



2025:DHC:801-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 1083/2025 & CM APPLN. 5341-42/2025****M/S. MAK CONTROL AND SYSTEMS PVT. LTD.**

...Petitioner

Through: Mr. S.S. Pandey, Ms. Ayushi Mishra
and Mr. Roshan Kumar, Advocates.

versus

UNION OF INDIA & ORS

...Respondents

Through: Mr. Shashank Bajpai, CGSC with
Ms. Stuti Karwal, Advocate and Mr.
Rudra, G.P. for UOI.

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Date of Decision: 29th January, 2025**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J : (ORAL)**

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking, *inter alia*, the following reliefs:-

“(a) Issue an appropriate Writ, Order or Directions including the Writ of Certiorari calling for the relevant records based on which the Respondents rejected the representation of the Petitioner for permitting him to participate in the UTRR with the equipment not in conformity with the PSQR as allowed to the others and on that basis declaring the Petitioner ineligible for issuance of the RFP to participate in the tender procedure in terms of the impugned orders including orders dated 08.11.2024, 20.11.2024 and 13.12.2024 as also the records based on which the RFP was issued to few selected vendors based on which the process is continuing till date by declaring them only eligible and thereafter quash all such orders including the Tender Procedure;



(b) Further, seeking a Writ in the nature of Mandamus to direct the Respondents to re-initiate the tender process for procurement of APUS for Tank T-72 and T-90 of the value of Rs 1325 Crore by allowing participation of the Petitioner and other similarly situated Vendors who are capable to manufacture the equipment as per the revised specifications by issuing RFP to them in addition to those who has been issued RFP despite they being non compliant vendors who failed to submit the equipment as per the original PSQR and process the same fairly by following the applicable Tender Procedure for the sake of most cost effective and optimal solution to the Armed Forces in due compliance of principles of Natural Justice to adopt fair, just and non discriminatory procedure ”

2. The facts shorn of unnecessary details and as culled out from the petition are as under:-

- (a) The respondents came out with an Expression of Interest (hereinafter referred to as “*the EoI*”) vide their letter no. A/35854/Make (APU)/GS(Mod)/AC/2020 in January, 2020, floated for procurement of 3257 Auxiliary Power Units (hereafter referred as ‘*APUs*’) for T-72 and T-90 S/SK Tanks. It is the case of the petitioner that since the petitioner had already designed, developed and supplied the required APUs to the Indian Army in past which were successfully installed in MBT Arjun as well, the petitioner responded to the EoI with complete integrity and confidence.
- (b) Consequently, the respondents issued Project Sanction Order (hereafter referred as ‘*PSO*’) to 23 vendors including the petitioner on 09.11.2020 for designing, developing and providing four prototypes (two units each for T-72 and T-90 S/SK tanks) of APUs as per the technical and other specifications listed in Preliminary Staff Qualitative Requirement (hereafter referred as ‘*PSQR*’) No. P-66 within a period of 78 weeks from the date of issue of PSO.



- (c) It is the case of the petitioner that as per the PSQR, since the respondents had called for STANAG Level-3 protection specification with total weight of APU (including casing and all accessories) to be only 500 kgs and noise level of less than 75dB which was quite a complicated task, the petitioner company, *vide* its letter dated 08.10.2021, approached the Project Facilitation Team (hereafter referred as 'PFT') of the respondents with detailed report and certain technical queries with the objective to understand the requirements of the user and request for changes in PSQR or alternative options suggested. However, *vide* their response letter dated 12.10.2021, the respondents merely reiterated the conditions of PSO thereby emphasizing to strictly abide by the qualitative requirements stated in PSQR without any deviations.
- (d) It is further the case of the petitioner that it once again approached the PFT of DG Mechanised Forces *vide* its letter dated 24.11.2021, which request was again rejected by the PFT *vide* its email dated 06.12.2021 and it was emphasized that the prototype will be evaluated as per the PSQR parameters as given in EoI for which various firms had allegedly responded and evaluated, thereby giving an impression that they have met the specifications and had supplied the same without deviation.
- (e) In the meantime, the DG Mechanised Forces/Gen Staff Branch (AC-2) *vide* its letter dated 08.03.2022 decided to conduct a User Trials Readiness Review (hereafter referred as 'UTRR') scheduled from 08.04.2022 and for which the petitioner was requested for providing inputs regarding the stage of project and issues/problems faced in the



development of prototype including delay envisaged. In response, the petitioner approached the PFT of DG Mechanised Forces *vide* its letter dated 10.03.2022 citing therein its detailed report on status of the development and listing various issues problems faced by petitioner company. However, no response was received by the petitioner.

