Case Study

on

Fraudulent Payment of Legal Fees

December 2023

Regional Capacity Building and Knowledge Institute

Kolkata

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Preface

Regional Capacity Building & Knowledge Institute, Kolkata was the Knowledge Centre for Compliance Audit before reallocation of knowledge center topics in 2023. In pursuit of excellence in our designated areas of Knowledge Centre, we attempt to bring out cases of frauds/deviations from rules and regulations reported and reflected in the C&AG audit reports of Union Government/State Governments, as case studies.

The case study on ***'Fraudulent Payment of Legal Fees'*** is based on the real audit experience and printed in the C&AG's report (Paragraph No. 3.1 of Compliance Report No. 27 of 2014 of Union Government (Scientific and Environment Ministries/Department). However, the facts and circumstances of the case have been modified keeping in view the classroom requirements.

The design of the case study attempts to bring awareness amongst the participants about the verification of documents relating to payments of legal fees and highlight related legal procedures followed in courts of justices in our country. the necessity of anticipating responses to our audit findings and collate evidences during the course of audit so that responses from auditable entities can be suitably addressed along with rules and regulations relating to fraudulent payments to the outside agencies and importance of internal control system to be in place, through a participatory approach.

Disclaimer:

The information contained in this case study is to be used as a case study example for training purposes only. The information in this case study is both factual and fictional. Opinions formulated and materials provided are intended to stimulate fruitful class discussion.

I hope that the readers will benefit from this case study and share the other areas with the RCB&KI for including newer areas in legal procedure for verification of payments. Suggestions, if any, are welcome for future development.

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Principal Director

RCB&KI, Kolkata
December 2023

Section 1: Case Study for the Participants

1. Introduction:

1.1 The case study on 'Fraudulent Payment of Legal Fees' is based on the real audit experience and the paragraph was printed in the C&AG's report [Paragraph No. 3.1 of Compliance Report No. 27 of 2014 of Union Government (Scientific and Environment Ministries/Department)]. However, the facts and circumstances of the case have been modified keeping in view the classroom requirements.

1.2 Short brief of the case study:

Two autonomous organisations under Department of Science and Technology (DST) were taking services of a Kolkata based advocate for dealing with their legal cases. One of them paid ₹57.33 lakh in respect of 17 claims while the other paid ₹26.22 lakh in respect of 20 claims of which ₹54.93 lakh was found to be fraudulent.

1.3 The case study has been prepared to:

(A) Aware the participants of importance of Financial Rules relating to payment/reimbursement against the claims of outside agencies as well as internal control system and gain knowledge on how the outside agencies end up with undue benefits due to inadequate knowledge and wrong decision of the competent authority and lack of internal control and preventive mechanism of corruption.

(B) The case study also aims to be aware of the participants' about verification of documents relating to payments of legal fees and procedure therein in courts.

(C) Improving the participant's ability to form (1) audit opinions, (2) anticipate responses to the audit opinions, and (3) collate or collect all essential evidences so that responses received from the auditee can be suitably analyzed and addressed.

2. Background

2.1 The audit assignment was to verify complaints received relating to payment of legal fees by two autonomous organisations under Department of Science and Technology (DST) who were taking services of an advocate for dealing with their legal cases.

2.2 Scope of Audit:

Audit of receipts and expenditure of bodies or authorities substantially financed from Union or State Revenues: Section 14 (1) of the CAG's (DPC) Act, 1971 state that where any body or authority is substantially financed by grants or loans from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly, the Comptroller and Auditor-General shall, subject to the provisions of any law for the time being in force, applicable to the body or authority, as the case may be, audit all receipts and expenditure of that body or authority and to report on the receipts and expenditure audited by him.

Note: The case study is related to two autonomous bodies (ABs) under Department of Science and Technology, Ministry of Science and Technology, Government of India. Hence, the above provision is applicable to these two ABs and added for the case study.

2.3 Audit objectives:

CAG's MSO (Audit) describes that the primary objectives of audit of expenditure are to check whether:

- Funds have been authorised by the competent authority prescribing limits within which expenditure can be incurred;
- The expenditure conforms to the relevant provisions of the Act and the Constitution and of the laws made thereunder and is also in accordance with the financial rules and regulations framed by the competent authority;
- Either a special or general sanction of the competent authority authorizing the expenditure is available; and
- All financial transactions have been correctly recorded in the accounts under examination and have been allocated to the appropriate heads of account.

This provision of the Act implies the condition that the expenditure should be incurred with due regard to the broad and general principles of financial propriety. Any cases involving a breach of these principles and thus resulting in improper expenditure or waste of public money should be treated by Audit in the same manner as cases of irregular or unauthorized expenditure.

3. Main story of the Case

3.1 Indian Association for Cultivation of Sciences (IACS), Kolkata and Bose Institute (BI), Kolkata, two autonomous organisations under Department of Science and Technology (DST) were taking services of a Kolkata based advocate for dealing with their legal cases. IACS paid ₹57.33 lakh in respect of 17 claims between July 2007 and November 2012 and BI paid ₹26.22 lakh in respect of 20 claims between September 2008 and August 2012 of which ₹54.93 lakh was found to be fraudulent.

Audit observed that both organisations did not follow any procedure to select the advocate who was working for the last 15-20 years. Neither any agreement was signed with the advocate nor any '*Vakalatnama'* (blank copy of '*Vakalatnama'* attached as **Annexure I** for participants' knowledge) to plead the organisations' cases, was found on record. It was informed by both organisations that long back the present advocate's father used to plead their cases.

Audit further observed that both IACS and BI made payments to the advocate against bills raised by him relating to appearances claimed to be made by him and/or other advocates whose services were claimed to be used by him for the organisations' cases before the High Court at Calcutta and subordinate courts.

The organisations' were also not verifying progress of their cases while processing the bills for payment. Payments were also being made for cases not related to the organisation.

Audit scrutiny of certified documents obtained from High Court at Calcutta (**Annexure II**) in respect of 13 bills raised on IACS and 12 bills raised on BI amounting to ₹54.93 lakh revealed that the bills were passed for payment without verifying proof of actual appearances in court. The details of payments are shown in below table:

The details of payment of legal fees

Sl. No.	Bill date	Date of appearance claimed in the Bill	Amount paid (₹ in lakh)		No. of dates on which hearings were not held	No. of dates on which name of advocate was not mentioned in the orders of the court	No. of dates after the date on which case was disposed of by the court	Dates in respect of case that did not pertain to the institute	Remarks
	Indian Association for the Cultivation of Science (IACS), Kolkata								
	Writ Petition No. 19720(W) of 2006 (Moly Biswas, Petitioner versus Union of India & others)								
1.	25.09.2008	18.05.06, 19.05.06, 12.07.06, 17.08.06, 19.09.06, 20.12.06, 22.12.06, 19.03.07, 29.03.07, 24.04.07, 15.05.07, 07.06.07, 17.07.07, 14.08.07, 11.12.07, 12.12.07, 14.12.07, 19.12.07	1.21		18	---	---	---	The case was filed on 25.08.2006. Therefore, the dates mentioned in the bill prior to 25.08.2006 were incorrect. Further, there was only one order dated 06.11.2006 in respect of the case
	W.P No. 3917(W) of 2010. Dr. Pushan Majumdar – vs – Union of India and other 11 analogous cases.								
2.	10.03.2010	03.03. 10	6.06		1	---	---	---	There was no mention of the case in the Daily Supplementary List to the Combined Monthly List of cases on and from 1 March 2010 for hearing on 3 March 2010.

3	13.03.2010	09.03.10	6.42		---	1	---	---	Order of High Court at Calcutta dated 09.03.10 did not show appearance of advocate.
4.	27.03.2010	17.03.10, 18.03.10, 23.03.10	2.02		1	2	---	---	Orders of High Court at Calcutta dated 17.03.10 and 18.03.10 did not show appearance of advocate. There was no order dated 23.03.10.
5.	10.07.2010	16.04.10, 28.04.10, 05.05.10, 18.05.10	5.12		4	---	---	---	There were no orders of High Court at Calcutta on any of the dates mentioned in the bill submitted by the advocate.
	MAT No. 1521 of 2010. (Renumbered as FMA 16) Dr. Pushan Majumdar – vs – Union of India and other 11 analogous cases.								
6.	13.04.2011	04.01.11, 25.01.11, 07.02.11	3.84		3	---	---	---	There were no orders of High Court at Calcutta on any of the dates mentioned in the bill submitted by the advocate.
7.	20.08.2011	28.02.11, 07.03.11, 14.03. 11	3.84		3	---	---	---	There were no orders of High Court at Calcutta on any of the dates mentioned in the bill submitted by the advocate.
8.	02.09.2011	28.03.11, 29.03.11	2.55		2	---	---	---	There were no orders of High Court at Calcutta on any of the dates mentioned in the bill submitted by the advocate.
9.	01.02.2012	17.01.12, 01.02.12	2.56		2	---	---	---	There were no orders of High Court at Calcutta on any of the dates mentioned in the bill submitted by the advocate.

