

## Commentary

### **Commentary on Duties and Powers of the Comptroller and Auditor General of India under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.**

- **Introductory**

The functions of the Comptroller and Auditor of India are derived mainly from the provisions of Article 149 to 151 of the Constitution of India. Article 149 provides that the Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were exercisable by the Auditor General of India before the commencement of the Constitution in relation to the accounts of the Dominion of India and of the provinces respectively. Under these transitional provisions the Comptroller and Auditor General continued to perform the duties and exercise the powers in relation to the Accounts of the Union and of the States as provided in the Government of India (Audit and Accounts) Order 1936, as adopted by the India (Provisional Constitution) Order, 1947 till the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (hereafter called the Act) was enacted by the Parliament. The Act which came into force on 15th December, 1971 has been amended in 1976, 1984, 1987 and 1994. The Act is a comprehensive legislation framed under Article 148(3) and 149 of the Constitution. It prescribes (a) the salary and other conditions of service of the CAG and (b) his duties and powers in relation to the accounts and audit of accounts of the Union, the States, the Union Territories and other authorities and bodies. No law of State Legislature can cast any duties or confer any powers upon the CAG or his representatives. Likewise the duties and powers of the CAG prescribed by law made by the Parliament cannot be superseded or abridged by or under any law made by the State Legislature.

- **Duties and responsibilities of the Comptroller and Auditor General in relation to accounts.**

Sections 10 to 12 of the Act deal with the responsibility of the Comptroller and Auditor General in relation to compilation of the accounts of the Union and the States and the Union Territories with Legislatures.

The first proviso of Section 10(1) authorises the President to relieve the Comptroller and Auditor General, after consultation with him, by an order, from the responsibility for compiling (i) the accounts of the Union (either at once or gradually by issue of several orders), (ii) the accounts of any particular service or department of the Union.

The second proviso to section 10 authorises the Governor of a State to relieve the Comptroller and Auditor General, with the previous approval of the President and after consultation with the Comptroller and Auditor General, by an order, from the responsibility for compiling (i) the accounts of the State (either at once or gradually by issue of several orders) and (ii) the accounts of any particular service or department of the State. The President may also, after consultation with the Comptroller and Auditor

General, by an order, relieve him from the responsibility for keeping the accounts of any particular class or character.

In 1976, in exercise of powers under the first proviso to Section 10 (1) of the Act, Comptroller and Auditor General has been relieved of the responsibility of compiling and keeping the accounts of various Departments/Ministries of the Union Government, except in respect of accounts relating to (a) pensions in lieu of resumed jagirs, lands etc (b) the Indian Audit and Accounts Department. Similarly, Comptroller and Auditor General is also relieved from the responsibility of compiling accounts of Union Territories except Union Territory of Chandigarh, Dadra Nagar Haweli and Lakshadweep. In so far as the States are concerned, Comptroller and Auditor General continues to (a) compile the accounts of all States except the State of Goa (b) keep such accounts in relation to compilation of accounts of the States as may be necessary (c) prepare the Appropriation Accounts and Finance Accounts thereof.

The third proviso to sub-section (i) of section 10 authorises the President to relieve the Comptroller and Auditor General from the responsibility for keeping the accounts of any particular class or character. Pursuant to these provisions, the President has, by issue of several orders, relieved the Comptroller and Auditor General from the responsibility for maintaining the Provident Fund accounts of all State Government employees, in the States of Rajasthan, Mizoram, Arunachal Pradesh, Jammu & Kashmir, Bihar (now including Jharkhand), Punjab and Sikkim. As part of the schemes of transfer of the responsibility of compiling the accounts of various departments / Ministries of the Union Government from the Comptroller and Auditor General, he has been relieved from the responsibility of maintaining the provident fund accounts of all employees of the Union Government, except those of the Indian Audit and Accounts Department.

