



## Important Judgements

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### **I. Arvind Gupta Vrs. Union of India(2013) Supreme Court Cases 293(BEFORE Hon'ble Judges R.M. LODHAAND ANIL R. DAVE, JJ**

#### **Powers of CAG to Conduct Performance Audit**

In this case decided by the Supreme Court, the Petitioner submitted that CAG of India has no power to give performance audit report and the provisions in the Regulations of Audit and Accounts, 2007 framed under the CAG(DPC) Act, 1971 empowering the CAG to conduct performance audit is violative of the Constitution.

The Supreme Court held that the CAG's functions to carry out examination into economy, efficiency and effectiveness with which the Government has used its resources, is in-built in the 1971 Act. Performance Audit Reports prepared under the Regulations have to be viewed accordingly. The Court observed no unconstitutionality in the Regulations.

#### **Extracts of the Judgement**

Writ Petition(C) No. 393 of 2012, decided on October 1, 2012

1. We have heard Mr. Santosh Paul, learned counsel for the petitioner. The learned counsel for the petitioner submits that the Comptroller and Auditor General of India

(CAG) has no power to give performance audit report and the Regulations on Audit and Accounts, 2007 (for short “the Regulations”) framed under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (for short “the 1971 Act”) empowering CAG to conduct performance audit are violative of the Constitution.

2. Article 149 of the Constitution of India provides that CAG 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. In pursuance of Article 149 of the Constitution, the 1971 Act has been enacted. Amongst other provisions in the 1971 Act, Section 16 provides that: “16 Audit of receipts of Union or of States – It shall be the duty of the Comptroller and Auditor General to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union Territory having a Legislative Assembly and 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.”
3. CAG's function to carry out examinations into economy, efficiency and effectiveness with which the Government has used its resources is inbuilt in the 1971 Act. Performance audit reports prepared under the Regulations have to be viewed accordingly. We find no unconstitutionality in the Regulations. Moreover, Article 151 of the Constitution provides that the reports of CAG relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament and the reports relating to the accounts of a State shall be submitted to the Governor of the State who shall cause them to be laid before the legislature of the State. The audit reports which are submitted by CAG are, thus, subject to scrutiny by Parliament or the legislature of the State, as the case may be.
4. The writ petition is wholly misconceived and is dismissed accordingly.

**II. Reghu Nath Kelkar Vrs. Union of India and others in The High Court of Bombay Public Interest Litigation No. 40 of 2008 Decided on: 24-3-2009 (Before Hon'ble Judges / Coram: Swatanter Kumar, CJ and D.Y. Chandrachud, J)**

**Powers of CAG regarding time, scope and extent of audit**

In this case decided by the High Court of Bombay, an allegation was made about the failure of the CAG to conduct a comprehensive audit. The Court considered scope of Section 23 of the CAG (DPC) Act. The Court observed that the time, scope and extent of audit are all matters which fall within the jurisdiction of the CAG and is not a matter on which Court ought to tread.

**Extract of Judgement**

9. In so far as prayer Clause (b) of the Petition is concerned, an affidavit has been filed on behalf of the Comptroller and Auditor General in which it has been stated that receipts and disbursements under the Market Stabilizations Scheme are duly budgeted in the receipt and expenditure budget which is subject to parliamentary control. The account of the Ministry of Finance and appropriation account of the Government of India are audited at 'regular frequency' by the Comptroller and Auditor General. Under Section 23 of the Comptroller and Auditor General (Duties, Powers and Conditions of Service)

Act, 1971 the scope and extent of audit is determined by the Comptroller and Auditor General. The Comptroller and Auditor General reports his findings to Parliament by submitting audit reports under Article 151 of the Constitution. The Reserve Bank of India has clarified that funds collected from the sterilization of liquidity by the Market Stabilization Scheme form part of the Consolidated Fund of India and are hence, deemed to be audited by the Comptroller and Auditor General.

10. The Petitioner, however, relies upon a response received to a query under the Right to Information Act in which it has been disclosed by the Comptroller and Auditor General on 19th June, 2008 that no specific audit in respect of the borrowings of the Central Government under the Market Stabilization Scheme was conducted since 2004 nor was there any specific audit of the application of funds borrowed thereunder. The Comptroller and Auditor General has also clarified that no audit has been conducted in respect of the currency and Gold Revaluation Account in the balance-sheet of the Reserve Bank of India since the accounts of the Reserve Bank of India do not fall under the audit jurisdiction of the Comptroller and Auditor General in response to the query for information that no specific audit was conducted either in respect of the borrowings or the application of funds under the Market Stabilization Scheme since 2004 does not in our view detract from what has been stated in the affidavit filed on behalf of the Comptroller and Auditor General. The affidavit discloses that under Section 23 of the Act the scope and extent of audit is determined by the Comptroller and Auditor General and that the accounts of the Ministry of Finance as well as the appropriation account of the Government of India are audited at regular frequency by the Comptroller and Auditor General. The timing, scope and extent of audit are all matters which fall within the jurisdiction of the Comptroller and Auditor General and this is certainly not matter on which the Court ought to tread. There is neither a constitutional nor statutory dereliction of duties by the Comptroller and Auditor General and it is undoubtedly for the Comptroller and Auditor General to consider whether and if so to what extent a specific audit should be undertaken.