10.	03.03.2012	01.02.12, 02.02.12, 17.02.12, 18.02.12, 28.02.12	1.26		3	2	---	---	Appearance for 01.02.2012 was shown in bill at Sl. No. 9 also. **Therefore payment for the date was claimed twice.** There were no orders of High Court at Calcutta on 01.02.12, 18.02.12 and 28.02.12. From the orders dated 02.02.12 and 17.02.12 it was observed that appearance of the advocate was not mentioned in the order.
11.	28.04.2012	02.03.12, 07.03.12, 14.03.12, 16.03.12, 21.03.12, 23.03.12, 28.03.12, 30.03.12	2.02		7	1	---	---	There were no orders of High Court at Calcutta on any of the dates mentioned in the bill submitted by the advocate except on 14.03.12. Even on the said date, appearance of the advocate was not mentioned in the order.
	W.P No. 8619 of 2012. Ashok Kr. Roy – vs – IACS and others (Merged with 1521)								
12.	10.11.2012	02.05.12, 03.05.12, 10.05.12, 29.06.12, 03.07.12, 26.08.12, 28.08.12	1.18		4	3	---	---	There were no orders of High Court at Calcutta on 03.05.12, 29.06.12, 03.07.12 and 26.08.12. Further, from the orders dated 02.05.12, 10.05.12 and 28.08.12 it was observed that appearance of the advocate was not mentioned in the order.
13.	21.05.2007	25.04.05, 27.04.05, 29.04.05, 02.05.05, 05.05.05	0.34		4	1	---	---	There were no orders of High Court at Calcutta on any of the dates mentioned in the bill submitted by the

									advocate except on 05.05.05. Even on the said date, appearance of the advocate was not mentioned in the order.
	Bose Institute, Kolkata								
	W.P No. 20437(W) of 2006/CAN 274 of 2009. Kalipada Das – vs – Union of India and others.								
14.	17.08.2009	19.12.08, 12.01.09, 21.01.09, 17.03.09, 25.03.09, 31.03.09, 20.05. 09, 17.06.09, 15.07. 09, 22.07.09, 29.07. 09	1.23		11	---	---	---	Under the case, there were only two orders dated 19.12.2006 and 07.11.2006. Further, CAN 274 of 2009 did not pertain to the institute.
	WP No. 10551(W) of 1997, Paschim Banga Security Karmi Union of India and others.								
15.	19.11.2011	04.01.11, 11.01.11, 18.01.11, 25.01.11, 07.02.11, 15.02.11, 22.02.11, 28.02.11, 08.03.11, 15.03.11, 22.03.11, 28.03.11, 29.03.11, 31.03.11	1.41		14	---	14	---	The case was disposed of on 15.1.10. Therefore, claims made for dates subsequent to 15.01.2010 were fraudulent.
16.	11.11.2009	08.08.08, 10.09.08, 19.09.08, 19.11.08, 26.11.08, 10.12.08, 19.12.08, 23.12.08, 21.01.09, 28.01.09, 19.02.09, 16.03.09, 30.03.09	1.68		13	---	---	---	Under the case, there were orders dated 21.05.1999, 30.06.1999, 29.07.1999 and 04.12.2009 only. Therefore claims made for appearances on the dates mentioned in the bill were incorrect.
	MAT No.1436 of 2008, Tarun Chakraborty vs. Bose Institute (Renumbered as FMA 300 of 2009)								
17.	5.8.2010	05.01.10, 06.01.10, 14.01.10, 19.02.10, 24.03.10, 31.03.10, 07.04.10, 21.04.10	0.89		8	---	8	---	The case was disposed of on 17.08.2009. Therefore, claims made for dates subsequent to 17.08.2009 were fraudulent.
18.	06.09.11	21.01.11, 27.01.11, 15.02.11, 23.02.11,	1.31		13	---	13	---	The case was disposed of on 17.08.2009. Therefore,

		28.02.11, 09.03.11, 16.03.11, 30.03.11, 31.03.11, 05.04.11, 12.04.11, 19.04.11, 27.04.11							claims made for dates subsequent to 17.08.2009 were fraudulent.
19.	24.05.12	12.05.11, 15.06.11, 21.07.11, 22.07.11, 28.07.11, 29.07.11, 17.08.11, 18.08.11, 25.08.11, 07.09.11, 15.09.11, 22.09.11, 29.09.11, 30.09.11	1.65		14	---	14	---	The case was disposed of on 17.08.2009. Therefore, claims made for dates subsequent to 17.08.2009 were fraudulent.
	WP No. 27359(W) of 2007, Shyamal Kr. Ghosh & Anr vs Union of India and others.								
20.	10.03.2009	15.04.08, 22.04.08, 29.04.08, 30.04.08, 06.05.08, 15.05.08, 16.07.08, 23.07.08, 24.07.08, 31.07.08, 20.08.08	1.23		11	---	---	---	There were no orders of High Court at Calcutta on any of the dates mentioned in the bill submitted by the advocate.
	WP No.6415 (W) of 2003 Shanti Sarkar & Anr. Vs Union of India and others.								
21.	20.02.2010	19.02.08, 19.03.08, 25.06.08,21.08.08, 19.12.08, 21.01.09, 19.02.09, 25.03.09	0.9		8	---	---	---	Under the case, only one order was passed on 17.06.2003. No order was passed thereafter.
	CAN No. 274 of 2009 Radha Devi vs. Narendra Singh Anand and ANR								
22.	05.08.2010	11.01.10, 12.01.10, 13.01.10, 14.01.10, 15.02.10, 16.02.10, 22.02.10, 23.02.10, 23.03.10, 30.03.10, 05.04.10, 26.04.10	1.35		---	---	---	12	This case did not pertain to the institute.
23.	22.01.2011	07.06.10, 08.06.10, 14.06.10, 15.06.10, 28.06.10, 29.06.10, 12.07.10, 13.07.10, 23.07.10, 30.07.10,	1.57		---	---	---	14	This case did not pertain to the institute.

		12.08.10, 19.08.10, 24.08.10 , 31.08.10							
24.	31.03.2012	19.05.11, 22.06.11, 29.06.11, 18.08.11, 30.08.01, 05.09.11, 07.09.11, 21.09.11, 22.09.11, 28.09.11, 29.09.11, 02.11.11, 03.11.11, 15.11.11, 16.11.11, 17.11.11	1.88		---	---	---	16	This case did not pertain to the institute.
25.	04.08.2012	04.01.12, 05.01.12, 10.01.12, 11.01.12, 18.01.12, 19.01.12, 24.01.12, 25.01.12, 01.02.12, 02.02.12, 07.02.12, 09.02.12	1.41		---	---	---	12	This case did not pertain to the institute.
	TOTAL		**54.93**		**144**	**10**	**49**	**54**	

Detailed scrutiny of the bills and dates of appearances revealed:

i. In 144 dates of appearances claimed by the advocate, there were no hearings on the said dates in the High Court as can be seen from the column no. 5 of the above table;
ii. Of these 144 dates of appearances, 49 dates as described in column 7 of the above table were after the date on which the concerned case was disposed of by the court;
iii. Column 8 of the table shows that 54 dates of appearances claimed by the advocate, for which payments were made by BI were in respect of a case that did not pertain to the Institute.
iv. In 10 dates of appearances, orders of the High Court did not indicate appearance of advocates for whom the bills were claimed as shown under column 6 of the table; and
v. In one case, payment was made twice against appearance on the same date claimed by the advocate in two separate bills.

3.2 Justification given by the Organisation

On being pointed out by Audit to IACS and BI (July 2013), IACS admitted (August 2013) that legal expense bills were released erroneously for payment without pre-audit. IACS further informed (February 2014) that two separate panels of the advocates, one for High court and other for the Lower Courts has been made.

BI stated (March 2014) that single copy of ***Vakalatnama*** was made and given to the advocate for filing before the court. With regard to formal agreement with the advocate, whereas IACS accepted (June 2014) that formal agreement with the advocate was not available, BI stated (June 2014) that the advocate was engaged around 15 to 20 years ago.

4. Assignment Questions

Instructor may encourage the participants to raise questions during the presentation and the following are vital audit questions that need to be raised:

(I) Questions relating to requirement of records/documents to be collected from auditable entity:

i. List of cases under litigation during the period from 2006 to the date of audit.

ii. Advocates appointed for representing the Units in the above cases.

iii. Notices received from the court for hearing or intimated by the advocates.

iv. Brief of the court proceeding to ascertain whether the advocate appointed by the Units attended the same.

v. Claims received from the advocates.

vi. Payments made to the advocates.

vii. Copies of money receipts which were obtained by IACS and BI.

viii. Abstract showing the case-wise payments to the advocates.

(II) Questions that requires audit analysis:

ix. Cross verification of these notices/intimations with the cause lists of the courts.

x. Whatever possible irregularities related to payment were made.

xi. Whether the payments were made after verifying the veracity of the certificates of attendance given by the advocates.

xii. Whether the payments were sanctioned by the competent authority.

xiii. Whether the payments of legal fees were in order.

xiv. Whether the organisations/officers were exercising due diligence for payments to outside agencies.

xv. Whether corruption control mechanisms were in place.

xvi. Whether the internal control system was sufficient.

xvii. What are the preventive measures to be taken for making the internal control system effective and appropriate?

xviii. What are the steps to be taken for efficient and sufficient anti-fraud and anti-corruption measures?

xix. Whether the organisations were aware of the Court procedures and legal fee structures of the counsel.

xx. Whether the auditable entities had followed OM issued by Department of Legal Affairs, Ministry of Law and Justice.

xxi. Whether the organisations had previous knowledge of professional standards issued by the Bar Council of India wherein the duty of the advocates towards clients have been described.