Section 11 authorises the President to relieve the Comptroller and Auditor General after consultation with him, from the responsibility for the preparation and submission of accounts relating to annual receipts and disbursements (Finance Accounts) for the purpose of the Union or a Union territory having Legislative Assembly. It authorises the Governor of a State, with the previous approval of the President and after consultation with the Comptroller and Auditor General, to relieve the Comptroller and Auditor General from the responsibility for preparation and submission of accounts relating to annual receipts and disbursements for the purpose of a State. The President has issued orders on 20th June, 1978 relieving the Comptroller and Auditor General from the responsibility of preparing the Finance Accounts of the Union Government from 1977-78 onwards. The C&AG has also been relieved vide orders issued by the President on 10th April 1989, from the responsibility for the preparation, in each year, of the accounts showing under the respective head the annual receipts and disbursements for the purpose of the Union Territory of Pondicherry from 1988- 89 accounts onwards. He has also been relieved vide order issued by the Governor of Goa with the previous approval of the President on 27.6.89 from the responsibility for the preparation in each year of the accounts showing under the respective heads and annual receipts and disbursements for the purpose of Goa State for the year 1988-89 onwards. It should be noted that in above cases the Comptroller and Auditor General has been relieved from the responsibility for preparation of the Finance Accounts (of the Union) but he is responsible for its submission to the President/Governor/Administrator for being laid before the Parliament/State/UT Legislature. Prior approval of the President

and consultation with the Comptroller and Auditor General are required to relieve the Comptroller and Auditor General from the responsibility for the preparation of the Finance Accounts of a State.

Section 12 of the Act deals with the responsibility of the Comptroller and Auditor General to give information and render assistance to the Union Government, to the State Governments and Union Territory with the Legislative Assembly in preparation of financial statements.

- **Duties in relation to Audit**

General provisions relating to audit are contained in Sections 13 to 21, 23 and 24 of the Act. Section 13 of the Act enjoins on the CAG the duty to audit all expenditure from the Consolidated Fund of India, of each State and of each Union Territory having legislative assembly and to ascertain whether the monies shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged and whether the expenditure conforms to the authority which governs it. Such audit of expenditure is comprehensive and includes;

1. audit against provision of funds;
2. regularity audit;
3. propriety audit;
4. efficiency-cum-performance audit and
5. systems audit.

The completeness and accuracy of the accounts is examined and it is seen that there is proper voucher or proof of payment. Audit against provision of funds is aimed at ascertaining whether the monies shown in the accounts as having been disbursed, were legally available for and applicable to the service or purpose to which they have been applied or charged. The Appropriation Accounts of the Union Government and of such State Governments and Union Territory Governments, whose accounts are compiled and kept by the respective Governments, are prepared by the Governments concerned and audited by the Comptroller and Auditor General. The Appropriation Accounts of other State Governments are prepared by the Comptroller and Auditor General from the accounts compiled and kept by him. It is seen in audit that the expenditure conforms to the authority which governs it (regularity audit). Audit also examines the propriety of executive action and looks beyond formality of the expenditure to its wisdom, faithfulness and economy and brings to the notice of the Legislature, cases of waste, losses, extravagant and nugatory expenditure and thus challenges any improper exercise of discretion, and comments on propriety of expenditure (Propriety audit). Efficiency-cum-performance audit is a comprehensive appraisal of the progress and efficiency of the execution of development programmes. In this audit, an attempt is made to assess and appraise to what extent, social and economic objectives sought to be achieved have been achieved and at what cost; and to examine how far the agency or department is adequately discharging its financial responsibilities and ascertain whether the schemes are being executed and their operations conducted economically. In systems audit, organisation and systems governing authorisation, recording, accounting and internal control are analysed and standards of quality and performance evaluated.

Section 13 of the Act also requires the Comptroller and Auditor General to audit all transactions of the Union, of the States and of the Union Territories having a Legislative Assembly, relating to the Contingency Funds and Public Accounts and to audit all trading, manufacturing, profit and loss accounts and balance sheet and other subsidiary accounts kept in any department of the Union or of a State or a Union Territory.

