

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

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Date of decision: 3rd February, 2015

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W.P.(C) No.581/2015

RAJ KACHROO

..... Petitioner

Through: Petitioner in person.

Versus

EdCIL (INDIA) LTD. & ORS

..... Respondents

Through: Ms. Shiva Lakshmi, CGSC with Mr.
Rahul Chouhan, Adv.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petitioner has filed this petition under Article 226 of the Constitution of India, as a Public Interest Litigation, pleading, (i) that the respondent no.1 is a Company owned by the Government of India; (ii) that the methodology used by the respondent no.1 with regard to booking of revenue in its annual accounts is incorrect; (iii) as a result of the said incorrectness, funds belonging to the Government of India which would ordinarily be audited by Comptroller and Auditor General of India (CAG) for 'Value For Money' are treated as funds belonging to respondent no.1 and in which capacity they are auditable by the respondent no.1's Chartered Accountant and not by CAG; (iv) that there is a

vast difference between Chartered Accountant's Tax Audit and CAG's 'Value for Money' audit; (v) that upon the petitioner representing to the CAG, with *prima facie* evidence, that the turnover of the respondent no.1 was much lower than what the respondent no.1 reports in its annual accounts, CAG in or about the year 2011 ordered a special audit of respondent no.1; (vi) that though the audit report was not made public but the observations made by CAG were published by the respondent no.1 in its Annual Report for the year 2011-2012; as per the said observations CAG vindicated the stand of the petitioner and found that the turnover of the respondent no.1 in the year 2011-2012 was not Rs.86.5 crores as was reported by the respondent no.1 in its annual accounts but was only Rs.18.5 crores; (vii) however the respondent no.1 took a stand that its accounting practices being very old and being in consonance with the advice earlier given by the CAG, needed no change; (viii) CAG also did not press for correction; (ix) the petitioner also complained to the Institute of Chartered Accountants of India (ICAI) stating that the Chartered Accountant who certified the accounts of the respondent no.1 was negligent in his duties as he had booked the revenue of the respondent no.1 incorrectly; however the Disciplinary Committee of the ICAI dismissed the petitioner's complaint observing that there was no harm done because the resulting net profit or loss would remain the

same; and, (x) that if the version of the petitioner fortified by the observations of the CAG is correct, then only Rs.18.5 crores can become part of annual accounts of the respondent no.1 and be subjected to the Tax Audit by respondent no.1's Chartered Accountant and the remaining Rs.68 crores being the money that was given to the respondent no.1 by its clients who are various entities of Government of India does not belong to the respondent no.1 and must be subjected to 'Value For Money' audit by CAG in the same manner as the CAG audits monies spent by other Government Departments.

2. The petition therefore seeks reliefs of (i) a direction to the respondent no.1 to correct its annual accounts; (ii) a direction to the respondent No.3 CAG to commission a study to establish the magnitude of Government money that slips CAG's 'Value For Money' audit each year; (iii) a direction to the CAG and respondent No.2 ICAI to in turn instruct all Government owned companies and Chartered Accountants on how to book revenue correctly; (iv) a direction to the CAG to review and correct its Commercial Audit Manual; (v) a direction to the CAG to develop a procedure on how Government companies must maintain records of spending from their client accounts which are various Governments or Government owned bodies; (vi) a direction to the CAG to develop software for maintaining records of expenses out of a client account; and, (vii) a direction

to the CAG to develop software for use by its Commercial Auditors to increase the extent and effectiveness of their Supplementary Audit.

3. The petition came up before us first on 21st January, 2015 when after hearing the petitioner appearing in person we reserved order.

4. The emphasis of the petition as well as of the oral submissions of the petitioner was on the CAG having found merit in the version of the petitioner.