- (f) In due course, a meeting was held on 15/16.03.2022 between all the vendors including the petitioner herein with PFT of DG Mechanized Forces wherein a lot of technical issues were discussed. It is the case of the petitioner that no discussion or directions were given that the vendors can submit the Prototype with deviations, which was also earlier denied in writing, and no Minutes of the Meeting to this effect was shared by the respondents with the petitioner, whereas such minutes of discussion, as per the procedure, had to be recorded and shared with the individual vendors.
- (g) Subsequently, the GS Branch/Dte. Gen. Armd. Corps (AC-2) *vide* its letter dated 18.05.2022, directed for conducting of UTRR of APUs developed by all the 23 vendors, post satisfaction of their own internal testing and confirmation of the same in writing to the Chairman, PFT. It is the specific case of the petitioner that since it could not technically realize a Prototype meeting the PSO terms and PSQR specification, it did not field the units and did not participate in the UTRR. It is stated that the petitioner did not submit the equipment with deviation, whereas other similarly placed vendors whose equipments genuinely failed to meet the PSQR requirements were held eligible by adopting a procedure contrary to the guidelines



issued by the respondents.

- (h) The petitioner, having learnt about non-meeting of PSQR requirements by any of the vendors who had fielded their equipments/prototypes, and being fully ready with two optimized and tested prototypes (especially with respect to power rating in HAA and desired STANAG) of the APU for T-72 (Qty 01) and T-90 (Qty 01) tanks as desired in EOI, approached the respondents *vide* its representations dated 30.11.2022 and 18.01.2023, with the request that in case the Indian Army revises the PSQR for the equipment, the EoI with revised PSQR should be shared with it as well, rather than limiting the same to just few vendors who had participated in UTRR with their equipments/prototypes, being duly aware that their equipments failed to meet the laid down specifications.
- (i) However, it is stated that the PFT not only unilaterally decided to revise the PSQR for weight but also decided to accept the equipments only from the vendors who had fielded in the UTRR for further trials without considering the petitioner. Aggrieved by this, the petitioner preferred a representation dated 15.03.2023. In response, the respondent *vide* its letter dated 03.04.2023 took a stand that in the meeting held on 15/16.03.2022, it was clarified to the vendors to continue with the development and that the PSQRs will be revised post conduct of UTRR and since the petitioner failed to submit technical documents and field its prototype for UTRR, it was held ineligible for issuance of commercial Request For Proposal (hereafter referred as '*RFP*') in accordance with Para nos.14(a) and 28(a) of PSO and Para nos.4, 8, 9 and 12(d)(i) & (iii) of UTRR



Instructions promulgated *vide* Armoured Corps Directorate letter dated 28.05.2022. It was also stated by the respondents in the said letter that the case has progressed to the next stage as per DAP 2020.

- (j) Aggrieved by this, the petitioner preferred several representations dated 10.04.2023, 09.06.2023, 17.08.2023 and 28.12.2023 at various levels, requesting the respondents to allow its participation and for issuance of RFP for field evaluation of the petitioner's prototypes. The petitioner also subsequently learnt that there has been a complete change in PSQRs which drastically alters the design parameters of the APUs.
- (k) Having received no response, the petitioner was constrained to approach this Court by filing its earlier writ petition being W.P.(C) 11214/2024. The matter was heard on 21.08.2024, when the concerned authorities were directed to produce the original documents to show that on 15/16.03.2022, the vendors were permitted to submit the equipment with deviation. Consequently, on 01.10.2024, the respondents produced the said Minutes of the Meeting before this Court but no copy of the same was shared with the petitioner claiming confidentiality. This Court *vide* its order dated 01.10.2024 permitted the petitioner to withdraw the said writ petition and submit a fresh representation to be decided by the respondents by a reasoned order within three weeks. With the said liberty, the earlier writ petition was disposed of.
- (l) Resultantly, the petitioner preferred its detailed representation dated 07.10.2024 addressed to the respondents. However, *vide* impugned order dated 08.11.2024, the respondents rejected the grievances of



the petitioner concerning the change in PSQR post initiation of project, reiterating their same old stand that since the petitioner allegedly failed to submit their technical documents and the prototype for UTRR, it was declared ineligible for issue of RFP. Hence, the present writ petition has been filed.

