सत्यमेव जयते

भारत के नियंत्रक-महालेखापरीक्षक के

(कर्तव्य, शक्तियां और सेवा की शर्तें)

अधिनियम, 1971 पर

विवरणिका

Brochure on

Comptroller and Auditor General's

(Duties, Powers and Conditions of Service)

Act, 1971

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FOREWORD

International Standards for Supreme Audit Institutions prescribe constitutional status for Supreme Audit Institutions with a clear legal mandate. The Constitution of India has mandated the Comptroller & Auditor General of India (also known as the Supreme Audit Institution in the international context) as the auditor of the nation. The duties and powers of the CAG as enshrined in Article 148 to 151 of the Constitution of India have been further elaborated in the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

Brochure on duties and powers of the Comptroller and Auditor General of India under the CAG's (DPC) Act, 1971 was first published in 1980 and then in 1992. This revised version is brought out with a view to update the existing Brochure. We are additionally incorporating the Amendments to the CAG's (DPC) Act and extracts of significant judgements for a better appreciation of the role of C&AG. I hope that this revised version will be of immense value and interest to the readers.

New Delhi
Dated: January 2014

(Shashi Kant Sharma)
Comptroller and Auditor General of India

1 INTRODUCTION

The role of the CAG evolved through practice and tradition in British India. The Government of India Act 1858 paved the way for appointment of first Auditor General, Sir Edward Drummond in November 1860. Under the Montford Reforms of 1919, the Auditor General became independent of the Government. The Government of India Act 1935 strengthened the position of the Auditor General. The Government of India (Audit and Accounts) Order 1936 provided for the conditions of service of the Auditor General. The Order also clearly defined the duties and powers of the Auditor General in relation to audit and accounts.

The constitution of India has mandated Comptroller and Auditor General as auditor to the nation. Independence of the CAG from the Executive is inherent in Article 148 of the Constitution. Duties and Powers of CAG of India in relation to accounts of Union and States are given in Article 149 and 150 of the Constitution. Article 151 prescribes that his reports are to be submitted to the President / Governor and placed before the respective legislatures.

The Comptroller and Auditor General (Conditions of Service) Act 1953 was enacted to define his term of office, pension payable to him and other conditions of service. Later, the duties and powers of the CAG have been further elaborated in the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. The Government of India (Audit and Accounts) Order 1936 and CAG's Conditions of Service Act 1953 were repealed after the CAG's DPC Act 1971 was passed.

CAG's DPC Act elaborates on three distinct features of constitutional provisions. Sections 1 to 9 of the DPC Act (chapter I of the Act) deal with conditions of service of CAG ensuring his independence. Sections 10 to 12 of the Act (chapter II of the Act) explain provisions relating to accounts of the Union and States. Sections 13 to 20 of the Act (chapter III of the Act) discuss provisions relating to audit of expenditure, receipts, government companies / corporations, etc. covering both Union and States. Chapter IV of the Act covers miscellaneous provisions.

CAG's DPC Act has been amended since then. Four such amendments have been incorporated in this publication. Occasionally, doubts are raised regarding mandate of CAG with reference to Performance Audit. Ministry of Finance, Government of India issued instructions in June 2006 regarding Performance Audit clarifying that the Performance Audit falls within the scope of audit by C&AG. Copy of the Office Memorandum issued by Government of India is also included in this brochure.

In addition, issues regarding constitutional validity of regulations, powers of CAG regarding scope and extent of audit have also been deliberated upon by the Judiciary. Extracts of some of the judgements have also been incorporated. This publication is an attempt to bring the CAG's DPC Act, 1971 along with such later developments at one place. A commentary on CAG's DPC Act, 1971 has been given to facilitate appreciation of mandate of the CAG.

2 CONSTITUTIONAL PROVISIONS RELATING TO COMPTROLLER AND AUDITOR GENERAL OF INDIA

CONSTITUTION OF INDIA

CHAPTER - V

148. Comptroller and Auditor-General of India:-

(1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule:

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

149. Duties and powers of the Comptroller and Auditor General:-

The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such

duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

150. Form of accounts of the Union and of the States:-

The accounts of the Union and of the States shall be kept in such form as the President may, (on the advice of) the Comptroller and Auditor-General of India, prescribe.

151. Audit reports:-

(1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India 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.

3

THE DPC ACT, 1971

THE COMPTROLLER AND AUDITOR GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) AMENDMENT ACT, 1971

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THE DPC ACT, 1971
THE COMPTROLLER AND AUDITOR GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) ACT, 1971
(ACT NO. 56 OF 1971)
(15th December, 1971)

An Act to determine the conditions of service of the Comptroller and Auditor General of India and to prescribe his duties and powers and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

1. Short title

This Act may be called the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971.

2. Definitions-

In this Act, unless the context otherwise requires,

(a) "accounts", in relation to commercial undertakings of a Government, include trading, manufacturing and profit and loss accounts and balance-sheets and other subsidiary accounts ;

(b) "appropriation accounts" means accounts which relate to the expenditure brought to account during a financial year, to the several items specified in the law made in accordance with the provisions of the Constitution or of the Government of Union Territories Act, 1963, (20 of 1963) for the appropriation of moneys out of the Consolidated Fund of India or of State, or of a Union territory having a Legislative Assembly, as the case may be;

(c) "Comptroller and Auditor-General" means the Comptroller and Auditor-General of India appointed under article 148 of the Constitution;

(d) "State" means a State specified in the First Schedule to 'the Constitution;

(e) "Union" includes a Union territory, whether having a Legislative Assembly or not.

CHAPTER II
SALARY AND OTHER CONDITIONS OF SERVICE OF THE COMPTROLLER AND AUDITOR-GENERAL

Salary

3. There shall be paid to the Comptroller and Auditor General a salary which is equal to the salary of the Judge of the Supreme Court:

Provided that if a person who immediately before the date of assuming office as the Comptroller and Auditor-General, was in receipt of, or, being eligible so to do, had elected to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or any of its predecessor Governments, or under the Government of a State or any of its predecessor Governments, his salary in respect of service as Comptroller and Auditor-General shall be reduced-

(a) by the amount of that pension; and

(b) if he had, before assuming office, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pesion.

Term of office

4. The Comptroller and Auditor-General shall hold office for a term of six years from the date on which he assumes such office:

Provided that where he attains the age of sixty-five years before the expiry of the said term of six years, he shall vacate such office on the date on which he attains the said age:

Provided further that he may, at any time, by writing under his hand addressed to the President, resign his office.