5. We, recently in *Sarvesh Bisaria Vs. UOI* MANU/DE/3368/2014 had occasion to consider the role of the CAG. Article 148 of the Constitution of India prescribes for a CAG to be appointed by the President and the manner and terms and conditions of appointment and removal thereof. Article 149 prescribes the duties and powers of the CAG. Article 150 provides that the accounts of the Union and of the State to be kept in such form as the President may, on the advice of the CAG prescribe. Article 151 provides, that the reports of the 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 the Parliament and, the reports of the CAG 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. It thus follows that it is the Parliament / Legislature of the State which has to

peruse the audit reports of the CAG. The Comptroller & Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 also by Section 11 thereof provides for the CAG to submit the accounts i.e. reports, to the President or the Governor of the State as the case may be and no further. Though it is not expressly provided but it also follows that it is the Parliament / Legislature of the State which has to thus take action also on the basis of the said reports.

6. A Division Bench of this Court in CWP No.1716/2000 titled ***B. L. Wadhera Vs. Union of India*** decided on 16th May, 2001 was concerned with the grievance that the functioning of the CAG has been rendered irrelevant because of inaction of the Ministries and Departments of the Union of India and the States. It was the contention that there was no follow-up action on the reports of the CAG pointing out irregularities or illegalities. A direction to the Union, to file status report indicating action taken / proposed to be taken with respect to irregularities or illegalities pointed out by the CAG, was sought from the Court. A preliminary objection was however taken by the UOI to the maintainability of the petition, on the ground that the subject matter of the petition was within the specific domain of the Parliament and it would be inappropriate for the Court to give any direction as to how the Parliament should look at the matter and that such a direction, if issued, will transgress and

interfere with the powers of the Parliament to act in its specified area of functioning. The Division Bench of this Court, with reference to Articles 122 and 212 of the Constitution of India *inter alia* to the effect that the validity of any proceedings in the Parliament shall not be called in question in the Court, held that once it is found that the Legislature has the power and privilege, it must be left to the House itself to determine, whether there in fact has been any breach of privilege. The contention of the petitioner that even if no direction could be given to the Parliament, it could certainly be given to the concerned Ministries / Departments, was rejected and it was held that the aspects regarding the action to be taken on the report and follow-up action, if any, are closely interlinked and it would not be desirable to dissect them. It was further held that it is within the domain of the Parliamentary power to work out the modalities and procedures. Accordingly, the petition was held to be not maintainable.

7. We, in ***Sarvesh Bisaria*** supra also, considering a couple of other judgments, held that no direction can be given by this Court to the CVC or the Government to take any action on the basis of the reports of the CAG. Mention was also made of ***Arun Kumar Agrawal Vs. Union of India*** (2013) 7 SCC 1 laying down that CAG report is always subject to scrutiny by the Parliament

and the Government can always offer its views on the report of the CAG and the CAG report is always subject to the Parliamentary debates and it is possible that the Public Accounts Committee can accept the concerned Ministry's objections to CAG report or reject the CAG report. It was further held that though CAG is undisputedly a Constitutional functionary but it is for the Parliament to decide, whether after receiving the report, to make comments thereon or not. Qua the role of CAG, we in *Sarvesh Bisaria* supra concluded, is to enable the legislature to oversee the functioning of the Government and it is for the legislature to take action on the basis of CAG Reports or to direct the Government to take action on the basis thereof and till the legislature has not so directed, this Court cannot direct any action to be taken on the basis of the CAG Reports.

8. The judgment in *Sarvesh Bisaria* thus applies squarely to the petition at hand. The petition is clearly in misconception of the role of the CAG.

9. We also fail to see the public interest in the issue flagged by the petitioner. Sections 10 to 20 of the CAG Act supra prescribe the different kinds of audits to be conducted by the CAG and the petitioner has failed to specify the provision under which according to the petitioner, audit has to be conducted. Rather, the grievance of the petitioner appears to be that owing to incorrect

accounting practices of the respondent No.1, funds of other Govt. Departments / Bodies, who are not parties, escape audit.

10. Qua the directions sought by the petitioner against the ICAI, we may record that the petitioner, under the provisions of the Chartered Accountants Act, 1949 had / has remedy against the dismissal of his complaint. For this reason also, we are of the opinion that no case for issuance of any direction as sought against the ICAI is made out.

11. The petition is dismissed. We refrain from imposing any costs on the petitioner.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 3, 2015

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