This Section 13 also enjoins on the Comptroller and Auditor General the duty to report on the expenditure, transactions or accounts so audited by him.

### **Duties and responsibilities in relation to audit of bodies and authorities**

financed by Government The expenditure incurred by the Government from the Consolidated Fund often takes the form of grants and loans to various bodies and authorities. Under Section 13 of the Act, it is the responsibility of the Comptroller and Auditor General to audit such expenditure. This audit of such expenditure is restricted to \ the records available in Government offices and is directed towards examining the admissibility of the grant and loan, the adequacy of sanction and verifying the fulfillment of conditions of grants and loans and their utilisation for the purposes for which they are intended. Prior to the promulgation of the Act, access to the records of the bodies and authorities was not available as a matter of right and it was secured by way of a provision in the orders of sanction issued by Governments as a condition for payment of grants and loans.

The Act has made provisions in Section 14 and 15 for the audit of the accounts of authorities and bodies receiving financial assistance in the form of grants or/and loans from the Government of India or State or Union Territory Section 14 of the Act deals with the audit of receipts and expenditure of Bodies and Authorities substantially financed from Union or State Revenue. Section 15 of the Act envisages scrutiny of procedure of departments and agencies giving grants or loans to outside institution for a specific purpose with a view to examining as to how such departments/agencies satisfy themselves as to the fulfillment of the conditions subject to which such grants or loans is given. The provisions in Section 14 and 15 for audit of accounts of authority or bodies receiving financial assistance in the forms of grants or loans are subject to certain conditions and criteria specified in those Sections.

The essential ingredients for any institution to attract audit under Section 14(I) are:-

1. The grant and/or loan must be to a body or authority.
2. The grant or loan must have been paid out of the Consolidated Fund.
3. The autonomous body must be "substantially financed" by grant or loan in accordance with the explanation of that term given in the Section.
4. The audit will be of all receipts and expenditure of the body or authority.
5. Audit will be subject to the provisions of any law, for the time being in force applicable to the body or authority. The said clause is interpreted to mean that our audit will co-exist with and compliment the audit arrangements that may be specified in such law.
6. The words "body" and "authority" used in Article 149 of the Constitution, have not been defined either in the Constitution or in the Act, wherein also these words have been used. However, "authority" has been interpreted by the Attorney General of India to mean a person or body exercising power or command vested in it by virtue of provisions in the Constitution or Acts passed by the Parliament or the State Legislatures. "Body" has been interpreted by him to mean an aggregate of persons,

whether incorporated or unincorporated. The expression 'body' would therefore include institutions or organizations set up as autonomous organisations under specific statutes or as a society registered under the Societies Registration Act, 1860 or Indian Trust Act 1882 or other statutes, voluntary organizations or non-governmental organizations, Urban and Rural local self government institutions, co-operative societies, societies or clubs etc.

7. The term 'body' and 'authority' includes a Company or Corporation. Thus, if a Company or Corporation is not covered by Section 19(1), 19(2) or 19(3) of the Act, it is open, to take up audit under Section 14(1), 14(2) or 20(2), as the case may be subject to the conditions specified in each section being satisfied. The second condition in Section 14 is that the grant and/or loan must be paid from the Consolidated Fund. Cases in which the grants or loans are received by a body or authority through another body or authority which is itself financed by the Central or State Government, have to be excluded for purposes of audit under Section 14, unless it could be clearly established that the intermediary body or authority was a mere agency for remitting the grant/loan provided by Government.

Taxes and duties of the Central Government, State Governments and Union Territory Governments having a Legislative Assembly are some times assigned and transferred in whole or in part to local bodies. It has been held that the 'assignment' of taxes etc. to local bodies may be treated as grant for the purpose of application of Section 14 of the Act if the amounts have been given to local bodies by way of financing their expenditure through payment of non-returnable amounts for specific purposes. On the other hand 'compensation amounts' when paid to make good losses, damages etc. caused to local bodies should not be treated as grant for this purpose.