Explanation: - For the purpose of this section, the term of six years in respect of the Comptroller and Auditor-General holding office immediately before the commencement of this Act, shall be computed from the date on which he had assumed office

Leave

5 (1) A person who, immediately before the date of assuming office as the Comptroller and Auditor-General, was in the service of Government may be granted during his tenure of office but not thereafter, leave in accordance with the rules for the time being applicable to the Service to which he belonged before such date and he shall be entitled to carry forward the amount of leave standing at his credit on such date, notwithstanding anything contained in section 6

(2) Any other person who is appointed as the Comptroller and Auditor-General may be granted leave in accordance with such rules as are for the time being applicable to a member of the Indian Administrative Service.

(3)The power to grant or refuse leave to the Comptroller and Auditor-General and to revoke or curtail leave granted to him, shall vest in the President.

Pension

6. (1) A person who, immediately before the date of assuming office as the Comptroller and Auditor-General, was in the service of Government shall be deemed to have retired from service on the date on which he enters upon office as the Comptroller and Auditor General but his service as the Comptroller and Auditor-General shall be reckoned as continuing approved service counting for pension in the Service to which he belonged:

(2) Every person who enters upon office as the Comptroller and Auditor-General shall, on demitting the said office, be eligible to a pension of a sum of fifteen thousand rupees per annum which sum shall include the aggregate of all pensions payable to him and the commuted portion, if any, of his pension, and the pension equivalent of the retirement gratuity, if any, which may have been admissible to him under the rules for the time being applicable to the Service to which he belonged:

Provided that if such a person is or becomes eligible, at any time, under the rules for the time being governing the Service to which he belonged, to a pension higher than the said sum of fifteen thousand rupees, he shall be eligible to draw, as pension, the said higher amount.

(3) A person who, immediately before the date of assuming office as the Comptroller and Auditor-General, was in receipt of, or, had become eligible for receiving, a pension in respect of any previous service under Government, shall, on demitting office as the Comptroller and Auditor-General, be eligible to, a pension of fifteen thousand rupees per annum which sum shall include the aggregate of all pension payable to him and the commuted portion, if any, of his pension, and the pension equivalent of the retirement gratuity, if any, which may have been admissible to him under the rules for the time being applicable to the Service to which he belonged:

Provided that if such a person is or becomes eligible, at any time, under the rules for the time being governing the Service to which he belonged, to a pension higher than the said sum of fifteen thousand rupees, he shall be eligible to draw, as pension, the said higher amount.

(4) Any other person who is appointed as the Comptroller and Auditor-General shall, on demitting the said office, be eligible to a pension of fifteen thousand rupees per annum.

(5) The person holding office immediately before the commencement of this Act as the Comptroller and Auditor-General shall be eligible to draw, at his option, pension at the rate at which it would be admissible to him, if this Act had not come into force or at the rate specified in this section.

(6) A person who demits office as the Comptroller and Auditor- General by resignation shall, on such demission, be eligible to a pension at the rate of two thousand rupees per annum for each completed year of his service as the Comptroller and Auditor-General:

Provided that in the case of a person referred to in sub- section (1) or sub-section (3), the aggregate amount of pension admissible under this sub-section together with the amount of pension including the commuted portion, if any, of his pension, and the pension equivalent of the retirement gratuity, if any, which may have been admissible to him under the rules for the time being applicable to the Service to which he belonged immediately before he assumed office as the Comptroller and Auditor-General, shall not exceed fifteen thousand rupees per annum or the higher pension referred to in proviso to sub-section (2) or sub-section (3), as the case may be.

(6A)[1] Notwithstanding anything contained in the foregoing provisions of this section, a person referred to in subsection (1) who demits office (whether in any manner specified in sub-section (8) or by resignation) as the Comptroller and Auditor-General after the commencement of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Amendment Act, 1984 shall, on such demission, be entitled to-

(a) the pension to which he would have been entitled under the rules of the Service to which he belonged by reckoning his service as the Comptroller and Auditor-General as continuing approved service counting for pension in such Service; and

(b) a special pension of seven hundred rupees per annum in respect of each completed year of service as the Comptroller and Auditor-General;

(6B) Notwithstanding anything contained in the foregoing provisions of this section, a person referred to in sub-section (3) who demits office (whether in any manner specified in sub-section (8) or by resignation as the Comptroller

[1]Inserted by the CAG(DPC) Amendment Act (2 of 1984)

and Auditor-General after the commencement of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Amendment Act, 1984, shall, on such demission, be entitled to-

(a) the pension payable to him in respect of any previous service under Government; and

(b) a special pension of seven hundred rupees per annum in respect of each completed year of service as the Comptroller and Auditor-General.

(6C) [2]Notwithstanding anything contained in the foregoing provisions of this section, a person who demits office (whether in any manner specified in sub-section (8) or by resignation) as the Comptroller and Auditor-General after the commencement of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Amendment Act, 1987, shall, on such demission, be entitled to-

(a) a pension which is equal to the pension payable to a Judge of the Supreme Court-

(i) if such person is a person referred to in sub- section (1) or sub-section (3), in accordance with the provisions of Part III of the Schedule to the Supreme Court Judges (Conditions of Service) Act, 1958 (hereafter in this Act referred to as the Supreme Court Judges Act), as amended from time to time; and

(ii) if such person is a person referred to in sub-section (4), in accordance, with the provisions of Part I of the Schedule to the Supreme Court Judges Act, as amended from time to time;

(b) such pension (including commutation of pension), family pension and gratuity as are admissible to a Judge of Supreme Court under the Supreme Court Judges Act and the rules made thereunder, as amended from time to time.

(6D) Notwithstanding anything contained in the foregoing provisions of this section, a person who demitted office (whether in any manner specified in sub section (8) or by resignation) as the Comptroller and Auditor-General, at any time before the 16th day of December, 1987, shall be entitled to the pension specified in sub section (6C) on and from that date.

(7) If a person who demits office as the Comptroller and Auditor-General is not eligible to any pension under this section but is eligible to a pension under the rules for the time being applicable to the service to which he belonged immediately before he assumed Office as the Comptroller and Auditor-General,

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[2]Inserted under CAG(DPC) Amendment Act (50 of 1987), effective from 16.12.87

he shall, notwithstanding anything contained in this section, be eligible to draw such pension as is admissible to him under the said rules.