3. Mr. S.S. Pandey, learned counsel for the petitioner at the outset submits that the petitioner is a reputed arms manufacturer for the last almost four decades and has been supplying defence equipments to the armed forces. He submits that the petitioner, in particular, is a reputed manufacturer of APU for T-72 and T-90 Tanks for the Army. While describing the functions of APU, he submits that APU is an essential equipment in a Tank and the petitioner is the only company which is manufacturing these APUs for defence procurements for the last many decades.

4. Learned counsel submits that following the publication of the EoI and the familiarization visit to No.505 Army Base for development of APUs for the Tanks in question, the petitioner company *vide* communication dated 08.10.2021 sought certain technical queries from the respondents. Responding to the said communication, the respondents *vide* letter dated 12.10.2021, informed the petitioner that the parameters of the APU will remain as stated in the PSQR and the prototype will be evaluated during the UTRR. In other words, learned counsel submits that the information provided by the respondent *vide* the said communication did not brook any deviation from the original PSQR as per the terms of EoI.

5. Learned counsel contends that the petitioner, while working on the prototype within the parameters set out in the PSQR, found that



manufacture of such unit would not fall within the parameter set out in the PSQR in terms of its dimensions as also the overall weight, thus yet again, approached the respondent for clarification. He submits that the respondent reiterated yet again *vide* e-mail dated 06.10.2021 that the prototype must necessarily conform to the PSQR parameters given in EoI. He states that on the one hand, the respondents did not permit any deviation as sought to the original parameters of the PSQR yet, at the same time, called upon the vendors, including the petitioner informing that it had decided to conduct UTRR from 08.04.2022. Though the petitioner had protested *vide* letter dated 10.03.2022, there was no response emanating from the respondents.

6. Learned counsel vehemently contended that the respondents have, contrary to the previous communications, changed their original stand and permitted deviations in the PSQR for the prototype without any information to the petitioner. He claims that it is this crucial information, not having been conveyed to the petitioner that has resulted in violation of the EoI conditions as also the principles of natural justice which has impacted the petitioner and deprived it of an opportunity to participate in the UTRR.

7. Learned counsel for the petitioner forcefully and vehemently contested the claim of the respondents that in a meeting by the PFT of DG Mechanized Forces held on 15/16.03.2022 with the vendors including the petitioner, it was conveyed by the respondents to the vendors that prototype with deviations in the original PSQR were permissible which would be evaluated at the time of conducting UTRR. Learned counsel stoutly opposes the stand taken by the respondents and claims that no such information was made available by the respondents to any of the vendors



on the said dates. He also hotly contested the stand taken by the respondents that the representative of the petitioner was also present in the said meeting. Learned counsel also submits that Minutes of the said meeting were never furnished to the petitioner. He contends that in the absence thereof, the mere oral assertion of the respondents regarding permissibility of a prototype with deviation being discussed and forming part of the Minutes of the Meeting dated 15/16.03.2022, cannot be believed.

8. Learned counsel for the petitioner argued that due to such arbitrary and unfair procedure adopted by the respondents, while other vendors proceeded to participate in UTRR despite their prototypes having large number of deficiencies, the petitioner who had mastered the manufacturing of units was unfairly and arbitrarily denied an opportunity to participate in the UTRR. It is this action of the respondents that led to the petitioner file the previous writ petition as also the present writ petition.

9. Drawing attention to the impugned order dated 08.11.2024 whereby the representation of the petitioner has been decided, he categorically submits that despite order dated 01.10.2024 passed by this Court in W.P.(C)11214/2024, the impugned order does not even remotely refer to the issues raised in the representation. Dilating on the issue, he submits that the respondents have just repeated their previous stand taken orally before this Court in the previous round of litigation. Other than that, according to him, the respondents have skirted the actual issues and queries raised by the petitioner. He contends that it was on this deliberate and wilful deprivation of providing an opportunity to the petitioner to submit a prototype with deviation from the original PSQR that the petitioner has been excluded



from participating in the UTRR and consequentially, in the further tender process.

10. Learned counsel, on the basis of the aforesaid arguments, submits that even now, the petitioner can be permitted to participate in the UTRR and demonstrate its prototype since it is the stand of the respondents that deviations infact have been permitted to all the vendors or in the alternative, prays that the impugned orders, including the tender procedure be quashed and consequentially, the tender procedure be re-initiated.

11. *Per Contra*, learned counsel appearing for the respondents vehemently opposed the submissions addressed by the learned counsel for the petitioner.

