SC Verdict on Rafale Deal

Why in news?

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The Supreme Court recently gave its verdict on the Rafale aircraft acquisition deal. Click here to know more on the deal's controversy.

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What is the court's stance?

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- The controversy is triggered by a media interview of former French President and press coverage alleging "favouritism" by the Modi government.
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- But individual perceptions cannot be the basis of a roving judicial review and so the Court declined to intervene.
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- It said it cannot sit as an appellate authority over each and every aspect of the deal.
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- It refused to employ its judicial review powers to intervene in the deal's decision-making process, pricing and the choice of Indian Offset Partner (IOP).
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- It agreed with government that judicial review is limited in matters of defence procurements, Inter-Governmental Agreements (IGAs) that may be vital to national security.
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What is the verdict?

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- The judgment came on a batch of petitions for an independent court-

monitored CBI/SIT investigation into the deal.
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- There was no occasion to doubt the decision-making process which led to the IGA between the French and Indian governments.
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- "Minor variations" in the decision-making process should not lead to the setting aside of the contract itself.
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- The court, however, restrained itself from delving deeper into the issue.
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- The Court said it could not use the mechanism of judicial review to compare the prices of aircraft between the old and the new deal.
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- But the judgment repeated the government's claim that the contract was of "financial advantage to the nation".
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- In all, the Court held that there was no substance to the allegation that the government showed any "commercial favouritism".
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- It's because it acknowledged the government stand that the choice of IOP was not in its realm; the vendor, Dassault Aviation, chooses its own IOP.
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What are the concerns?

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- **Role** - The apex court went into issues that should have been left to the Comptroller and Auditor General (CAG), and after that to Parliament.
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- Neither the report of the CAG on procuring Rafale aircraft nor the Parliamentary Accounts Committee (PAC) report on it has been completed.
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- So in effect, the work that should have been done by the CAG has now been rendered virtually purposeless.
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- The shortcomings, if any, to be highlighted by the CAG, may be pointless as the court has already determined that nothing was wrong.
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- **Information** - Along the way, the court asked for information from the government in sealed covers.
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- This is a practice it has resorted to in other cases as well.

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- But it is fundamentally contrary to the normal and accepted practice of judges hearing cases in open court.
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- **Contradictions** - There are contradictions, too, in the judgment.
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- E.g. it says “it is certainly not the job of the court to carry out a comparison of the pricing details in matters like the present”.
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- But the judgement mentions on examining closely the price details and comparison of the prices.
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- The correct course of action now would be for the government or the court to release the whole or at least the relevant part of what was communicated in secret.
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Source: The Hindu, Business Standard

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