Section 2 – Teaching Notes for the Instructor

1. Synopsis:

Two autonomous organisations under Department of Science and Technology (DST) were taking services of a Kolkata based advocate for dealing with their legal cases. One of them, IACS paid ₹57.33 lakh in respect of 17 claims while the other, BI paid ₹26.22 lakh in respect of 20 claims of which ₹54.93 lakh was found to be fraudulent.

In the instant case, audit scrutiny revealed that there was no hearings for which payments to the advocates were made for the appearances in the court. Audit scrutiny has also revealed that payments were made for dates of appearances, which were after the disposal of the concerned case. It has also been found in audit that payments were made for appearances for a case which was not pertaining to that particular organisation.

2. Teaching and Learning Objectives

2.1 To improve the ability of the participants to form audit opinions and anticipate the replies from the auditable unit and counter the replies through group discussion and presentation.

2.2 To make the participants gain knowledge of

- Necessity of internal control system,
- Court procedures, legal fee structures
- Prevention of corruption provisions
- Financial Rules

2.3 Refining the skills of participants' in tackling responses from the auditable units to the audit observations. They will all learn and appreciate the need to collect reliable evidences so that responses from the auditable units can be suitably refuted.

3. Target Audience

The case study is prepared for the auditors which includes Auditors cadre as well as Group A andGroup B officers' of IA&AD.

4. Relevant Readings

Following topics/documents are relevant to the case study, which requires to be studied and disseminated to the participants' for better understanding of the case study:

(A) Documents related to IA&AD

- CAG's (DPC) Act, 1971
- C&AG's Internal Control Standards

- CAG's MSO (Audit)
- Paragraph no. 3.1 of Compliance Audit Report no. 27 of 2014 of Union Government (Scientific and Environment Ministries/Department)

(B) Documents related to Department specific other than IA&AD

- Financial Regulations Part I
- High Court Procedures and Practice in India (https://blog.ipleaders.in/high-court-procedures-and-practice-in-india/)
- Rules on professional standards – The bar Council of India (www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/)
- Instructions issued by Department of Legal Affairs, Ministry of Law and Justice, Government of India (OM no. 26(1)/2014/judl. dated New Delhi 01.10.2015)

(C) Other Documents

Guidelines for the Audit of Corruption Prevention (GUID 5270) (Need for Corruption Prevention Systems)

Of the above topics/documents, relevant provisions of CAG's (DPC) Act, 1971, CAG's MSO (Audit) has been discussed in previous paragraphs. Now, topics/documents other than these two topics are discussed in the succeeding paragraphs:

4.1 C&AG's Internal Control Standards

4.1.1 Internal control is an integral process that is effected by an entity's management and personnel and is designed to provide reasonable assurance that the following general objectives are being achieved:

- fulfilling accountability obligations;
- complying with applicable laws and regulations;
- executing orderly, ethical economical, efficient and effective operations;
- safeguarding resources against loss.

Internal control is a dynamic integral process that is being continuously adapted to the changes an organisation is facing. Management and personnel at all levels have to be involved in this process to provide reasonable assurance of the achievement of the objectives.

Components of internal control:

Internal control consists of five interrelated components:

- control environment;
- risk assessment;
- control activities;
- information and communication and
- Monitoring

Internal control is designed to provide reasonable assurance that the entity's general objectives are being achieved. Therefore, clear objectives are a prerequisite for an effective internal control

Roles and Responsibilities:

process.

Everyone in an organisation has some responsibility for internal control:

Internal auditors examine the effectiveness of internal control and recommend improvements, but they don't have primary responsibility for establishing or maintaining it.

Staff members contribute to internal control as well. Internal control is an explicit or implicit part of everyone's duties. All staff members play a role in effecting control and should be responsible for reporting problems of operations, non-compliance with the code of conduct, or violations of policy.

Supreme Audit Institutions (SAI's) encourage and support the establishment of effective internal control in the government. The assessment of internal control is essential to the SAI's compliance, financial and performance audits. They communicate their findings and recommendations to interested stakeholders.

External auditors audit certain Government organisations in some countries. They and their professional bodies should provide advice and recommendations on internal control.

4.1.2 Failure of internal control mechanism in the organisations.

Points of failure

- Lack of knowledge and skill on behalf of the organisations led to the present situation that could not ensure the orderly, ethical, economical, efficient and effective performance. It is also evident that the individual responsibility was also not ensured leading to the failure of fixing responsibility.
- Both the organisations had failed to identify the risk of fraud. Due to non-identification of fraud, they were not in a position to evaluate and assess the risk.
- In the instant case the organisations had failed to implement the control activities like authorisation of approval procedure. While authorising and approving payment, the appropriate authority had failed to implement the correct process of authorisation and approval procedure. If they followed the established procedure of authorisation and approval, this type of fraudulent payment would not happen.
- The segregation of duty may not be present in the organisation. Thus, fixing responsibility has become difficult.
- Control over resource and records as well as verification of the records had not be carried out properly before making payments. If the verification process would have been carried

out thoroughly, the instances of payment for a date relating to a case before its filing would not happen.

4.2 Standards of Financial Proprietary

Every Officer incurring or authorizing expenditure from public money should be guided by high standards of financial propriety. Every Officer should also enforce financial order and strict economy at every step and see that all relevant financial rules and regulations are observed, by his own office and by subordinate disbursing officers. Among the principles on which emphasis is generally laid are the following:

i. Every officer is expected to exercise the same vigilance in respect of expenditure incurred from public money as a person of ordinary prudence would exercise in respect of expenditure of his own money.
ii. The expenditure should not be prima facie more than the occasion demands.
iii. No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
iv. Expenditure from public moneys should not be incurred for the benefit of a particular person or section of the people, unless:
   (1) A claim for the amount could be enforced in a Court of Law, or
   (2) The expenditure is in pursuance of a recognized policy or custom.
v. The responsibility and accountability of every authority delegated with financial powers to procure any item or services on Government account is total and indivisible. Government expects that the authority concerned will keep the public interest and standards of financial propriety in its mind while making a procurement decision.
vi. The concerned authority must place on record the considerations which weighed with it while taking the procurement decision. Audit Officers shall also be responsible for watching that the above principles are strictly observed.

[Authority: Rule (6) Financial Regulations- Part-I- volume-I [FR-Part-I, Vol-I (DSR)] General Financial Rule [GFR] 2005– Chapter-2 General System of Financial Management. Rule 21.]

5. Assignment Questions

Instructor may encourage the participants to raise questions during the presentation and the following are vital audit questions that need to be raised:

(I) Questions relating to requirement of records/documents to be collected from auditable entity:

i. List of cases under litigation during the period from 2006 to the date of audit.
ii. Advocates appointed for representing the Units in the above cases.
iii. Notices received from the court for hearing or intimated by the advocates.
iv. Brief of the court proceeding to ascertain whether the advocate appointed by the Units attended the same.
v. Claims received from the advocates.
vi. Payments made to the advocates.
vii. Copies of money receipts which were obtained by IACS and BI.
viii. Abstract showing the case-wise payments to the advocates.

(II) Questions that require audit analysis:

ix. Cross verification of these notices/intimations with the cause lists of the courts.
x. Whatever possible irregularities related to payment were made.
xi. Whether the payments were made after verifying the veracity of the certificates of attendance given by the advocates.
xii. Whether the payments were sanctioned by the competent authority.
xiii. Whether the payments of legal fees were in order.
xiv. Whether the organisations/officers were exercising due diligence for payments to outside agencies.
xv. Whether corruption control mechanisms were in place.
xvi. Whether the internal control system was sufficient.
xvii. What are the preventive measures to be taken for making the internal control system effective and appropriate?
xviii. What are the steps to be taken for efficient and sufficient anti-fraud and anti-corruption measures?
xix. Whether the organisations were aware of the Court procedures and legal fee structures of the counsel.
xx. Whether the auditable entities had followed OM issued by Department of Legal Affairs, Ministry of Law and Justice.
xxi. Whether the organisations had previous knowledge of professional standards issued by the Bar Council of India wherein the duty of the advocates towards clients have been described.

(III) Possible HQs office query and replies by field offices:

Whenever a draft paragraph is sent to HQs office for consideration to include in the C&AG Report, queries from HQs in several cases are received by the concerned field office on the DP. It is important to give prompt reply to HQs queries so that the DP can be processed in time. Following table shows the queries received from HQs office and replies sent to them relating to the instant case study **(Annexure V - Query and VI - Replies):**

Sl. No.	Question	Reply
1	Whether any formal agreement/ work order was placed with the advocate. If so, the copy thereof maybe sent.	As mentioned in the audit para, formalagreement of advocate starts with authorising "Vakalatnama" by signing both the parties. A blank copy of the same is enclosed. In the last para of theDP, it was mentioned that no 'Vakalatnama' was filed by IACS. BI however, replied unsatisfactory answer bypassing the audit query. Therefore, noformal agreement with the advocate wasfound in audit. Matter of appointment of advocate was resolved in the meeting ofthe GC, a copy of which is enclosed. However, no documents showing formalagreement with the lawyer were found inthe records of IACS and BI. Copies of the response are enclosed.
2	IACS has stated that they are pursuing advocate to provide evidence for attendance in the courtand no payment is being released tothem after November 2012. It may be examined whether they got any information from the advocate and what is the amount which has been withheld by them.	Copies of all correspondences made between IACS and the advocate areenclosed. However, IACS did not furnish any documents showing the case wise total withheld amount of legal fees which indicated the earlier reply of IACS is notcorrect.