The third condition in this section is to be read with the "Explanation" under the sub section. If the amount of the grant or loan or both to a body or authority in any financial year together with the unutilised grant or loan to that body or authority carried over from the preceding financial year, from either the Consolidated Fund of India or of any State or of any Union Territory having a Legislative Assembly are collectively not less than Rs. 25 lakhs in a year (this limit was Rs. 5 lakhs prior to amendment in 1984) that body or authority will be covered by this sub-section if the other provision in regard to the financial assistance being not less than seventy five percent of the total expenditure of the body or authority is also fulfilled. It may be noted that, in case of loans, only "unutilised" should be taken into consideration and not the entire outstanding loan against a body or authority; When the accounting year of a body or authority is not identical with the financial year of Government (e.g. cooperative societies), the test for determining whether the body or authority falls under Section 14 may be applied with reference to the normal accounting period of the particular body or authority.

The fourth condition for audit under section 14 is that audit is not intended to confine itself to the grant or loan and utilisation thereof, but has to cover all receipts and expenditure of the body or authority from whatever source they are derived. The type, scope, nature and periodicity of audit to be conducted is entirely at the discretion of the Comptroller and Auditor General under Section 23 of the Act. With the amendment of the Act in 1984, an enabling provision has been made vide sub-section (2) of Section 14, for the audit by the Comptroller and Auditor General with the prior approval of the President/Governor of a State/Administrator of a Union Territory having a Legislative Assembly to audit all receipts and expenditure of any body or authority where the grants and/or loans to such body or authority from the Consolidated Fund(s) is not less than rupees one crore in a financial year. Another change brought out by the

amendment is that under Section 14(3), the Comptroller and Auditor General will continue to audit the receipts and expenditure of a body or authority for a further period of two years notwithstanding that the conditions specified in sub-section (1) or sub section (2) are not fulfilled during any of the two subsequent years.

Section 15 of the Act describes the functions of the Comptroller and Auditor General in the case of grants or loans given to authorities and bodies for specific purposes. This section has two parts. The first part imposes a statutory responsibility on the Comptroller and Auditor General to scrutinise the procedures by which the authority sanctioning a grant or loan for any specific purpose to any authority or body not being a foreign State or International organisation from the Consolidated Fund of India or of any State or of any Union Territory satisfies itself as to the fulfillment of the conditions subject to which such grants or loans are given.

The second part gives him the right of access to ,the books and accounts of the authority or body in receipt of such grants and loans, subject to certain restrictions, namely:-

1. The authority or body is not a foreign State or International organisation.
2. the President/Governor/Administrator concerned may, if he is of the opinion, in public interest, by order, relieve the Comptroller and Auditor General after consultation with him, for making any such scrutiny in respect of any body or authority;
3. The right of access to the books and accounts of any corporation where the law establishing it (or the rules and regulations framed under that law) provides (which includes appointment by Government or any such authority under powers conferred by that law) for audit by an agency other than the Comptroller and Auditor General is available only with the authority of the President/Governor/ Administrator concerned. Such authorisation is made after prior consultation with the Comptroller and Auditor General and after giving the concerned corporation a reasonable opportunity of making representation with regard to the proposal.

It would be observed from the provisions of Section 15 that, whereas the examination of the records of the sanctioning authorities for purposes of examining the procedure adopted is an obligatory or statutory function, it is not obligatory that the books of all authorities and bodies, the accounts and books of which are open to audit by the Audit Department must necessarily be scrutinised Further, the examination under this section relates to grant or loan given for specific purposes but does not cover grants or loans for general purposes without any conditions. Grants/loans given for maintenance, purchase/procurement of specific items like land, building, equipments etc. grants/loans which are subject to fulfillment of certain conditions, grants/loans to cover deficit etc. should be treated as specific purpose grants/loans.

It should be noted that unlike Section 14(1) Section 15 does not specifically provide for reporting the results of audit of loans/grants. However, as the grants/loans constitute expenditure out of the Consolidated Fund, reporting there on is automatic under the provisions of Section 13 of the Act.

