTS, the governing specifications (DCSSEA 415/A) and the DGAQA approved ATP, the extension must be granted.

8.5 The Delivery Completion Certificate issued by Respondent No. 4 – DGAQA, dated 6th March 2023, also indicates that the product in question –

⁶ "DGAQA"

⁷ "ATP"



i.e., SWAST-51H (OM15) meets the specification of the Respondents.

8.6 The Petitioner's supplies during the initial PCC term were delivered without any complaints or issues raised by the Respondents, indicating satisfactory performance.

8.7 The sole ground for denying extension is the impugned rig test report, which is not a specified criterion imposed on any other supplier. Moreover, the test itself was conducted on 'used oil' and not fresh oil, thus denoting complete arbitrariness.

9. On the other hand, Mr. Rohan Jaitley and Mr. Hussain Taqvi, counsel for the Respondents argue that none of the grounds urged in the present writ petition are sustainable. They present the following arguments:

9.1 Respondent No. 2 is the regulatory body of DRDO, vested with the responsibility of providing Airworthiness certification for military Aircrafts, Helicopters, Unmanned Aerial Systems, Aero-engines, etc. These Airworthiness functions are implemented by Respondent No. 2 through Regional Centres of Military Airworthiness⁸ located across India, and covers the entire spectrum of activities of Indian Military Aviation such as design, continued verification of airworthiness, certification of systems and production support.

9.2 The Respondents have carried out tests on the product in question, which is a lubrication product used in Military Aircrafts or Helicopters, in terms of their specifications and requirements. Therefore, since the Petitioner's product SWAST-51H (OM15) failed to meet the requisite rig test, the Respondents are well within their rights to deny the extension of PCC which was earlier granted to the Petitioner.



9.3 Furthermore, the Petitioner company is new to the field of development of Aviation lubricants and does not hold the necessary experience as claimed by them. The product in question is OM 15 (Hydraulic oil) which is used in military fighter aircrafts and helicopters. Therefore, it is essential for the Respondents to satisfy themselves with the quality of the product in question. In this regard, the first clearance granted to the Petitioner for aviation lubricant i.e., OEP-70, was issued by Respondent No. 2 on 26th October, 2021, and currently none of the lubricants/products in question [SWAST-51H (OM-15), SWAST-510H (OM-150), SWAST-11 (OM-11)] are being used in any Indian military aircraft or helicopters.

10. The Court has carefully considered the contentions advanced by both parties and finds itself unable to grant the relief sought in the present writ petition. At the outset, it is essential to note that the Petitioner's grievance regarding the extension of the Provisional Clearance Certificate ('PCC') lies squarely within the jurisdiction and mandate of Respondent No. 2—CEMILAC, the regulatory authority empowered by the Ministry of Defence to grant or deny airworthiness certifications based on prescribed standards and guidelines.

11. Respondent No. 2, as the regulatory body, is competent to assess compliance with airworthiness criteria both when granting initial certifications and when considering extensions. This authority necessarily involves a technical assessment within the framework of the applicable guidelines, allowing Respondent No. 2 to act in the best interest of flight safety and operational standards. As such, this Court cannot supplant its own

⁸ "RCMA"



judgment in areas where expert regulatory discretion is applied unless there is clear evidence of procedural irregularity or gross arbitrariness.

12. To justify the invocation of this Court's jurisdiction under Article 226 of the Constitution of India, the Petitioner bears the burden of demonstrating that Respondent No. 2 acted in a manner that was manifestly arbitrary or in derogation of its regulatory mandate. In the present case, however, the Court finds that Respondent No. 2's decision to deny the PCC extension is premised on substantive findings, specifically the results of the rig test conducted at HAL, Bangalore, which indicated non-compliance with certain safety parameters.

13. The primary contention advanced by the Petitioner, that the initial approval of the products at the provisional clearance stage entitles them to an extension, lacks merit. The grant of provisional clearance does not imply an irrevocable right to future extensions; it is a preliminary authorization subject to ongoing compliance and regulatory satisfaction. Extensions of such clearances inherently depend on continued adherence to specified standards and performance criteria, which regulatory bodies assess independently at each stage. The Petitioner's assumption that initial approval guarantees subsequent extensions misinterprets the regulatory framework governing airworthiness certifications. The pre-production clearance or the Provisional Clearance Certificate is issued primarily for conducting prototype trials where ever the flight performance for consumables is not available. Furthermore, in the Provisional Clearance Certificate first granted to the Petitioner on 13th September, 2022 by Respondent No. 2 for the SWAST-51H (OM-15) product, the following stipulation/limitation was explicitly mentioned:



“4. Limitation:

Before using the Oil for Airborne application, concurrence to be obtained from the concerned platform RCMA/CEMILAC by the User. During usage, on two lead aircraft, user shall ensure that the oil samples are withdrawn at every 50 h (till stipulated oil change interval) for assessing the oil characteristics as per the approved QTS (Tests at Sr No.: 3, 4 (at 40°C & at Minus 40°C), 5,6,10, 13, 14 & 18 of Table 3). Before completion of next 50 hrs of operation, the test results compliance to the QTS should be obtained by the user. Any abnormalities / deviation should be immediately reported to concerned platform RCMA by user QA in order to decide operational life of the subject oil.

Particle contamination checks of the SWAST-51H oil shall be carried out as per the instructions provided by the Platform OEM. This data in comparison with original oil should be submitted to CEMILAC for perusal as well as for any suitable action, if required.”

[Emphasis added]

14. This clause was incorporated into the PCC specifically to address flight safety concerns and to facilitate conduct of further functional performance and end-use tests, as deemed necessary. These include rig tests, ground trials, flight trials, and engine test house runs, among others, which may vary depending on the type of oil, its intended military application, and the requirements set by the platform RCMA, in consultation with the OEM and end users. Such rigorous testing is vital to ensure that products intended for use by the Armed Forces meet stringent defence specifications, given the critical nature of Indian Air Force and Defence operations. These requirements are in line with the manual/guidelines as per the Procedure for Design, Development and Production of Military Air Systems and Airborne Stores (DDPMAS) 2021, Version 1.0 issued by the Ministry of Defence, which guidelines have to be strictly followed by Respondent No. 2 for providing Airworthiness Certification.

15. Moreover, the Union of India has highlighted that during the



procurement process for the SWAST-51H (OM-15) product from the Petitioner, the Integrated Headquarters of the Ministry of Defence (Army) issued a letter dated 19th January, 2023, to Respondent No. 2, seeking their concurrence on quality tests for the Petitioner's product and the current status of the PCC. In response, and to uphold stringent quality standards and ensure flight safety for Army personnel, Respondent No. 2 deemed it necessary to conduct ground-level rig tests for SWAST-51H (OM-15).

16. Regarding the Petitioner's argument that the rig test should have been conducted on "used oil", the Respondents have clarified that the rig test was initially performed on fresh oil, with subsequent physico-chemical properties evaluated after 50 hours of operational use. Oil subjected to such testing—following 50 hours of use—is referred to as "used oil" in the report, and thus, the Petitioner's interpretation is misplaced. This type of endurance or ground-level rig test is designed to assess whether the OM-15 oil maintains stability and integrity over extended use. According to the Respondents, a product meeting defence standards should not show significant degradation even after several hours of operational use. Since the Petitioner's product failed to meet the required corrosion and flash point thresholds during this test, it raises serious concerns regarding its reliability and safety. In view of this outcome, since the product fails to meet these critical standards, Respondent No. 2 has decided not to extend the Provisional Clearance Certificate for SWAST-51H (OM-15).

17. The Petitioner argues that it has been unfairly singled out—pointing to the fact that no other supplier's products have been subjected to the ground-level rig test that their product, SWAST-51H, faced. From their perspective, this selective scrutiny reflects arbitrariness. Yet, this contention



overlooks that safety demands flexibility in regulatory oversight, especially in areas as critical as defence. Here, Respondent No. 2 conducted tests considering user requirements and quality concerns—a prerogative well within its mandate to ensure that each product meets the operational needs. The Court, therefore, finds that the testing requirements imposed here fall within the purview of Respondent No. 2, which are founded in safety concerns. Simply put, in matters of flight safety, uniform treatment is not a given, nor should it be.

18. In light of these findings, it is evident that the decision by Respondent No. 2 cannot be deemed arbitrary. Thus, having regard to the principles of judicial review in cases involving technical determinations by specialized regulatory bodies discussed above, it cannot be said that the decision of Respondent No. 2 is arbitrary.

19. Hence, the Court finds no reason to interfere in the decision of Respondent No. 2 and accordingly, the present writ petition is disposed of, along with pending applications.

20. The date fixed i.e. 29th November, 2024 stands cancelled.

SANJEEV NARULA, J

NOVEMBER 6, 2024

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