12. Mr. Shashank Bajpai, learned counsel for the respondent submits that the reference to letters dated 12.10.2021 and email dated 06.12.2021 whereby it was conveyed by the respondents that no deviation in the prototype from the PSQR would be permissible, cannot be denied by the respondents. However, he emphasizes that in the meeting dated 15/16.03.2022, the PFT, DG Mechanized Forces discussed a lot of technical issues with the vendors including the representative of the petitioner. According to him, the issue in regard to whether some deviations would be necessary in the parameters prescribed in the original PSQR was also deliberated upon and it was decided that the vendors would be permitted to submit prototypes with deviations from the PSQR. In that context, learned counsel for the respondents firmly asserted that during the arguments in W.P.(C) No.11214/2024 held on 01.10.2024, the respondents had produced the Minutes of the said Meeting wherein not only the name of the representative of the petitioner was mentioned, the said



representative had also appended his signatures therein. He asserted that it was only after this Court had satisfied itself of the presence of the petitioner through the representative, that it refused to interfere in the tender process and only permitted the petitioner to submit a fresh representation with the respondents.

13. Learned counsel also draws attention to the impugned order dated 08.11.2024 to submit that every issue raised in the representation was considered, deliberated and dealt with para-wise. Thus, according to him, the submission of the petitioner that issues raised in the representation were not dealt with by the respondents, is unsubstantiated. He states that once the petitioner did not participate in the UTRR with its prototype, despite permissible deviation, the petitioner now cannot expect to turn the clock back. He states that the tender procedure has carried forward with many vendors having participated in the UTRR, thus there cannot be any special consideration given to the petitioner to participate in a process at a belated stage.

14. To the submission that the petitioner was furnished with the Minutes of the Meeting dated 15/16.03.2022, learned counsel states that keeping in view the confidentiality and nature of technical discussion in respect of defence equipments like the Tanks in question, the same obviously could not be shared in view of the interests of national security. He thus prays that the petition be dismissed with exemplary costs.

15. Having heard the learned counsel for the parties, we are of the opinion that the present petition is unmerited.

16. Though at the first blush, the argument of the learned counsel for the petitioner regarding letter dated 12.10.2021 and email dated 06.12.2021



wherein respondents had instructed that no deviation was permissible and thus the petitioner was deprived of an opportunity to participate in the UTRR with its prototype appears to be attractive, yet on a deeper examination, we find that it is not so. Rather, there is merit in the submission of the learned counsel for the respondents that when the PFT, DG Mechanized Forces held a meeting on 15/16.03.2022, and had a technical discussion with all the vendors including the petitioner through its representative, it cannot be disbelieved that such permissibility to submit a prototype with deviation was indeed discussed and conveyed as a decision to the vendors. This opinion gets fortified by the submission of the learned counsel for the petitioner himself that some other vendors had indeed participated in the UTRR with their prototypes with deviations. Logically speaking, if no such deviation was permitted, the question of even a single vendor having participated with a deviated prototype would not arise. Thus, the stand of the petitioner seems to be unmerited and we are not persuaded on that count.

17. So far as the issue of furnishing of the Minutes of the Meeting dated 15/16.03.2022 is concerned, it is not denied by the petitioner that discussion of technical nature, as submitted by the learned counsel for the respondents had taken place which of course would be highly confidential and in the interests of national security. In such circumstances, we do not find any arbitrariness or unfairness on the part of the respondents in not furnishing a copy of the Minutes of the said meeting to the petitioner. Our conscience is satisfied by the fact that the representative of the petitioner had indeed participated in the said meeting and in view of the nature of technical discussions, we are of the considered opinion that the respondents



were not mandated to furnish a copy of the Minutes of the said Meeting.

18. Learned counsel for the petitioner had also argued that proper procedure was not followed, in that, as per para 28 (v) of Chapter III-A: Defence Procurement Procedure for 'MAKE-II' Sub Category of 'MAKE' procedure, the conversion of PSQRs to SQRs were to take place prior to the commencement of user trials, which were violated. He submitted that after PSQR the respondents have straight away proceeded to user trials without the PSQRs being converted to SQRs first. Having heard learned counsel for the petitioner, keeping in view the aforementioned facts, we do not think it apposite to interfere or interdict the tender procedure merely on this variation, if at all it was done, since the core issue of the respondents having permitted deviations to the original PSQRs, which originally impacted the petitioner, have been held in favour of the respondent. In that view of the matter such submission too is unmerited and is of no consequence.

19. Though the petitioner has impugned the orders dated 08.11.2024, 20.11.2024 and 13.12.2024, the latter two orders are not even annexed to the petition. Thus, there is no way to ascertain as to what more was observed in those orders.

20. In that view of the matter, the present writ petition, alongwith pending applications, stands dismissed.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

JANUARY 29, 2025/rl