(8) Except where he demits office by resignation, a person holding office of the Comptroller and Auditor-General shall be deemed, for the purposes of this Act, to have demitted such office as such if, and only if:-

(a) he has completed the term of office specified in section 4, or

(b) he has attained the age of sixty-five years, or

(c) his demission of office is medically certified to be necessitated by ill health.

7. Omitted[3]

Right to subscribe to General Provident Fund

8. Every person holding office as the Comptroller and Auditor General shall be entitled to subscribe to the General Provident Fund (Central Services).

Other conditions of Service

9 [4]Save as otherwise provided in this Act, the conditions of service relating to travelling allowance, provision of rent-free residence and exemption from payment of income- tax on the value of such rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and such other conditions of service as are for the time being applicable to a Judge of the Supreme Court under Chapter IV of the Supreme Court Judges Act, and the rules made thereunder, shall, so far as may be, apply to serving or retired Comptroller and Auditor-General as the case may be.

Provided that nothing in this section shall have effect so as to give a person, who immediately before the date of assuming office as the Comptroller and Auditor General, was in the service of Government, less favourable terms in respect of any of the matters aforesaid than those to which he would be entitled as a member of the Service to which he belonged, his service as Comptroller and Auditor-General being treated for the purpose of this proviso as continuing

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[3]7.Commutation of Pension

7. The Civil Pensions (Commutation) Rules for the time being in force shall, with such adaptations may be made therein by President, apply to a person who had held office as the Comptroller and Auditor-General-Omitted Under Act 50 of 1987.

[4]Save as otherwise expressly provided in this Act, the other conditions of service of a person holding office as the Comptroller and Auditor General including his emoluments during any period of duty out of India and his travelling allowance while travelling on duty, shall be determined by the rules for the time being applicable to a member of the Indian Administrative Service holding the rank of Secretary to the Government of Inida

(Substituted under Act. 50 of 1987)

CHAPTER III
DUTIES AND POWERS OF THE COMPTROLLER AND AUDITOR GENERAL

Comptroller and Auditor General to compile accounts of Union and States.

10. (1) The Comptroller and Auditor-General shall be responsible-

(a) for compiling the accounts of the Union and of each State from the initial and subsidiary accounts rendered to the audit and accounts offices under his control by treasuries, offices or departments responsible for keeping of such accounts; and

(b) for keeping such accounts in relation to any of the matters specified in clause (a) as may be necessary:

Provided that the President may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for compiling-

(i) the said accounts of the Union (either at once or gradually by the issue of several orders) ; or

(ii) the accounts of any particular services or departments of the Union:

Provided further that the Governor of a State may, with the previous approval of the President and after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for compiling-

(i) the said accounts of the State (either at once or gradually by the issue of several orders) ; or

(ii) the accounts of any particular services or departments of the State :

Provided also that the President may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for keeping the accounts of any particular class or character.

(2) Where, under any arrangement a person other than the Comptroller and Auditor-General has, before the commencement of this Act, been responsible-

(i) for compiling the accounts of any particular service or department of the Union or of a State, or

(ii) for keeping the accounts of any particular class or character,

such arrangement shall, notwithstanding anything contained in subsection (1), continue to be in force unless, after consultation with the Comptroller and Auditor-General, it is revoked in the case referred to in clause (i), by an order of the President or the Governor of the State, as the case may be, and in the case referred to in clause (ii), by an order of the President.

Comptroller and Auditor-General to prepare and submit accounts to the President, Governors of States and Administrators of Union territories having Legislative Assemblies

11. The Comptroller and Auditor-General shall, from the accounts compiled by him or by the Government or any other person responsible on that behalf, prepare in each year accounts (including, in the case of accounts compiled by him, appropriation accounts) showing under the respective heads the annual receipts and disbursements for the purpose of the Union, of each State and of each Union territory having a Legislative Assembly, and shall submit those accounts to the President or the Governor of a State or Administrator of the Union territory having a Legislative Assembly, as the case may be, on or before such dates as he may, with the concurrence of the Government concerned, determine.

Provided that the President may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for the preparation and submission of the accounts relating to annual receipts and disbursements for the purpose of the Union or of a Union territory having a Legislative Assembly;

Provided further that the Governor of a State may, with the previous approval of the President and after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for the preparation and submission of the accounts relating to annual receipts and disbursements for the purpose of the State.

Comptroller and Auditor General to give information and render assistance to the Union and States

12. The Comptroller and Auditor- General shall, in so far as the accounts, for the compilation or keeping of which he is responsible, enable him so to do, give to the Union Government, to the State Governments or to the Governments of Union territories having Legislative Assemblies, as the case may be, such information as they may, from time to time, require, and render such assistance in the preparation of their annual financial statements as they may reasonably ask for.

General provisions relating to audit

13. It shall be the duty of the Comptroller and Auditor-General-

(a) to audit all expenditure from the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to ascertain whether the moneys shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged and whether the expenditure conforms to the authority which governs it;

(b) to audit all transactions of the Union and of the States relating to Contingency Funds and Public Accounts;

(c) to audit all trading, manufacturing, profit and loss accounts and balance-sheets and other subsidiary accounts kept in any department of the Union or of a State ; and in each case to report on the expenditure, transactions or accounts so audited by him.

Audit of receipts and expenditure of bodies or authorities substantially financed from Union or State Revenues

14 (1) Where anybody or authority is substantially financed by grants or loans from the Consolidated Fund of India or of any State or of 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.

Explanation:- Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year is not less than rupees twenty five lakhs and the amount of such grant or loan is not less than seventy five per cent of the total expenditure of that body or authority, such body or authority shall be deemed, for the purposes of this sub-section to be substantially financed by such grants or loans as the case may be.

(2) Notwithstanding anything contained in sub-section the Comptroller and Auditor-General may, with the previous approval of the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, audit all receipts and expenditure of any body or authority where the grant or loan to such body or authority from the Consolidated Fund of India or of any State, or of any Union territory having a Legislative Assembly, as the case may be, in a financial year is not less than rupees one crore.

(3) Where the receipts and expenditure of any body or authority are, by virtue of the fulfillment of the conditions specified in sub-section (1) or sub-section (2) audited by the Comptroller and Auditor General in a financial year, he shall continue to audit the receipts and expenditure of that body or authority for a further period of two years notwithstanding that the conditions specified in sub-section (1) or sub-section (2) are not fulfilled during any of the two subsequent years.