### **Duties and responsibilities in relation to audit of receipts**

Section 16 of the Act provides for audit of all receipts which are payable into the Consolidated Fund of India and of each State and of each Union Territory having a Legislative Assembly by the Comptroller and Auditor General of India. It also requires him to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment,

collection and proper allocation of revenue and are being duly observed and to make for this purpose such examination of the accounts as he thinks fit and report thereon. Even prior to the enactment of the CAG Act, audit of receipts was entrusted to the Auditor General on consent basis. As per Para 13(2) of the "Government of India (Audit and Accounts) Order, 1936, the Auditor General could with the approval and on the request of the Governor General or Governor of any Province, audit the receipts of the Government.

### **Duties and responsibilities in relation to audit of accounts of stores and stocks**

Section 17 of the Act vests in the Comptroller and Auditor General the authority to audit and report on the accounts of the stores and stock kept in any office or department of the Union or a State or a Union Territory.

### **Duties and responsibilities in relation to audit of Government Companies**

Sub-Section 1, Section 19 of the Act provides that the duties and powers of the Comptroller and Auditor General in relation to the audit of the accounts of Government Companies shall be performed and exercised by him in accordance with the provisions of the Companies Act, 1956.

The relevant provisions of the Companies Act, 1956 in this regard are contained in Section 617 and 619 (Annexure-I) thereof.

The Companies Act 1956 has since been replaced by Companies Act 2013. The relevant provisions of the Companies Act 2013 in this regard are contained in section 2(45), 139, 143, 394 and 395 thereof (refer Annexure-II).

Section 2(45) defines a Government company as "any company in which not less than 51 percent of the paid-up share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company."

Under section 139 and 143 of the Companies Act 2013:

1. The auditor of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, shall be appointed by the CAG,
2. The CAG shall direct the manner in which the accounts of the Government company are required to be audited,
3. The auditor shall submit a copy of the audit report to the CAG which shall include the directions, if any, issued by the CAG, the action taken thereon and its impact on the accounts and the financial statements of the company,
4. The CAG shall have the right to conduct a supplementary audit of the financial statements of the Company by such person or persons as he may authorise in this behalf, and for the purposes of such audit require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form as the CAG may direct, and comment upon or supplement such audit report and any such comments upon or supplement to the audit report shall

be sent by the company to every person entitled to copies of audited financial statements and also be placed before the annual general meeting of the company,

5. The CAG may, in case of any company covered under section 139 (5) or 139 (7), if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

Under section 394 and 395 of the Companies Act 2013,

1. Where the Central Government is a member of a Government Company, the Central Government shall cause an annual report on the working and affairs of that company to be (a) prepared within three months of its annual general meeting before which the comments given by the CAG and the audit report is placed under the proviso to Section 143 (6) ; and (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the CAG;
2. Where in addition to the central government, any state government is also a member of a Government Company, that state government shall cause a copy of the annual report prepared under Section 394 (1) to be laid before the House or both House of the state legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred to in Section 394(1).
3. Where Central Government is not a member of a Government Company, each State Government (s) which is member of that company, shall cause an annual report on the working and affairs of the company to be (a) prepared within the time specified in section 394 (1); and (b) as soon as possible laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section;
4. The provisions of section 394 and section 395 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

### **Audit of Corporations established by Parliament.**

Section 19(2) of the Act deals with the audit of the accounts of corporations established by or under law made by Parliament. The Act provides that CAG's duties and powers in relation to audit of such corporations shall be performed and exercised by him in accordance with the provisions of the respective legislations. The same was the position prior to the coming into force of the Act. The word "legislations" used in the section refers not only to the provisions in the parent Acts relating to the corporations but also to rules and regulations framed by competent authorities by virtue of powers vested in them under the relevant acts.

### **Audit of corporations established by States**

Under the Constitution, only Parliament can prescribe by law, the duties and powers of the Comptroller and Auditor General and, therefore, it is not within the