3	BI has started that professional standards of Bar Council provide that the advocate is responsible to the clients for the amount charged; it may please be examined whether the BI has taken up the matter with the advocate/bar council for expeditious information/ documents to examine the justification of fees charged by the advocate. If so, with what results?	The BI has replied that they are not in a position to ask the advocate/bar council to justify the fees charged by the advocate, as the professional standards donot provide scope for making such queries. BI has also asked for suggestion and ruleposition on what ground they can ask for such information from the advocate/bar council.
4	How was the advocate selected i.e. what was the process followed for their selection?	The advocate was selected purely on choice basis for both Unit. No formal procedure was followed.
5	How are court cases followed up (progress of cases) in files of these Units? Did files relating to court cases indicate any movements in cases including hearings, filings adjournments? Can we link absence of progress in the files/cases with thepayments?	IACS stated that in absence of legal cell,the files relating to court cases were maintained and handled by the ex- Council of IACS. However, with the appointment of new advocate, IACS haddecided to keep records of all court caseswith them. BI referred to the professional standards wherein it was stipulated once the case was handed to advocate, the client shouldnot bother for anything or everything of the case except the reimbursement of payment of claimed fees to advocate, on the basis of the account maintained by him. Hence, date of hearing, file of petition and adjournment is mentioned bythe advocate. BI further added they started the monitoring the case by deputing one Asstt. Registrar/Office Superintendent to the court. The reply of BI is not acceptable since it did not hand over the case to the advocatethrough “Vakalatnama”, as is required bythe professional standards of Bar-at-Law.

		Further, the phrase 'reimbursement ofclaim fees' itself did not construe the meaning of false and fabricated payments.
6	How are we arriving at conclusionthat bills amounting to ₹54.93 lakh were false and fabricated? It is notmentioned in the para.	It is mentioned in the annexure and is requested to keep the annexure with thepara. If the conclusion of false and fabricated payment is to be described in the para, the length of the para would go up and become complex.

6. Teaching Plan:

6.1 Time allotment:

Particulars	Time allotted
Introduction and Setting up the situation	15 minutes
Discussion of background	10 minutes
Evaluating the alternatives	25 minutes
Discussion of "what happened"	15 Minutes
Case wrap-up	10 minutes

6.2 At first, the instructor will describe the background and facts of the event of the case study through a presentation **(Annexure VII)**. Then, the participants will have an opportunity to study the case and present their audit opinions. Lastly, the instructor will conclude considering the views of the participants.

6.3 Then, the participants may be divided into two groups (Team A and Team B). Team A may present their views as an auditor and Team B may present their views as an auditable entity on the above case. The instructor may be the mediator and give his/her opinions and views on the audit opinions formed by Team A and replies of Team B.

6.4 Give a break to the participants and ask them to form opinions from the perspective of the auditor and Auditable Entity. Ask the participants to note down the records/evidences that need to be checked/collected for the above audit paragraph.

6.5 After the break, ask the participants to name the records/evidences that need to be checked/collected. The participants may name a few items from the list below. Spell out the left out records and discuss each of the following documents, along with their importance:

i. Files relating to individual cases showing the details of cases along with other details like the starting date of the case, hearing dates, case history, present status, management position and decisions taken for further movement, cause list etc.
ii. List of cases under litigation during the period from 2006 to the date of audit.
iii. Files relating to payments showing the attendance of advocate, bills preferred by the advocate, payments vouchers, copy(ies) of cheques issued for payments, bank statements indicating the payments made, copies of money receipts obtained from the advocate on the payments made, sanctions of payments by the competent authority etc.

6.6 Thereafter, ask participants one by one from Team A to form an audit finding, based on the evidences collected and from Team B to counter/give a suitable reply to the audit finding till most of the possible audit findings and replies have been brought out and discussed.

6.7 The instructor may be the mediator throughout the process and give his/her opinion on each of the audit finding and reply. He/She could also suggest the possible audit findings and replies, if the participants are unable to bring forth all the possible findings/replies.

7. Suggested/possible answers to assignment questions:

7.1 suggested replies or answers

Sl. No.	Question	Suggested reply
(I) Questions relating to requirement of records/documents to be collected from auditable entity		
1	List of cases under litigation during the period from 2006 to the date of audit.	The Units may provide a list of cases which are closed/on-going during the period as mentioned in the audit requisition.
2	Advocates appointed for representing the Units in the above cases.	The Units will provide a list of names if there is a panel of lawyer for the Units. Otherwise, they may provide the single name of advocate.
3	Notices received from the court for hearing or intimated by the advocates.	Copy(ies) of the notices may be provided by the Units. Otherwise, they may reply that the copy(ies) are not available with them. If not provided stating the fact that the same is not available with them, follow up requisition may be issued for collection and submission.
4	Brief of the court proceeding to ascertain whether the	Brief details may be provided by the Units.

	advocate appointed by the Units attended the same.	
5	Claims received from the advocates.	Details of bills preferred by the advocate may be provided by the Units.
6	Payments made to the advocates.	Payments records like vouchers, bank statements/cheque issued etc. may be collected from the Units.
7	Copies of money receipts which were obtained by IACS and BI	Copy of the money receipts provided by the organisations, may provide some of the money receipts, or may reply that the money receipts are not available with them. In case of reply that the money receipts are not available with them, the audit may ask the 8organisation to collect the same from the incumbent upon and provide the same to the audit.
8	Abstract showing the case-wise payments to the advocates	A written reply showing the abstract may be collected from the Units.
(II) Questions that requires audit analysis:		
1	Cross verification of these notices/intimations with the cause lists of the courts.	Cross verification may be carried out and if any difference is found, the same may be highlighted in the audit observation and reason may be asked to the Units. If the reasons provided by the Units are not satisfactory, the para may be framed.
2	Whether the payments were made after verifying the veracity of the certificates of attendance given by the advocates.	Copies of certificates given by advocates may be obtained from the Units and cross verification may be carried out with two sets of records i.e. attendance records and payments records.

3	Whether the payments were sanctioned by the competent authority.	Copies of financial and administrative sanction of the competent authority for payments may be collected. If sanctions are not in place, observations may be framed.
4	Whether any irregular payment was made. If so, to what extant?	Cross checking all records with one another, the extant of irregular payment may be decided.
5	Whether the payments of legal fees were in order.	No
6	Whether the organisations/officers were exercising due diligence for payments to outside agencies.	No
7	Whether corruption control mechanisms were in place.	No
8	Whether the internal control system were sufficient.	No
9	Whether the organisations were aware of the Court procedures and legal fee structures of the counsel.	The question may have two possible replies i.e. the unit may or may not be aware of the court procedures and legal fee structure of the counsel. If the unit was not be aware of the procedure, it was a negligence and error on their part. If they were aware of the provision and still made the wrong payments, the question of collusion and indulgence in fraud arises. Further, it shows the negligence and absence of exercising due diligence on their part.
10	Whether the auditable entities had followed OM issued by Department of Legal Affairs, Ministry of Law and Justice.	
11	Whether the organisations had previous knowledge of professional standards issued by the Bar Council of India wherein the duty of the	One organisation was aware; another may not be aware. It was a negligence and error on the part of the 2nd unit.

	advocates towards clients have been described.	

7.2 For instructor's convenience, the possible audit findings and replies are detailed in the table below:

Auditable Entity's view	Auditor's comment
While IACS has accepted the fact that they had not entered into any formal agreement and they also asked for appearance records from the advocate in support of his attendance in court against which payments were made. They also replaced the advocate; BI however, replied bypassing the audit query stated that it is not the duty of the concerned Units for looking after the cases once the same is handed over to the advocate by quoting the professional standards.	It is found that while IACS has accepted audit observation, BI has replied in negative. However, the fact remains that though the professional standards specifies the procedure for payments, it not allowed or has any sanctity of professional standard or any other documents to make any fraudulent payments. The reply of BI is not acceptable since it did not hand over the case to the advocate through "Vakalatnama", as is required by the professional standards of Bar-at-Law. Further, the phrase 'reimbursement of claim fees' itself did not construe the meaning of false and fabricated payments.

8. Suggested teaching methods

- Presentation by instruction with PowerPoint for making the participants' aware of the case objectives.
- Group Discussion of the case along with reference documents.
- Self-reading to improve the understanding of situations related to legal cases.
- Questionnaire.
- Presentation by the participants'.

9. What happened subsequently

9.1 Audit conclusion and **impact of audit**

The audit conclusions and impact of audit are shown below:

What legal and administrative steps were taken by both the Institutes against the concerned advocate	IACS, Kolkata lodged FIR against Mr. Surajit Das, Ex-Advocate to Jadavpur Police Station on 26.08.2014. Further, Bose Institute, Kolkata also lodged FIR against Mr. Surajit Das, Ex-Advocate to Maniktala Police Station on 21.08.2014. CBI registered cases on the same with respect to both the Institutes. For IACS, the Departmental Action recommended by the CBI has been initiated and with respect to Bose Institute, the Departmental Action recommended by CBI has been completed. Both the institutes removed Shri Surajit Das, the concerned lawyer from their panel and no new cases have been assigned to him after the observation raised by Audit. All cases pending with Shri Das have been assigned to newly empaneled advocates and he has been asked to handover all the relevant files and documents to the Rep/28/Misc./2019-20/Vol.-I/ I/469891/2023 designated advocates. Further, as a remedial measure, IACS and Bose Institute have reported that they have streamlined the system of handling/monitoring of court cases and taken steps to ensure that established procedure and guidelines are followed before making any payment for court cases and related bills raised by the advocates.
Whether the amount of excess payment ₹54.93 lakh was completely recovered from the advocate and current status of recovery, if made any.	Department of Science and Technology (DST) intimated (February 2017) that recovery of overpayment can be taken up only upon the conclusion of the judicial and disciplinary proceedings. However, the Current status of recovery made towards the excess payment of Rs.54.93 lakh is not available with this office.