### **III. National Dairy Development Boards Vrs. CAG of India.in The High Court of Delhi W.P. (Civil) 4834 OF 1998 Decided on: 27-1-2010 (Before Hon'ble Justice Sanjeev Khanna)**

#### **Powers of CAG to conduct audit**

In this case decided by the Delhi High Court, the powers of the CAG to conduct audit under section 14, 15 and 19 of the CAG (DPC) Act was considered. The Petitioner challenged the authority of the CAG to invoke and exercise the powers under Section 14 (2) of the 1971 Act to conduct audit of accounts of the NDDB which is governed by its own Act viz. NDDB Act, 1987, and which has a provision of overriding effect to the NDDB Act over any other law. The Court laid down the following proposition: -

1. CAG Act is a Special Act as distinguished from a General Act.
2. CAG's power to audit under Section 14 (1) can be curtailed, conditional or even prohibited under any law applicable to the Body or Authority.
3. Section 14 (2) is an independent section which will apply once the conditions mentioned in the said Section are satisfied and the fact that the body or authority cannot be subject to audit under Section 14 (1) is irrelevant.

4. Section 15 confers power to undertake scrutiny of the accounts/records of the sanctioning authority to ensure that proper procedure was followed while sanctioning any grant/loan.
5. Section 15 and Section 14 (2) are independent sections and come into operation when the pre conditions mentioned therein are satisfied. Section 15 cannot be read to override Section 14 (2) or vice-versa.
6. The provisions of the Section 19 are clarificatory in nature. Section 19 (2) does not override the provisions of Section 14 (2) and other provisions of the CAG (DPC) Act. Section 19(2) protects the power and right given to the CAG to audit accounts of Corporations under the Law made by Parliament by which they are established. This means that CAG can conduct audit under Section 14 (1), 14 (2) or 15 of the CAG Act in respect of any corporation when under the respective legislation annual financial audit is not undertaken by the CAG.

**IV. Arun Kumar Aggarwal Vrs. Union of India in the Supreme Court of India W.P. (Civil) 469 OF 2012 Decided on: 9-5-2013 (Before Hon'ble Justice K. S. Radhakrishnan & Justice Dipak Misra)**

**CAG Audit Report as a basis for grant of relief or initiating action**

In this case the Supreme Court considered, whether a CAG Audit Report by itself can be accepted by the Court to grant relief or as a basis for initiating action. The Court held that CAG's Report is always subject to scrutiny by the Parliament and it is for the Parliament to decide whether after receiving the report to make its comments on the CAG's report.

**Extracts of the Judgement**

We have referred to the report of the CAG, the role of the PAC and the procedure followed in the House, only to indicate that the CAG report is always subject to scrutiny by the Parliament and the Government can always offer its view on the report of the CAG.

The question that is germane for consideration in this case is whether this court can grant reliefs merely placing reliance on the CAG's report. The CAG's report is always subject to parliamentary debates and it is possible that PAC can accept the ministry's objection to the CAG report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for the Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's report.

We may, however, point out that since the report is from a Constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective ministries have to offer on the CAG's report. The Ministry can always point out, if there is any mistake in the CAG's report or the CAG has inappropriately appreciated the various issues.

**V. Shri S. Subramaniam Balaji Vrs. the Government of Tamil Nadu and others. in the Supreme Court of India Civil Appeal 5130 of 2013 Decided on: 25-7-2013 (Before Hon'ble Justice P Sathasivam and Justice Ranjan Gogoi)**

**Duty of CAG regarding examination of expenditure**

In this case decided by the Supreme Court, the Petitioners prayed that CAG of India has a duty to examine expenditures even before they are deployed. The Court while considering the various issues observed that in addition to the Legislative control, the founding fathers of the Constitution have also thought it fit to keep a check on Government account and expenses through the agency outside the Legislature also. Article 148 has created a Constitutional functionary in the form of CAG of India. CAG examines the propriety, legality and validity of all expenses incurred by the Government and exercises effective control over the Government accounts.

### **Extracts of the Judgement**

The Comptroller and Auditor General of India is a Constitutional functionary appointed under Article 148 of the Constitution. His main role is to audit the income and expenditure of the Governments, Government bodies and State-run corporations. The extent of his duties is listed out in the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. The functioning of the Government is controlled by the Constitution, the laws of the land, the Legislature and the Comptroller and Auditor General of India. CAG examines the propriety, legality and validity of all expenses incurred by the Government. The office of CAG exercises effective control over the government accounts and expenditure incurred on these schemes only after implementation of the same. As a result, the duty of the CAG will arise only after the expenditure has incurred.

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