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[5]prior to amendment in 1984, this was Rs. five lakhs.

Functions of Comptroller and Auditor-General in the case of grants or loans given to other authorities or bodies

15. (1) Where any grant or loan is given for any specific purpose from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly to any authority or body, not being a foreign State or international organisation, the Comptroller and Auditor-General shall scrutinise the procedures by which the sanctioning authority satisfies itself as to the fulfillment of the conditions subject to which such grants or loans were given and shall for this purpose have right of access, after giving reasonable previous notice, to the books and accounts of that authority or body:

Provided that the President, the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, may, where he is of opinion that it is necessary so to do in the public interest, by order, relieve the Comptroller and Auditor General, after consultation with him, from making any such scrutiny in respect of any body or authority receiving such grant or loan.

(2) Except where he is authorised so to do by the President, the Governor of a State or the Administrator of a Union territory having legislative Assembly, as the case may be, the Comptroller and Auditor General shall not have, while exercising the powers conferred on him by sub-section (1), right of access to the books and accounts of an corporation to which any such grant or loan as is referred to in sub-section (1) is given if the law by or under which such corporation has been established provides for the audit of the accounts of such corporation by an agency other than the Comptroller and Auditor- General:

Provided that no such authorisation shall be made except after consultation with Comptroller and Auditor-General and except after giving the concerned corporation a reasonable opportunity of making representations with regard to the proposal to give to the Comptroller and Auditor-General right of access to its books and accounts.

Audit of receipts of Union or of States

16. It shall be the duty of the Comptroller and Auditor-General to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are

being duly observed and to make for this purpose such examination of the accounts as he thinks fit and report thereon.

Audit of accounts of stores and stock

17. The Comptroller and Auditor-General shall have authority to audit and report on the accounts of stores and stock kept in any office or department of the Union or of a State.

Powers of Comptroller and Auditor-General in connection with audit of accounts

18. (1) The Comptroller and Auditor-General shall in connection with the performance of his duties under this Act, have authority-

(a) to inspect any office of accounts under the control of the Union or of a State, including treasuries and such offices responsible for the keeping of initial or subsidiary accounts, as submit accounts to him;

(b) to require that, any accounts, books, papers and other documents which deal with or form the basis of or are otherwise relevant to the transactions to which his duties in respect of audit extend, shall be sent to such place as he may appoint for his inspection ;

(c) to put such questions or make such observations as he may consider necessary, to the person in charge of the office and to call for such information as he may require for the preparation of any account or report which it is his duty to prepare.

(2) The person in charge of any office or department, the accounts of which have to be inspected and audited by the Comptroller and Auditor-General, shall afford all facilities for such inspection and, comply with requests for information in as complete a form as possible and with all reasonable expedition.

Audit of Government companies and corporations

19. (1) The duties and powers of the Comptroller and Auditor General in relation to the audit of the accounts of Government companies shall be performed and exercised by him in accordance with the provisions of the Companies Act, 1956 (1 of 1956).

(2) The duties and powers of the Comptroller and Auditor-General in relation to the audit of the accounts of corporations (not being companies) established by or under law made by Parliament shall be performed and exercised by him in accordance with the provisions of the respective legislations.

(3) The Governor of a State or the Administrator of a Union territory having a Legislative Assembly may, where he is of opinion that it is necessary in the public interest so to do, request the Comptroller and Auditor-General to audit the

accounts of a corporation established by law made by the Legislature of the State or of the Union territory, as the case may be, and where such request has been made, the Comptroller and Auditor-General shall audit the accounts of such corporation and shall have, for the purposes of such audit, right of access to the books and accounts of such corporation:

Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General and except after giving reasonable opportunity to the corporation to make representations with regard to the proposal for such audit.

Laying of reports in relation to accounts of Government companies and corporations

19 A (1) The reports of the Comptroller and Auditor-General, in relation to the accounts of a Government company or a corporation referred to in section 19, shall be submitted to the Government or Governments concerned.

(2) The Central Government shall cause every report received by it under sub-section (1) to be laid, as soon as may be after it is received, before each House of Parliament.

(3) The State Government shall cause every report received by it under, sub-section (1) to be laid as soon as may be after it is received, before the Legislature of the State.

Explanation:- For the purposes of this section, "Government" or "State Government", in relation to a Union territory having a Legislative Assembly, means the Administrator of the Union territory.

Audit of accounts of certain authorities or bodies

20. (1) Save as otherwise provided in section 19, where the audit of the accounts of any body or authority has not been entrusted to the Comptroller and Auditor-General by or under any law made by Parliament, he shall, if requested so to do by the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, undertake the audit of the accounts of such body or authority on such terms and conditions as may be agreed upon between him and the concerned Government and shall have, for the purposes of such audit, right of access to the books and accounts of that body or authority:

Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General.

(2) The Comptroller and Auditor-General may propose to the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, that he may be authorised to undertake the audit of the accounts of any body or authority, the audit of the accounts of which has not been entrusted to him by law, if he is of opinion that such audit is necessary because a substantial amount has been invested in, or advanced to, such body or

authority by the Central or State Government or by the Government of a Union territory having a Legislative Assembly, and on such request being made, the President or the Governor or the Administrator, as the case may be, may empower the Comptroller and Auditor-General to undertake the audit of the accounts of such body or authority.

(3) The audit referred to in sub-section (1) or sub-section (2) shall not be entrusted to the Comptroller and Auditor-General except where the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, is satisfied that it is expedient so to do in the public interest and except after giving a reasonable opportunity to the concerned body or authority to make representations with regard to the proposal for such audit.

CHAPTER IV
MISCELLANEOUS

Delegation of Power of Comptroller and Auditor-General

21. Any power exercisable by the Comptroller and Auditor-General under the provisions of this Act, or any other law may be exercised by such officer of his department as may be authorised by him in this behalf by general or special order:

Provided that except during the absence of the Comptroller and Auditor-General on leave or otherwise, no officer shall be authorised to submit on behalf of the Comptroller and Auditor-General any report which the Comptroller and Auditor-General is required by the Constitution or the Government of Union Territories Act, 1963 (20 of 1963) to submit to the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be.