What steps were taken by both the institutes to fix responsibilities in the subject case.	IACS intimated (May 2015) that the Council in its meeting held on 13.07.2014 resolved to form a panel of advocates as a corrective measure. Bose institute stated (May 2015) that as per the decision of the Council and delegation of powers to the Director, BI approved engagement of lawyers and Senior

	Counsel depending on the merit and urgency of the case and on case-to-case basis at different courts of Kolkata.
What was the final stand/ role of the Ministry of law and Justice in the case	As the proper step towards amendment of Regulations/Byelaws to include provision regarding legal charges, the Department has written to the Ministry of Law and Justice seeking their advice in the matter. Consequently, the Ministry has issued general instructions to all the Ministries/Departments of Govt. of India regarding engagement of Government counsel from the panel of Union of India for defending Court cases where Union of India is also a party along with an Autonomous Body. DST intimated (Feb 2018) that the instructions have been forwarded to Bose Institute and IACS for compliance and same would be incorporated in the modified Regulations/Byelaws of BI/IACS
What is the status of Action taken note on the printed para 3.1	Action Taken Note (ATN) on the above cited printed Para 3.1 is not closed as on date. The last ATN issued by the Department was in February 2018. Further development of the case is awaited from the Department

Annexure I: Blank *Vakalatnama*

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(141)

VAKALATNAMA

IN THE COURT OF CUTTACK

Suit Appeal / Revision No.________________of 201

Appellant / Petitioner/Plaintiff

Versus

Respondent / Opp. Party / Defendant

Known all men by these presents, that by this VAKALATNAMA

I /We ____

____

____

Appellant / Respondent /Petitioner / Opposite Party in the aforesaid Revision / Appeal Case do hereby appoint and retain Sri __________________________________

____

____

____

Advocate (s) to appear for me / us, in the above case and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same, or any decree or order passed therein including all applications for return of documents or receipt of any moneys that may be payable to me / us in the said case and also in applications for review in appeals under Orissa High Court Order and in applications for leave to appeal to Supreme Court. I / We authorise my / our Advocate(s) to admit any compromise lawfully entered in the said case.

Dated..................................201

Received from the executan(s)
satisfied and accepted & certify that
I hold no brief for the other side.

Advocate Accepted as above	Advocate Accepted as above
Advocate Accepted as above	Advocate Accepted as above

Signature of Executant(s)

Annexure II: Court Records

endent. | Superintendent, Central Copying Section. | P. T. O.

224

... 21242

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Superintendent

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plaints shall be accompanied by this counterfoil. It will have to be given up when the copy is delivered.

Mandamus Xerox Copy Section High Court, A.S., Calcutta

Amit Kumar Das

Central Copying Section. P. T. O.

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Superintendent.

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plaints shall be accompanied by this counterfoil. It will have to be given up when the copy is delivered.

Mandamus Xerox Party Copy Section High Court, A.S., Calcutta

Amit Kumar Das

.... 6234 FMA 541 of 2009

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Assistant Superintendent Central Filing Section Appellate Side High Court, Calcutta

idered as complete until Stamps and costs have been supplied in full which must be done within seven days of the date
plaints shall be accompanied by this counterfoil. It will have to be given up when the copy is delivered.

Amit Kumar Das

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CALCUTTA HIGH COURT (APPELLATE SIDE) 16/07/2014

CASE STATUS INFORMATION

Current Case Number	WP / 20437W / 2006	Pending
Name Of The Petitioner	KALIPADA DAS	
Name Of The Respondent	U.O.I.	
Advocate Of The Pet.	DIPANKAR DAS GUPTA	
Advocate Of The Res.		
Case Stage	15 / FOR HEARING	
Court & Bench Number	24 1 HON'BLE JUSTICE ANIRUDDHA BOSE	
Last List Date	07/01/2013	

DETAILS OF APPLICATIONS :

APPLICATION NUMBER	DISPOSAL DATE	DISPOSAL TYPE	COURT NO & BENCH

Details of Connected/Arising Out of Cases :

Case Type	Case No	Case Year

COMPUTER SECTION HIGH COURT CALCUTTA

CALCUTTA HIGH COURT (APPELLATE SIDE) 16/07/2014

CASE STATUS INFORMATION

Current Case Number	FMAT / 48 / 2009	Pending
Name Of The Petitioner	RADHA DEVI	
Name Of The Respondent	NARENDRA SINGH ANAND & ANR.	
Advocate Of The Pet.	MD. JABED ALI SK.	
Advocate Of The Res.		
Case Stage	4 / FOR ADMISSION	
Court & Bench Number		

DETAILS OF APPLICATIONS :

APPLICATION NUMBER	DISPOSAL DATE	DISPOSAL TYPE	COURT NO & BENCH
CAN 274/2009			17

Details of Connected/Arising Out of Cases :

Case Type	Case No	Case Year

COMPUTER SECTION HIGH COURT CALCUTTA

-33- (Continued...) (162)

In The High Court at Calcutta

Appellate Jurisdiction

DAILY SUPPLEMENTARY LIST TO THE COMBINED MONTHLY LIST OF CASES ON AND FROM MONDAY, THE 1ST MARCH, 2010, FOR HEARING ON WEDNESDAY, THE 3RD MARCH, 2010.

INDEX

SL. NO.	BENCHES	COURT ROOM NO.	TIME	PAGE NO.
1.	HON'BLE MR. MOHIT S. SHAH, CHIEF JUSTICE AND THE HON'BLE JUSTICE PINAKI CHANDRA GHOSE	1 (DB-I)		1
2.	THE HON'BLE JUSTICE BHATTACHARYA AND THE HON'BLE JUSTICE PRASENJIT MANDAL	17 (DB-II)		4
3.	THE HON'BLE JUSTICE KALYAN JYOTI SENGUPTA AND THE HON'BLE JUSTICE KALIDAS MUKHERJEE	19 (DB-III)		14
4.	THE HON'BLE JUSTICE DEBI PRASAD SENGUPTA AND THE HON'BLE JUSTICE PRABHAT KUMAR DEY	3 (DB-IV)		14
5.	THE HON'BLE JUSTICE TALUKDAR AND THE HON'BLE JUSTICE RAGHUNATH RAY	5 (DB-V)		18
6.	THE HON'BLE JUSTICE PRATAP KUMAR RAY AND THE HON'BLE JUSTICE MRINAL KANTI SINHA	14 (DB-VI)		24
7.	THE HON'BLE JUSTICE PRANAB KUMAR CHATTOPADHYAY AND THE HON'BLE JUSTICE PRANAB KUMAR DEB	11 (DB-VIII)	(NOT SITTING ON AND FROM 03.3.2010 TO 17.3.2010)	29
	THE HON'BLE JUSTICE PRANAB KUMAR CHATTOPADHYAY AND THE HON'BLE JUSTICE KISHORE KUMAR PRASAD	11 (DB-VIII)	(ON AND FROM 03.3.2010 TO 17.3.2010 AND ON 18.3.2010 AS LONG AS REGULAR DIVSN. BENCH DOES NOT SIT)	29

Annexure III: Instructions issued by Ministry of Law and Justice, Government of India relating to Fees of Counsel

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No. 26(1)/2014/judl.
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Judicial Section
*****

New Delhi the 1st October, 2015

OFFICE MEMORANDUM

Sub: Revision of fee payable to various categories of Central Government counsel.

In partial modification to this Department's various OMs issued from time to time, the undersigned is directed to convey approval of Competent Authority for the revision of the fee structure applicable to Government counsels of all the categories with immediate effect as per the details given below:-

(A)

The Fee structure applicable to Group 'A' 'B' and 'C' panel Counsel in Supreme Court:-

Sl.No.	Item of work	Revised fee Group 'A' Panel Counsel	Revised fee Group 'B'& 'C' Panel Counsel
1.	All Regular Appeals and defended Writ Petitions(for final hearing)	₹13,500/-per case per day	₹ 9,000/- per case per day
2.	All defended Admission matters (SLP/TP and writ petitions & other misc. matters for admission)	₹ 9,000-per case per day	₹ 4,500/-per case per day
3.	Settling of pleadings	₹ 5,250/- per case	----
4.	Appearance in Miscellaneous Applications	₹ 4,500/-per case	----
5.	Conference	₹ 900/- per conference	----
6.	Out of Head quarter	₹ 13,500/- daily fee for the days of his absence from HQ	₹ 9,000/- daily fee for the days of his absence from HQ.
7.	Conveyance charges for performing local journey while outside Headquarter.	₹ 1, 500/-	₹ 1,500/-
8.	Clerkage	NIL	NIL
9.	Drafting SLP/Counter Affidavit/Rejoinder etc.	---	₹ 3,000/- per case
10.	Drawing Written Submission	---	₹ 3,000/- per case

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11.	Drafting or Appearance in Miscellaneous Applications (including mentioning of the case/Caveat/Clearance/obtaining the number and taking date for hearing)	---	₹ 3,000/-per case

All other terms and conditions applicable to Group 'A', 'B' and 'C' Panel Counsel in Supreme Court in the pre-revised OM No. 21(04)/1999-Judl. dated 24.09.1999 read with OM No. 21(05)/ 2011-Judl. dated 01.10.2011 shall continue to remain applicable unless specifically revoked/revised.

