

Findings of Delhi High Court in DISCOMs Audit Matter

While allowing the petitions filed by DISCOMS challenging the decision of GNCTD entrusting audit under section 20 of CAG Act, the High Court has accepted arguments of the CAG that the words 'body or authority' used in sec 20 has to be given the same meaning as appearing in Article 149 of the Constitution and sections 14, 15, 16 and 19 of the CAG Act.

CAG:

- Domain of CAG over accounts not only of UOI and the States but also of any body or authority. (para 29 & 31)
- Word 'body or authority' to be read as same as in Constitution & CAG Act. (para 38 A)
- Word 'body or authority' used in Section 20 to be read in light of Section 14, 15, 19 of CAG Act. (para 38 B)
- Word 'body or authority' used in Section 20 not restricted to 'State' under Article 12. (Para 38 E & P)
- CAG is the fourth pillar of India. (para 38 H)
- Parliament by law can specify the powers and duties to be in exercised relation to Union, State or any body or authority.(para 31)
- Interpreting Article 149, the words ' as may be prescribed by or under any law made by Parliament', relates to powers and duties of CAG; to the words 'such duties and exercise such powers' and not words 'any other body or authority' . (para 29)
- CAG has a duty to audit any body or authority that fulfils the conditions of section 14, 15, 16 or 19, and not restricted to a body or authority that is governmental in nature. (para 34 & 38)
- Provision of Constitution w.r.t. CAG are quite akin to provisions w.r.t. judges of Supreme Court. (para 38 G)
- CAG is part of the basic structure of Constitution. (para 38 H)
- Expanse of CAG's power cannot be stifled and limited. (para 38 L)
- With the changing mode of doing business, where business is being carried not by natural persons but by artificial persons, the need for a detailed scrutiny to know

about the entity and transactions of such entity, audit by the CAG may be necessary (para 38 T)

- DISCOMS are an example of Public Private Partnership.(para 38 L)
- CAG have no jurisdiction over the accounts of private companies till a provision thereof has been made by law of Parliament. (para 38 M)
- Even under Section 20, accounts of private entities can be audited by CAG subject to the fulfillment of conditions prescribed therein.(para 38 O)
- The Constitutional office of CAG necessary for operation of check and balance model, for control of government power/decisions.
- Section 20 would not apply to bodies or authorities subject matter of Section 14-16 whose Audit has been entrusted to CAG by CAG Act. (para 41)
- CAG though undoubtedly an important pillar of our constitution is not the remedy or panacea for all ills in the society. (para 77)
- Report of CAG under Section 20 also has to be laid before the Parliament/Legislative Assembly. (para 51)
-

GoNCTD:

- DISCOMS are under the domain of GoNCTD and not Union. (Para 45C)
- Electricity being concurrent subject, only State Govt. is concerned with it. (para 45 C)
- Decision to conduct Audit of accounts of DISCOMS under Section 20(1) is the exercise of power by the Governor on the advice of council of Ministers.(para 46)
- Action of Governor under Section 20(1) is not an Adjudicatory function. (para 45 H)

Reasonable Opportunity:

- Time of 48 hours given to DISCOMS is reasonable and is not violative of reasonable opportunity under Section 20(3) of the Act. (para 47 I– V)
- Ingredients of Section 20 i.e. (i) Expedient in public interest, (ii) after consultation with CAG; (iii) on the terms and conditions agreed with CAG, being essential, the non compliance would render the action bad.
- Term ‘proposal of Audit’ under Section 20 means not only desire to audit but also to contain terms and conditions of audit agreed between CAG and Lt. Governor. (para 47 VI-VII)

- Prior consultation on the terms of Audit with CAG is an important restriction on the executive under section 20.
- DISCOM were not given reasonable opportunity to make representation with regard to the proposal for such audit.
- To invoke section 20 by the Executive, consultation with CAG and agreement with CAG of the terms and conditions of audit are important restrictions on the Executive (para 47 XX)
- Action of Govt. being in non-compliance of Section 20(3) is to be struck down.
- Audit for which it was ordered is not in public interest.

DERC:

- Sole purpose of audit being tariff determination.
- In terms of license, even if Govt. wants any information from DISCOM, it has to approach DERC and if DERC approves it, then only DISCOMS would be compelled to supply the information.
- After enactment of Electricity Act, 2003 and Reforms Act, power of State Govt. relating to electricity Law stand vested in the DERC.
- Once DERC approved the expenditure, no reason as to why CAG be allowed to arrive at any different conclusion.
- DERC being statutory body has ample powers to Conduct Audit.
- DERC can appoint appropriate accountants as consultants to investigate the allegations against the DISCOMS.
- Audit by CAG of the accounts of an entity under the regulatory regime even though possible owing to such entity satisfying the test of a body or authority but would be a futile exercise and not be in public interest.
- Direction to CAG to conduct Audit when its Report would not secure public interest (alleged) of Reduction of Tariff is useless.
- Issue not examined from perspective of Section 13 -16 of the Act.
- In Telecom Audit case, SC upheld's CAG power because there transaction has nexus with CFI.
- In present case, Tariff has no nexus with CFI.
- In present case, nexus if any of transactions of GNCTD with DISCOMS was in the matter of transfer scheme, the audit of which CAG has refused to do.

Conclusions:

- ‘Body or Authority’ under Article 149 and CAG Act extend to ‘Private Body or Authority also’ and cover DISCOMS.
- Direction of Administrator for Audit under Section 20(1) has to be on aid and advice of Council of Ministers.
- Though time given was reasonable but opportunity given without disclosing public interest was not reasonable.
- Audit under Section 20(1) for determination of Tariff was not expedient in public interest; DERC empowered to determine Tariff and Conduct Audit.
- Report of CAG has no place in Regulatory Regime brought about by Electricity Act and Reforms Act.