Power to make rules

22. (1) The Central Government may, after consultation with the, Comptroller and Auditor-General, by notification in the Official Gazette, make rules for carrying out the provisions of this Act in so far as they relate to the maintenance of accounts.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the manner in which initial and subsidiary accounts shall be kept by the treasuries, offices and departments rendering accounts to audit and accounts offices;

(b) the manner in which the accounts of the Union or of a State or of any particular service or department or of any particular class or character, in respect of which the Comptroller and Auditor-General has been relieved from the responsibility of compiling or keeping the accounts, shall be compiled or kept;

(c) the manner in which the accounts of stores and stock shall be kept in any office or department of the Union or of a State, as the case may be ;

(d) any other matter which is required to be, or may be, prescribed by rules.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to make regulations

23. The Comptroller and Auditor-General is hereby authorised to make regulations for carrying into effect the provisions of this Act in so far as they relate to the scope and extent of audit, including laying down for the guidance of the Government Departments the general principles of Government accounting and the broad principles in regard to audit of receipts and expenditure.

Power to dispense with detailed audit

24. The Comptroller and Auditor-General is hereby authorised to dispense with, when circumstances so warrant, any part of detailed audit of any accounts or class of transactions and to apply such limited check in relation to such accounts or transactions as he may determine.

Repeal

25. The Comptroller and Auditor-General (Conditions of Service 21 of 1953.) Act, 1953, is hereby repealed.

Removal of doubts

26. For the removal of doubts, it is hereby declared that on the commencement of this Act the Government of India (Audit and Accounts) Order, 1936, as adapted by the India (Provisional Constitution) Order, 1947, shall cease to be in force except as respects anything done or any action taken thereunder.

4 AMENDMENTS TO THE CAG's DPC ACT, 1971

CAG's DPC Act 1971 has been amended four times i.e. 1976, 1984, 1987 and 1994. The amendments are listed below:

I. THE COMPTROLLER AND AUDITOR GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) AMENDMENT ACT, 1976 No. 45-F of 1976

An Act further to amend the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971.

Be it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:-

1. (1) This Act may be called the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Amendment Act, 1976.[6]

   (2) It shall be deemed to have come into force on the 1st day of March, 1976.

2. In section 10[7] of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971[8] (hereinafter referred to as the principal act), in sub-section (1), –

   (a) for the first proviso, the following provisos shall be substituted, namely:-

   "Provided that the President may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for compiling –

   (i) the said accounts of the Union (either at once or gradually by the issue of several orders); or

   (ii) the accounts of any particular services or departments of the Union:

   Provided further that the Governor of a State may, with the previous approval of the President and after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for compiling

[6] Short title and commencement

[7] Amendment of section 10

[8] 56 of 1971

(i) the said accounts of the State (either at once or gradually by the issue of several orders); or

(ii) the accounts of any particular services or departments of the State:";

(b) in the second proviso, for the words "Provided further", the words "Provided also", shall be substituted.

3. In Section 11 of the principal Act[9]:-

(a) for the words "by any other person responsible in that behalf", the words "by the Government or any other person responsible in that behalf" shall be substituted.

(b) the following provisos shall be inserted at the end, namely:-

"Provided that the President may, after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for the preparation and submission of the accounts relating to annual receipts and disbursements for the purpose of the Union or of a Union territory having a Legislative Assembly:

Provided further that the Governor of a State may, with the previous approval of the President and after consultation with the Comptroller and Auditor-General, by order, relieve him from the responsibility for the preparation and submission of the accounts relating to annual receipts and disbursements for the purpose of the State".

4. In section 22[10] of the principal Act, -

(a) in clause (b) of sub-section (2), after the words "the accounts of", the words "the Union or of a State or of" shall be inserted;

(b) in sub-section (3), for the words "in two successive sessions", the words "in two or more successive sessions", and for the words "the session in which it is so laid or the session immediately following", the words "the session immediately following the session or the successive sessions aforesaid" shall be substituted.

5. (1) The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Amendment Ordinance, 1976[11], is hereby repealed[12]

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[9] Amendment of section 11

[10] Amendment of section 22

[11] 1 of 1976

[12] Repeal and saving

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

II. THE COMPTROLLER AND AUDITOR GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) AMENDMENT ACT, 1984

No. 2 of 1984 **(16 March 1984)**

An Act further to amend the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971

Be it enacted by Parliament in the Thirty-fifth year of the Republic is follows:-

1. This Act may be called the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Amendment Act, 1984.
2. In the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (hereinafter referred to as the Principal Act), in section 6, after sub-section (6), the following sub-section shall be inserted namely:-

"(6A) Notwithstanding anything contained in the foregoing provisions of this section a person referred to in sub-section (1) who demits office (whether in any manner specified in sub-section (8) or by resignation) as the Comptroller and Auditor General after the commencement of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Amendment Act, 1984, shall, on such demission, be entitled to:-

(a) the pension to which he would have been entitled under the rules of the Service to which he belonged by reckoning his service as the Comptroller and Auditor General as continuing approved service counting for pension in such service ; and

(b) a special pension of seven hundred rupees per annum in respect of each completed year of service as Comptroller and Auditor General ;

Provided that the aggregate of the amounts payable to him under clause (a) and clause (b) of this sub-section shall in no case exceed a sum of twenty thousand and four hundred rupees per annum.

(6B) Notwithstanding anything contained in the foregoing provisions of this section, a person referred to in sub-section (3) who demits office(whether in any manner specified in sub-section (8) or by resignation) as the Comptroller and Auditor General after the commencement of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Amendment Act, 1984, shall, on such demission, be entitled to –

(a) the pension payable to him in respect of any previous service under Government; and

(b) a special pension of seven hundred rupees per annum in respect of each completed year of service as Comptroller and Auditor General.

Provided that the aggregate of the amount payable to him under clause (a) and clause (b) of this sub-section shall in no case exceed a sum of twenty thousand and four hundred rupees per annum and such sum shall include the aggregate of all other pensions, if any, payable to him and the commuted portion, if any, of his pension."

3. Section 14 of the Principal Act shall be renumbered as sub-section (1) thereof and –

(a) in the Explanation of sub-section (1) as so renumbered,-

(i) for the words "rupees five lakhs; "the words "rupees twenty five lakhs" shall be substituted.

(ii) for the words "this section" the words "this sub-section" shall be substituted;

(b) after sub-section (1), as so renumbered, the following sub-sections shall be inserted, namely:-

(2) Notwithstanding anything contained in sub-section (1) the Comptroller and Auditor General may with the previous approval of the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, audit all receipts and expenditure of any body or authority where the grants or loans to such body or authority from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly, as the case may be in a financial year is not less than rupees one crore.