(B)

The Fee structure applicable to Assistant Solicitors General of various High Courts, Central Government Standing Counsel of Delhi High Court (CGSC), Senior Central Government Standing Counsel (Sr. CGSC) of various Benches of CAT and Senior Panel Counsels in various High Courts/ CAT Benches (excluding the High Courts of Bombay and Calcutta) as per the following rates:-

Sl. No.	Item of work	Revised fee
1.	Retainer Fee of:- Assistant Solicitor General of various High Courts, Central Government Standing Counsel of Delhi High Court (CGSC) and, Senior Central Government Standing Counsel (Sr. CGSC) of various Benches of CAT.	₹ 9000/- per month.
2.	Suits, Writ Petitions and Appeals, including oral Applications for Leave to Appeal to Supreme Court in Writ Petitions.	₹ 9000/- per case per day of effective hearing in case of non-effective hearing ₹ 1500/- per day subject to a maximum of 5 hearing
3.	Application for Leave to Appeal to Supreme Court in Writ Petitions.	₹ 3000/- per case
4.	Settling pleadings	₹ 3000/- per case
5.	Miscellaneous Application	₹ 3000/- per case
6.	Conference	₹ 900/- per conference subject to:- (i) for setting pleadings- one conference. (ii) In respect of hearing of Writ matters, Suits, appeals and Supreme courts leave applications etc- Three conference.(Maximum)
7.	Miscellaneous and out of pocket expenses	As per actual to the satisfaction of the administrative Ministry/ Department.

All other terms and condition applicable to Senior Panel Counsels in various High Courts/ CAT Benches (excluding the High Courts of Bombay and Calcutta in to this Department's, OM No: 24(2)/99-Judl.,OM No. 26(1)/99-Judl., OM No. 25(3)/99-Judl., and OM No. 26(2)/99-Judl., all dated 24.09.99, read with OM No. 26(1)/2005-Judl. dated 31.01.2008 and OM No. 26(1)/2011-Judl., dated 01.10.2011, shall continue to remain applicable unless specifically revoked/revised.

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(C)

Revision of the fee structure applicable to the Panel Counsel of High Courts as well as of CAT Benches of Bombay and Kolkata:-

Sl.No.	Item of Work	Special Counsel	Senior Counsel Group. I	Senior Counsel Group. II	Jr. Counsel Advocate on record
1.	Suits, Appeals, Writ /Revision Petitions including Special Civil Application in the High Court.	₹ 9000	₹ 6000	₹ 3750	₹ 1800
	Per conference/Consultation	₹ 900	₹ 750	₹ 600	₹ 450
2.	Application including Interim Motions, Notices, Appeals, Leave Application, Arbitration, Company Matters, Criminal Revision and other Land Acquisition References (per day per effective hearing)	₹ 3000	₹ 3000	₹ 2250	₹ 1350
	Per conference/Consultation	₹ 900	₹ 750	₹ 600	₹ 450
3.	Drafting or Settling Pleadings, and Affidavits (per pleadings)	₹ 3000	₹ 1800	₹ 1500	₹ 1050
	Per conference/Consultation	₹ 900	₹ 750	₹ 600	₹ 450
4.	Appearance before Arbitration and Tribunals, etc and Courts other than High Courts (Per day per effective hearing)	₹ 7500	₹ 6000	₹ 3750	₹ 2250
	Per conference/Consultation	₹ 900	₹ 750	₹ 600	₹ 450
5.	Chamber Application, including Adjournment Application per day inclusive of consultation	NIL	₹ 1500	₹ 900	₹ 600
6.	Written opinions and written advice including advice on evidence (inclusive of consultation)	₹ 3750	₹ 2250	₹ 1350	₹ 1050

All other terms and conditions applicable to the Counsels of High Courts as well as of the CAT Benches of Bombay and Kolkata in the pre-revised OM No. 23(2)/2001-Judl. & OM No. 22(02)/2001dated 14th July, 2001 read with 23(2)2011-Judl. dated 1st October, 2011 shall continue to remain applicable unless specifically revoked/revised:-

Note:- There will be no ceiling on the number of conference/ consultation in the case of Special Counsel, however in the case of other categories of Counsels, the number of conferences per cases will be limited to four (relaxable to six at the discretion of the Incharge (Litigation) of Branch Secretariat, Mumbai/Kolkata.

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(D)

The Fee structure applicable for Panel Counsel, Delhi High Court and Central Govt. Counsel/ Pleader of various High Courts (including Panel Counsel of various CAT, Benches) excluding the High Courts of Bombay and Calcutta, as per the following rates:-

Sl.No.	Item of Work	Revised fee
1.	Civil or Criminal Writ Petitions under Article 226 & 227 of the Constitution, Contempt Petitions, Criminal/Civil Revision Petitions, Reference to the High Court under Sales Tax Act and Banking Company Petitions,	₹2250/- per effective hearing ₹450/- per non-effective hearing (subject to maximum of five hearings in a case)
2.	Original Suits, Civil Appeal from Decrees in Suits and proceedings including second appeal and land acquisition appeal except LPA from Petitions under Article 226 & 227 of the Constitution (including drafting fee)	Ad. Valoram/regulation fee (subject to maximum of ₹ 45,000/- in a case.)
3.	Company Petitions	To be regulated by the rule contained in Appendix (iii) of the Company (Court) Rules, 1959
4.	Drafting of pleadings counter affidavits/returns/answer to Writ Petitions/Grounds of Appeal and application for leave to appeal to the Supreme Court	₹ 1,350/- per pleading
5.	Drafting of Civil Misc. applications to petitions under the Indian Succession Act, Contempt of Court proceedings and other proceedings of an original nature	₹1,125/- per petition
6.	Civil Misc. petitions, forma paupers, transfer petitions and other civil misc. petitions of routine nature	₹ 450/- per petition
7.	Consultation /conference fee	₹ 450/- per conference (subject to maximum of 4 conferences in a case)

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8.	Appearance before the High Court in application under Section 34 & 37 of the Arbitration and Conciliation Act, 1996 Appearance before Arbitrator/Umpires etc.	₹2,250/- per effective hearing ₹450/- per non-effective hearing (subject to a maximum of 5 hearing in a case). ₹ 450/- per non-effective hearing (subject to a maximum of 5 hearings in a case).

All other terms and condition applicable to above mentioned Counsels in to this Department's, in OM No. 24(2)/99-Judl., OM No. 26(1)/99-Judl., OM No. 25(3)/99-Judl. and OM No. 26(2)/99-Judl, all dated 24.09.99 read with OM No. 26(1)/2005-Judl. dated 31.01.2008 and shall continue to remain applicable unless specifically revoked/revised.

(E)

The Fee structure Standing Govt. Counsel and Additional Standing Govt. Counsel in the District and Subordinate Courts:-

Sl.No.	Item of work	Revised fee
1.	Retainer fee for Standing Govt. Counsel	₹ 6000 per month
2.	Fee for effective hearing	₹ 1800 per day
3.	Fee for non-effective hearing	₹ 600 per day (not more than 5 such hearings in a case)
4.	Fee for drafting Written Statement, Grounds of Appeal etc.	₹ 1500 per pleading
5.	Fee for drafting other pleadings of misc. nature	₹ 600 per pleading
6.	Fee per Conference	₹ 900 (subject to maximum of 5 such conferences in a case / group of identical cases)
7.	Daily fee for out of Headquarters	₹ 2700 per day
8.	Conveyance charges for local journey outside Headquarters	₹ 900 (lump sum)
9.	Expenses for stay in hotels	₹ 1800 per day
10.	Clerkage	@ 10% of total fee excluding miscellaneous and out of pocket expenses (maximum ₹ 5250 in a case)
11.	Fee for identical Cases	Full fee in the 1st case and ₹ 750 in per suit for connected cases (max. 3 cases)
12.	Miscellaneous and out of pocket expenses	As per actual to the satisfaction of the administrative Department.

All other terms and conditions applicable to above mentioned Counsels in to this Department's, OM No. 27(11)/1999-Judl dated 24.09.1999 read with OM No. 27 (25)/2011-Judl. dated 01.09.2011. shall continue to remain applicable unless specifically revoked/revised.

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2. The above revised fee will be effective from 01.10. 2015.

3. **The counsel will be paid fee at the old rates in respect of their appearance in the Court etc. and other work done by them prior to 01.10. 2015 and at the revised rates in respect of the work done by them on/ after 01.10. 2015.**

4. This issues with the approval of the Ministry of Finance, Department of Expenditure E.II(B) Branch, ID Note No.9 (11)/99-E.II(B) dated 02.03.2015 and 07.08.2015.