(3) Where the receipts and expenditure of any body or authority are by virtue of fulfillment of the conditions specified in sub-section (1) or sub-section (2) audited by the Comptroller and Auditor General in a financial year, he shall continue to audit the receipts and expenditure of that body or authority for a further period of two years notwithstanding that the conditions specified in sub-section (1) or sub-section (2) are not fulfilled during any of the two subsequent years"

4. After section 19 of the Principal Act, the following section shall be inserted namely:-

19A (1) the reports of the Comptroller and Auditor General, in relation to the accounts of a Government Company or corporation referred to in section 19, shall be submitted to the Government or Government concerned.

(2) The Central Government shall cause every report received by it under sub-section (1) to be laid, as soon as may be after it is received, before each House of Parliament.

(3) The State Government shall cause every report received by it under sub-section (1) to be laid, as soon as may be after it is received, before the Legislature of the State.

Explanation –For the purposes of this section "Government" or "State Government" in relation to a Union territory having a Legislative Assembly, means the Administrator of the Union Territory.

III. THE COMPTROLLER AND AUDITOR GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) AMENDMENT ACT, 1987

No. 50 of 1987 **(16th December, 1987)**

An Act further to amend the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971.

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:-

1. This Act may be called the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Amendment Act, 1987.
2. In the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (hereinafter referred to as the principal Act), in section 6,-
   (a) In sub-sections (6A) and (6B), the provisos shall be omitted, and shall be deemed to have been omitted with effect from the 1st day of January, 1986;
   (b) after sub-section (6B), the following sub-section shall be inserted, namely:-

   "(6C) Notwithstanding anything contained in the foregoing provisions of this section, a person who demits office [whether in any manner specified in sub-section (8) or by resignation] as the Comptroller and Auditor-General after the commencement of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act.

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[13] Short title

[14] 56 of 1971

[15] Amendment of section 6

2. Comptroller and Auditor-General's (Duties, Powers and [50 of 1987] Conditions of Service) Amendment Act, 1987, shall on such demission, be entitled to-

(a) a pension which is equal to the pension payable to a Judge of the Supreme Court-

(i) if such person is a person referred to in sub-section (1) or sub-section (3), in accordance with the provisions of Part III of the Schedule to the Supreme Court Judges (Conditions of Service) Act, 1958 (hereafter in this Act referred to as the Supreme Court Judges Act), as amended from time to time; and

(ii) if such person is a person referred to in sub-section (4), in accordance with the provisions of Part I of the Schedule to the Supreme Court Judges Act, as amended from time to time;

(b) such pension (including commutation of pension), family pension and gratuity as are admissible to a Judge of Supreme Court under the Supreme Court Judges Act and the rules made thereunder, as amended from time to time."

3. Section 7 of the principal Act shall be omitted.

4. In section 9 of the principal Act, for the opening paragraph, the following shall be substituted, namely:-

"Save as otherwise provided in this Act, the conditions of service relating to travelling allowance, provision of rent-free residence and exemption, from payment of income-tax on the value of such rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and such other conditions of service as are for the time being applicable to a Judge of the Supreme Court under Chapter IV of the Supreme Court Judges Act , and the rules made thereunder, shall, so far as may be, apply to a serving or retired Comptroller and Auditor-General, as the case may be.".

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[16] Omission of section7

[17] Amend-ment of section 9.

IV. THE COMPTROLLER AND AUDITOR GENERAL'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) AMENDMENT ACT, 1994

No. 51 of 1994

(26 August 1994)

An Act further to amend the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971

Be it enacted by Parliament in the Forty-fifth Year of the Republic of India as follows:-

1. (1) This Act may be called the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Amendment Act, 1994.
   (2) Section 2 of this Act shall be deemed to have come into force on the 27th day of March, 1990 and section 3 thereof shall be deemed to have come into force on the 16th day of December, 1987

2. In the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (hereinafter referred to as the principal Act), in section 3, in the proviso,-
   (i) in clause (b), the word "and" occurring at the end shall be omitted;
   (ii) clause (c) shall be omitted.

3. In section 6 of the principal Act, after sub-section (6C), the following sub-sections shall be inserted namely:-
   "(6D) Notwithstanding anything contained in the foregoing provisions of this section, a person who demitted office [whether in any manner specified in sub-section(8)or by resignation] as the Comptroller and Auditor General, at any time before the 16th day of December, 1987, shall be entitled to the pension specified in sub-section (6C) and from that date."

5 IMPORTANT JUDGEMENTS

I. ARVIND GUPTA Vrs. UNION OF INDIA

(2013) Supreme Court Cases 293

(BEFORE Hon'ble Judges R.M. LODHA AND ANIL R. DAVE, JJ

Powers of CAG to Conduct Performance Audit

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

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

Extracts of the Judgement

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

1. We have heard Mr. Santosh Paul, learned counsel for the petitioner. The learned counsel for the petitioner submits that the Comptroller and Auditor General of India (CAG) has no power to give performance audit report and the Regulations on Audit and Accounts, 2007 (for short "the Regulations") framed under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (for short "the 1971 Act") empowering CAG to conduct performance audit are violative of the Constitution.

2. Article 149 of the Constitution of India provides that CAG shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament. In pursuance of Article 149 of the Constitution, the 1971 Act has been enacted. Amongst other provisions in the 1971 Act, Section 16 provides that:

"16 Audit of receipts of Union or of States – It shall be the duty of the Comptroller and Auditor General to audit all receipts which are payable into the Consolidated Fund of India and of each State and of each Union Territory having a Legislative Assembly and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and to make for this purpose such examination of the accounts as he thinks fit and reports thereon."

3. CAG's function to carry out examinations into economy, efficiency and effectiveness with which the Government has used its resources is inbuilt in the 1971 Act. Performance audit reports prepared under the Regulations have to be viewed accordingly. We find no unconstitutionality in the Regulations. Moreover, Article 151 of the Constitution provides that the reports of CAG relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament and the reports relating to the accounts of a State shall be submitted to the Governor of the State who shall cause them to be laid before the legislature of the State. The audit reports which are submitted by CAG are, thus, subject to scrutiny by Parliament or the legislature of the State, as the case may be.