(Suresh Chandra)
Joint Secretary and Legal Adviser
Tele No. 23387806

Copy to:

1. All Ministries/Departments to the Government of India.
2. Incharge, Central Agency Section, Litigation (HC) Section, Litigation Lower Courts Section. All Groups-A, B & C panel counsel of Supreme Court through Incharge, Central Agency Section.
3. All Senior Panel Counsel of High Courts/ CATs through concerned Assistant Solicitors General in High Courts/ Sr. CGSC of CATs Benches.
4. All Assistant Solicitors General in various High Courts/ Sr. CGSC of CATs Benches.
5. All Central Government Standing Counsel/Central Government Pleaders of Delhi High Court.
6. All Asstt. Solicitors General/Central Legal Adviser of various High Courts.
7. All Senior Central Government Standing Counsel/Addl. Central Government Standing Counsel of various CAT Benches.
8. All Standing Govt. Counsel and Additional Standing Govt. Counsel before various District and Subordinate Courts as per the list.
9. All Senior/Junior Counsel of the Arbitration Panel.
10. All Special Counsel, Senior Counsel Group-I, Senior Counsel Group-II and Junior Counsel of High Courts as well as CATs Benches of Bombay and Kolkata through the concerned Incharge of Branch Secretariat of Bombay and Kolkata.
11. Incharge, Branch Secretariats Mumbai/ Kolkata/ Chennai/ Bangalore.
12. All Sections of Department of Legal Affairs.
13. Legal Advisor, Railway Board, New Delhi (with 5 spare copies).
14. Department of Personnel and Training (AT Section), New Delhi (with 5 s/copies.)
15. Joint Secretary (Legal), Department of Revenue, Ministry of Finance, New Delhi (with 5 s / copies)
16. CBDT, Department of Revenue, Ministry of Finance, New Delhi (with 5 s / copies).
17. Branch Secretariats Mumbai/Calcutta/Chennai/Bangalore.
18. Ministry of Urban Development, Nirman Bhawan, New Delhi.
19. Department of Expenditure, Ministry of Finance, New Delhi w.r.t. their ID Note No.9 (11)/99-E.II(B) dated 02.03.2015 and 07.08.2015..
20. DGS&D, New Delhi.
21. NIC Cell with the request to upload the same in the website of this Department.
22. Judicial Section with 50 spare copies.
23. O.L. Section for Hindi translation.

Madhulika Upadhyay
(Madhulika Upadhyay)
J. Central Govt. Advocate
Tel. 23389006

Annexure IV

12/06 2014 14:52 FAX

001
गोपनीय

114

विशेष संवाहक द्वारा

भारत के नियंत्रक महालेखापरीक्षक का कार्यालय
9,दीनदयाल उपाध्याय मार्ग, नई दिल्ली-110124

प्रधान निदेशक लेखापरीक्षा (वैज्ञानिक विभाग), नई दिल्ली कृपया आपने पत्र संख्या.PDA(SD)/Rep5(1)/DST/IACS/Kol/14-15/23-26 दिनांक 17.04.2014 का अवलोकन करें जिसके साथ संघ सरकार (Scientific and Environmental Ministries/Departments) के 31 मार्च 2013 की समाप्त वर्ष में भारत के नियंत्रक महालेखापरीक्षक के प्रतिवेदन में सम्मिलित करने के लिए *Indian Association for the Cultivation of Science (IACS) and Bose Institute (BI), Kolkata, Department of Science and Technology (DST)* से संबंधित ड्राफ्ट पैराग्राफ *"Fraudulent payment of legal fees"* भेजा गया था.

12/6/14. Dy(R)

2. ड्राफट पैराग्राफ पर कुछ प्रश्नों एवं परिवर्तनों/सुझावों को वापस भेजा जा रहा है। आपसे अनुरोध है कि कृपया ड्राफ्ट पैराग्राफ/संलग्न विवरणिका में मांगी गई वांछित सूचनायें तथा स्पष्टीकरण शीघ्र समुचित रूप से पुनरीक्षित ड्राफ्ट पैरे के साथ इस कार्यालय को उचित कार्यवाही के लियें भेजें। इस कार्यालय में किए गये परिवर्तनों तथा टिप्पणियों के परिणामस्वरूप यदि ड्राफ्ट पैरे के आशय अथवा आंकड़ों में मौलिक परिवर्तन हो तो पुनरीक्षित ड्राफ्ट पैरे को पुनः मंत्रालय को भी भेजें। कृपया सभी ड्राफ्ट पैरा हाफ मार्जिन में भेजें ।

3. मंत्रालय/ विभाग का उत्तर यदि प्राप्त हो गया हो तो उसे भी पुनरीक्षित ड्राफ्ट पैराग्राफ में समुचित रूप से सम्मिलित कर लिया जाए।

वरिष्ठ प्रशासनिक अधिकारी
रिपोर्ट केन्द्रीय - स्वायत निकाय

9/6

प्रधान निदेशक लेखापरीक्षा (वैज्ञानिक विभाग),
नई दिल्ली- 110002

AAO(R-B) सी.ए.जी. यू.ओ. संख्याः 159/RC (AB)/ DP / 02-24/2014 दिनांक 06.06.2014

Fax to Kol-B.O urgent.

12/6/14. 12/6

119
11/06/2014

Received by V Bansal 18/06/14

D.R.REP D.No.132 12-6-13

Observations on Draft Para on "Fraudulent payment of legal fees"

1. Whether, any formal agreement/ work order was placed with the advocates? If so, copy thereof may be sent

2. IACS has stated that they are pursuing advocate to provide evidence for attendance in the court and no payment is being released to them after November 2012. It may be examined whether they got any information for the advocate and what is the amount which have been withheld by them.

3. Bose Institute has stated that professional standards of Bar Council provide that the Advocate is responsible to the clients for the amount charged; it may please the examined whether the institute has taken up the matter with the Advocate/ Bar council for expeditious information/document to examine the justification of fees charged by the Advocate? If so, with what results?

4. Reply of the High Court may be sent along with the revised para.

5. Reply to RTI may also be suitably added in the para.

6. Reply of the Management/ Ministry to the para may also be incorporated along with rebuttal thereon.

7. How was the advocate selected i.e. process followed?

8. How are court cases followed up (progress of cases) in files of these institutions? Did files relating to court cases indicate any movements in cases including hearings, filings adjournments? Can we link absence of progress in the files/cases with the payments?

9. How are we arriving at conclusion that bills amounting to Rs. 43.25 lakh were false and fabricated? It is not mentioned in the para.

10. In annexure it is stated that in orders does not mention that XYZ advocate did appeared? In such cases did any other advocate appear in such hearings?

Annexure V

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Comptroller and Auditor General, New Delhi Audit Query on the observation on draft paragraph titled "Fraudulent payment of legal fees" pertaining to IACS, Kolkata.

Sl. No.	C&AG Audit Query	Reply
1.	Whether, any formal/agreement/work order was placed with the advocates? If so, copy thereof may be sent.	As mentioned in the audit para formal engagement of advocate starts with authorizing "VAKALATNAMA" by signing both the parties. A blank copy of the same is **enclosed**. AKD-P/109 In the last para of the DP it was mentioned that no "VAKALATNAMA" was filed by IACS. BI however, replied unsatisfactory answer by-passing the audit query. AKD-P/10 Therefore, no formal agreement with the Advocate was seen in audit. Matter of appointment of Advocate was resolved in the meeting of GC a copy of which is **enclosed.** AKD-P/81+P/79 However, no documents showing formal agreement with the lawyear found in the records of IACS and Bose Institute. Copies of the response are **enclosed** AKD-P/89+P/107
2.	IACS has stated that they are pursuing advocate to provide evidence for attendance in the court and no payment is being released to them after November 2012. It may be examined whether they got any information for the advocate and what is the amounts which have been withheld by them.	Copies of all the correspondences made between IACS and the advocate are enclosed. AKD-P/73 to P/53 + P/89+8 However, IACS did not furnish any documents showing the case wise total withheld amount of legal charges which indicated the earlier reply of IACS is not correct. AKD P/99+P/86
3.	Bose Institute has stated that professional standards of Bar Council provide that the Advocate is responsible to the clients for the amount charged; it may please be examined whether the institute has taken up the, matter with the Advocate/Bar council for expeditious information/document to examine the justification of fees charged by the Advocate? If so, with what results?	In this connection the reply of the Bose Institute is reproduce below: "a) We had enclosed Rules on Professional Standards of the Bar Council of India in a letter addressed to Deputy Director of Audit on July 24, 2013. AKD P/107 | AKD-P/119 to P/113 b) The views of the Audit that Bose Institute should ask for the justification of fees charged by the Advocate from Bar Council of India is improper as the same is nowhere stated in the Professional Standards Rule which was submitted earlier to Audit. Hence, Audit may kindly suggested under which rule Autonomous Bodies can ask for the justification of rules from Bar Council of India please. It may be stated here that Bose Institute Council has empowered the Director to decide the amount of fees". Copy **enclosed.** AKD-P/107 AKD P/107
4.	Reply of the High Court may be sent along with the revised para.	Copy enclosed. AKD-P/1 to P/7
5.	Reply to RTI may also be suitably added in the para.	Copy enclosed. AKD-P/1 to P/7

6.	Reply of the Management/Ministry to the para may also be incorporated along with rebuttal thereon.	Yet not received.
7.	How the advocate was selected i.e. process followed? AKD- P/88	**IACS** AKD- P/99 It may be noted that Shri DN Das, Advocate and Shri Surajit Das, Advocate were providing professional legal services to IACS since 1981 (as may be seen from the resolution of the Governing Council dated 22.01.1982 as already cited above) and later a proposal was placed before the Governing Council for making a panel of Legal Advisors for IACS, in its meeting held on 09.10.2002 the Council turned down the proposal and resolved as under (copy enclosed). "The Council further expressed that the suggestion to 'replace' an existing Advocate i.e. Shri Surajit Das, without giving reasons behind it, is uncalled for". Shri DN Das and/or Shri Surajit Das, therefore, continued to provide legal services since his engagement from 1981 until engagement of a new panel of advocates. Recently, pursuant to the approval of the Governing Council, IACS held on 13.07.2013 has constituted two separate panels – one for High Court and the other for the Lower Courts as follows: 1. For High Court – They have been appointed as Senior Counsel, Group-I i) M/s B K Das ii) Mr. P. S. Bhattacharyya iii) Mr. Mantu Kumar Goswami 2. For Lower Courts – They have been appointed as Senior Counsels, Group-II i) Md. Naushad Hussain ii) M/s B K Das (Fees to the Advocates will be paid as per approved rates of Ministry of Law and Justice, Government of India as amended from time to time. However, fees to senior Advocates will be determined on case-to-case basis as per their standing). Shri Surajit Das had been requested to hand over the files/documents related to court cases (vide letter No. dated 20.02.2014) to the newly appointed lawyers with intimation to IACS. **Bose Institute** As the father of Shri Surajit Das, Advocate was also be the advocate of Bose Institute long back Shri Surajit Das advocate was engaged as advocate for Bose Institute around 15 to 20 years.

AKD- P/87

AKD P/107

8.	How are court cases followed up (progress of cases) in files of these institutions? Did files relating to court cases indicate movements in cases including hearing, filings adjournments? Can we link absence of progress in the files/cases with the payments?	**IACS** IACS stated that in the absence of a legal cell, the files relating to court cases were maintained and handled by the Ex-Counsel of IACS. However, with the appointment of new advocates, IACS had decided to keep records on all court cases with them. AKD P/87 **Bose Institute** Bose Institute referred to the professional standard wherein it was stipulated once the case was handed over to advocate, the client should not bother for anything or everything of the case except the reimbursement of payment of claim fees to advocate, on the basis of the account maintained by him. Hence, date of hearing, file of petition and adjournment is mentioned by the advocate. Bose Institute further added that they had started monitoring the cases by deputing one Assistant Registrar/or Office Superintendent to the Court. AKD P/105 The reply of the Bose Institute is not acceptable since it did not handed over the case to the advocate through "VAKALATNAMA" as is required by the professional standard of Bar at Law. Further the phrase 'reimbursement of payment of claim fees' itself did not construe the meaning of false and fabricated payment.
9.	How are we arriving at conclusion that bills amounting to ₹43.25 lakh were false and fabricated? It is not mentioned in the para.	It is mentioned in the annexure and is requested to keep the annexure with the para. If the conclusion of false and fabricated payment is to be described in the para, the length of the para should be go up and being complex.
10.	In annexure it is stated that in orders does not mention that XYZ advocate did appeared? In such cases did any other advocate appear in such hearings?	The bills submitted by the advocate in the names of advocates appeared on particular dates of hearing and the copies of the court order on that particular dates does not exhibit the appearance of these advocates mentioned in the bills

Senior Audit Officer (Report)

Annexure VI: Presentation

Indian Audit & Accounts Department

Case Study
On
Fraudulent Payment of Legal Fees

Prepared by:

Regional Capacity Building and Knowledge Institute

Kolkata

Website: https://cag.gov.in/rti/kolkata/en

December 2023

Introduction

- Case study based on the paragraph printed in the C&AG's report *(Paragraph No. 3.1 of Compliance Report No. 27 of 2014 of Union Government (Scientific and Environment Ministries/Department))*.
- Two autonomous organisations under Department of Science and Technology (DST) were taking services of a Kolkata based advocate for dealing with their legal cases.
- One of them paid ₹57.33 lakh in respect of 17 claims while the other paid ₹26.22 lakh in respect of 20 claims of which ₹54.93 lakh was found to be fraudulent.

Introduction…contd

- In the instant case, audit scrutiny revealed that the there was no hearings for which payments to the advocates were made for the appearances in the court.
- Audit scrutiny has also revealed that payments were made for dates of appearances, which were after the disposal of the concerned case.
- It has also been found in audit that payments were made for appearances for a case which was not pertaining to that particular organisation.

Background

- The audit assignment was to verify complaints received relating to payment of legal fees by two autonomous organisations under Department of Science and Technology (DST) who were taking services of an advocate for dealing with their legal cases.

Scope of Audit

- Audit of autonomous bodies, substantially financed by the Government of India, is conducted under **Section 14** of the C&AG's (DPC) Act.
- Principles and methodologies for audits are prescribed in the Auditing Standards and the Regulations on Audit and Accounts 2020 issued by the C&AG.

Background…contd.

Audit objectives

- Primary objectives of audit of expenditure are to check whether :

➢ Funds have been authorised by the competent authority prescribing limits within which expenditure can be incurred;

➢ The expenditure conforms to the relevant provisions of the Act and the Constitution and of the laws made thereunder and is also in accordance with the financial rules and regulations framed by the competent authority;

➢ Either a special or general sanction of the competent authority authorizing the expenditure is available; and

➢ All financial transactions have been correctly recorded in the accounts under examination and have been allocated to the appropriate heads of account.

Main Story

- Indian Association for Cultivation of Sciences (IACS), Kolkata and Bose Institute (BI), Kolkata, two autonomous organisations under Department of Science and Technology (DST) were taking services of a Kolkata based advocate for dealing with their legal cases. IACS paid ₹57.33 lakh in respect of 17 claims between July 2007 and November 2012 and BI paid ₹26.22 lakh in respect of 20 claims between September 2008 and August 2012 of which ₹54.93 lakh was found to be fraudulent.
- Audit observed that both organisations did not follow any procedure to select the advocate who was working for the last 15-20 years.
- Neither any agreement was signed with the advocate nor any '*Vakalatnama'* to plead the organisations' cases, was found on record.

Main Story…contd

- Audit further observed that both IACS and BI made payments to the advocate against bills raised by him relating to appearances claimed to be made by him and/or other advocates whose services were claimed to be used by him for the organisations' cases before the High Court at Calcutta and subordinate courts.
- The organisations' were also not verifying progress of their cases while processing the bills for payment.
- Payments were also being made for cases not related to the organisation.

Main Story…contd.

- ***<u>Reply of IACS and BI</u>***
- On being pointed out by Audit to IACS and BI (July 2013), IACS admitted (August 2013) that legal expense bills were released erroneously for payment without pre-audit. IACS further informed (February 2014) that two separate panels of the advocates, one for High court and other for the Lower Courts has been made.
- BI stated (March 2014) that single copy of ***Vakalatnama*** was made and given to the advocate for filing before the court. With regard to formal agreement with the advocate, whereas IACS accepted (June 2014) that formal agreement with the advocate was not available, BI stated (June 2014) that the advocate was engaged around 15 to 20 years ago.

Main Story…contd.

- ***Audit Conclusion***
  - Audit scrutiny of certified documents obtained from High Court at Calcutta (**Annexure II**) in respect of 13 bills raised on IACS and 12 bills raised on BI amounting to ₹54.93 lakh revealed that the bills were passed for payment without verifying proof of actual appearances in court.
- ***Justification given by the Administrative Department***

- Department of Science and Technology agreed with the audit observation. It stated that recovery of overpayment can be taken up only upon the conclusion of the judicial and disciplinary proceedings. However, the Current status of recovery made towards the excess payment of Rs.54.93 lakh is not available with this office.

Assignment Questions

- **Questions relating to requirement of records/documents to be collected from auditable entity:**

i. List of cases under litigation during the period from 2006 to the date of audit.

ii. Advocates appointed for representing the Units in the above cases.

iii. Notices received from the court for hearing or intimated by the advocates.

iv. Brief of the court proceeding to ascertain whether the advocate appointed by the Units attended the same.

v. Claims received from the advocates.

vi. Payments made to the advocates.

vii. Copies of money receipts which were obtained by IACS and BI.

- Abstract showing the case -wise payments to the advocates.

Assignment Questions…contd

- **Questions that requires audit analysis:**

i. Cross verification of these notices/intimations with the cause lists of the courts.

ii. Whatever possible irregularities related to payment were made.

iii. Whether the payments were made after verifying the veracity of the certificates of attendance given by the advocates.

iv. Whether the payments were sanctioned by the competent authority.

v. Whether the payments of legal fees were in order.

vi. Whether the organisations/officers were exercising due diligence for payments to outside agencies.

vii. Whether corruption control mechanisms were in place.

Assignment Questions…contd

- **Questions that requires audit analysis:**

viii. Whether the internal control system were sufficient.

ix. What are the preventive measures to be taken for making the internal control system effective and appropriate?

x. What are the steps to be taken for efficient and sufficient anti-fraud and anti-corruption measures?

xi. Whether the organisations were aware of the Court procedures and legal fee structures of the counsel.

xii. Whether the auditable entities had followed OM issued by Department of Legal Affairs, Ministry of Law and Justice.

xiii. Whether the organisations had previous knowledge of professional standards issued by the Bar Council of India wherein the duty of the advocates towards clients have been described.