4. The writ petition is wholly misconceived and is dismissed accordingly.

II. **Reghu Nath Kelkar Vrs. Union of India and others**

IN THE HIGH COURT OF BOMBAY

Public Interest Litigation No. 40 of 2008

Decided on: 24-3-2009

(Before Hon'ble Judges / Coram: Swatanter Kumar, CJ and D.Y. Chandrachud, J)

Powers of CAG regarding time, scope and extent of audit

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

Extract of Judgement

9. In so far as prayer Clause (b) of the Petition is concerned, an affidavit has been filed on behalf of the Comptroller and Auditor General in which it has been stated that receipts and disbursements under the Market Stabilization Scheme are duly budgeted in the receipt and expenditure budget which is subject to parliamentary control. The account of the Ministry of Finance and appropriation account of the Government of India are audited at 'regular frequency' by the Comptroller and Auditor General. Under Section 23 of the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971 the scope and extent of audit is determined by the Comptroller and Auditor General. The Comptroller and Auditor General reports his findings to Parliament by submitting audit reports under Article 151 of the Constitution. The Reserve Bank of India has clarified that funds collected from the sterilization of liquidity by the Market Stabilization Scheme form part of the Consolidated Fund of India and are hence, deemed to be audited by the Comptroller and Auditor General.

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

III. **National Dairy Development Board Vrs. CAG of India.**

IN THE HIGH COURT OF DELHI
W.P. (Civil) 4834 of 1998
Decided on: 27-1-2010
(Before Hon'ble Justice Sanjeev Khanna)

Powers of CAG to conduct audit

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

(i) CAG Act is a Special Act as distinguished from a General Act.

(ii) CAG's power to audit under Section 14 (1) can be curtailed, conditional or even prohibited under any law applicable to the Body or Authority.

(iii) Section 14 (2) is an independent section which will apply once the conditions mentioned in the said Section are satisfied and the fact that the body or authority cannot be subject to audit under Section 14 (1) is irrelevant.

(iv) Section 15 confers power to undertake scrutiny of the accounts/records of the sanctioning authority to ensure that proper procedure was followed while sanctioning any grant/loan.

(v) Section 15 and Section 14 (2) are independent sections and come into operation when the pre conditions mentioned therein are satisfied. Section 15 cannot be read to override Section 14 (2) or vice-versa.

(vi) The provisions of the Section 19 are clarificatory in nature. Section 19 (2) does not override the provisions of Section 14 (2) and other provisions of the CAG (DPC) Act. Section 19(2) protects the power and right given to the CAG to audit accounts of Corporations under

the Law made by Parliament by which they are established. This means that CAG can conduct audit under Section 14 (1), 14 (2) or 15 of the CAG Act in respect of any corporation when under the respective legislation annual financial audit is not undertaken by the CAG.

IV. **Arun Kumar Aggarwal Vrs. Union of India**
IN THE SUPREME COURT OF INDIA
W.P. (Civil) 469 of 2012
Decided on: 9-5-2013
(Before Hon'ble Justice K. S. Radhakrishnan & Justtice Dipak Misra)

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

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

Extracts of the Judgement

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

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

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

V. **Shri S. Subramaniam Balaji Vrs. the Government of Tamil Nadu and others.**

IN THE SUPREME COURT OF INDIA

Civil Appeal 5130 of 2013

Decided on: 25-7-2013

(Before Hon'ble Justice P Sathasivam and Justice Ranjan Gogoi)

Duty of CAG regarding examination of expenditure

In this case decided by the Supreme Court, the Petitioners prayed that CAG of India has a duty to examine expenditures even before they are deployed.

The Court while considering the various issues observed that in addition to the Legislative control, the founding fathers of the Constitution have also thought it fit to keep a check on Government account and expenses through the agency outside the Legislature also. Article 148 has created a Constitutional functionary in the form of CAG of India. CAG examines the propriety, legality and validity of all expenses incurred by the Government and exercises effective control over the Government accounts.

Extracts of the Judgement

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

6 INSTRUCTIONS OF GOVERNMENT OF INDIA

F.No. 6(5)-B (R) / 99
Ministry of Finance
Department of Economic Affairs
Budget Division
New Delhi the 13th June, 2006

Office Memorandum

Subject: - Performance Audit by Comptroller and Auditor General of India

Clarification has been sought whether Performance Audit falls within the scope of audit by C&AG under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

2. The Government has considered the matter. Under Section 23 of the DPC Act, 1971, the Comptroller and Auditor General of India has the powers to make regulations for carrying into effect the provisions of the Act in so far as they relate to scope and extent of audit. In pursuance of these provisions C&AG has been conducting performance audits in addition to financial audits and compliance audits based on guidelines / principles / regulations framed for the purpose. All audit reports of the C&AG are placed before the Parliament and State Legislatures, as the case may be as constitutionally mandated.

3. It is, therefore, clarified that performance audit, which is concerned with the audit of economy, efficiency and effectiveness in the receipt and application of public funds is deemed to be within the scope of audit by Comptroller and Auditor General of India for which Performance Auditing Guidelines drawn up by the Comptroller and Auditor General of India already exist.

4. All the Ministries / Departments are accordingly expected to facilitate the conduct of audits including performance audit by providing access to all the documents required by C&AG in connection with such audits. In this regard

attention of all the ministries is invited to O.M. F.No.1(43)-B/78 dated 23rd September 1978 issued from the Ministry of Finance, clarifying the procedure in respect of submission of official documents for audit without any apprehension and with due care with respect to custody and handling of classified files in accordance with standing instructions.

5. The respective subordinate offices and other entities that come under the purview of the C&AG audit may also be advised accordingly.

(P. R. Devi Prasad)
Officer on Special Duty (FRBM)

To,

1. Secretaries to Government of India (All Ministries / Departments)
2. Chief Secretaries of State and Union Territory Governments
3. Financial Advisors (All Ministries / Departments of Government of India)
4. Copy for information and record to:
   i. The Cabinet Secretariat and
   ii. The Office of the Comptroller and Auditor General of India

7 COMMENTARY

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

1. Introductory

The functions of the Comptroller and Auditor of India are derived mainly from the provisions of Article 149 to 151 of the Constitution of India. Article 149 provides that the Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were exercisable by the Auditor General of India before the commencement of the Constitution in relation to the accounts of the Dominion of India and of the provinces respectively. Under these transitional provisions the Comptroller and Auditor General continued to perform the duties and exercise the powers in relation to the Accounts of the Union and of the States as provided in the Government of India (Audit and Accounts) Order 1936, as adopted by the India (Provisional Constitution) Order, 1947 till the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (hereafter called the Act) was enacted by the Parliament. The Act which came into force on 15th December, 1971 has been amended in 1976, 1984, 1987 and 1994. The Act is a comprehensive legislation framed under Article 148(3) and 149 of the Constitution. It prescribes (a) the salary and other conditions of service of the CAG and (b) his duties and powers in relation to the accounts and audit of accounts of the Union, the States, the Union Territories and other authorities and bodies.

No law of State Legislature can cast any duties or confer any powers upon the CAG or his representatives. Likewise the duties and powers of the CAG prescribed by law made by the Parliament cannot be superseded or abridged by or under any law made by the State Legislature.

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

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

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

The second proviso to section 10 (2) authorises the Governor of a State to relieve the Comptroller and Auditor General, with the previous approval of the President and after consultation with the Comptroller and Auditor General, by an order, from the responsibility for compiling (i) the accounts of the State (either at once or gradually by issue of several orders) and (ii) the accounts of any particular service or department of the State. The President may also, after consultation with the Comptroller and Auditor General, by an order, relieve him from the responsibility for keeping the accounts of any particular class or character.

In 1976, in exercise of powers under the first proviso to Section 10 (1) of the Act, Comptroller and Auditor General has been relieved of the responsibility of compiling and keeping the accounts of various Departments/Ministries of the Union Government, except in respect of accounts relating to (a) pensions in lieu of resumed jagirs, lands etc (b) the Indian Audit and Accounts Department. Similarly, Comptroller and Auditor General is also relieved from the responsibility of compiling accounts of Union Territories except Union Territory of Chandigarh, Dadra Nagar Haweli and Lakshadweep.

In so far as the States are concerned, Comptroller and Auditor General continues to (a) compile the accounts of all States except the State of Goa (b) keep such accounts in relation to compilation of accounts of the States as may be necessary (c) prepare the Appropriation Accounts and Finance Accounts thereof.
The third proviso to sub-section (i) of section 10 authorises the President to relieve the Comptroller and Auditor General from the responsibility for keeping the accounts of any particular class or character. Pursuant to these provisions, the President has, by issue of several orders, relieved the Comptroller and Auditor General from the responsibility for maintaining the Provident Fund accounts of all State Government employees, in the States of Rajasthan, Mizoram, Arunachal Pradesh, Jammu & Kashmir, Bihar (now including Jharkhand), Punjab and Sikkim. As part of the schemes of transfer of the responsibility of compiling the accounts of various departments / Ministries of the Union Government from the Comptroller and Auditor General, he has been relieved from the responsibility of maintaining the provident fund accounts of all employees of the Union Government, except those of the Indian Audit and Accounts Department.

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

been relieved from the responsibility for preparation of the Finance Accounts (of the Union) but he is responsible for its submission to the President/ Governor/ Administrator for being laid before the Parliament/State/UT Legislature. Prior approval of the President and consultation with the Comptroller and Auditor General are required to relieve the Comptroller and Auditor General from the responsibility for the preparation of the Finance Accounts of a State.

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

3. Duties in relation to Audit

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

(a) audit against provision of funds;
(b) regularity audit;
(c) propriety audit;
(d) efficiency-cum-performance audit and
(e) systems audit.

The completeness and accuracy of the accounts is examined and it is seen that there is proper voucher or proof of payment. Audit against provision of funds is aimed at ascertaining whether the monies shown in the accounts as having been disbursed, were legally available for and applicable to the service or purpose to which they have been applied or charged. The Appropriation Accounts of the Union Government and of such State Governments and Union Territory Governments, whose accounts are compiled and kept by the respective

Governments, are prepared by the Governments concerned and audited by the Comptroller and Auditor General. The Appropriation Accounts of other State Governments are prepared by the Comptroller and Auditor General from the accounts compiled and kept by him. It is seen in audit that the expenditure conforms to the authority which governs it (regularity audit). Audit also examines the propriety of executive action and looks beyond formality of the expenditure to its wisdom, faithfulness and economy and brings to the notice of the Legislature, cases of waste, losses, extravagant and nugatory expenditure and thus challenges any improper exercise of discretion, and comments on propriety of expenditure (Propriety audit). Efficiency-cum-performance audit is a comprehensive appraisal of the progress and efficiency of the execution of development programmes. In this audit, an attempt is made to assess and appraise to what extent, social and economic objectives sought to be achieved have been achieved and at what cost; and to examine how far the agency or department is adequately discharging its financial responsibilities and ascertain whether the schemes are being executed and their operations conducted economically. In systems audit, organisation and systems governing authorisation, recording, accounting and internal control are analysed and standards of quality and performance evaluated.

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

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

3.1 Duties and responsibilities in relation to audit of bodies and authorities financed by Government

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

The Act has made provisions in Section t4 and 15 for the audit of the accounts of authorities and bodies receiving financial assistance in the form of grants or/and loans from the Government of India or State or Union Territory

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

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

(i) The grant and/or loan must be to a body or authority.
(ii) The grant or loan must have been paid out of the Consolidated Fund.
(iii) The autonomous body must be "substantially financed" by grant or loan in accordance with the explanation of that term given in the Section.
(iv) The audit will be of all receipts and expenditure of the body or authority.
(v) Audit will be subject to the provisions of any law, for the time being in force applicable to the body or authority. The said clause is interpreted to mean that our audit will co-exist with and compliment the audit arrangements that may be specified in such law.

(vi) The words "body" and "authority" used in Article 149 of the Constitution, have not been defined either in the Constitution or in the Act, wherein also these words have been used. However, "authority" has been interpreted by the Attorney General of India to mean a person or body exercising power or command vested in it by virtue of provisions in the Constitution or Acts passed by the Parliament or the State Legislatures. "Body" has been interpreted by him to mean an aggregate of persons, whether incorporated or unincorporated. The expression 'body' would therefore include institutions or organizations set up as autonomous organisations under specific statutes or as a society registered under the Societies Registration Act, 1860 or Indian Trust Act 1882 or other statutes, voluntary organizations or non-governmental organizations, Urban and Rural local self government institutions, co-operative societies, societies or clubs etc.

(vii) The term 'body' and 'authority' includes a Company or Corporation. Thus, if a Company or Corporation is not covered by Section 19(1), 19(2) or 19(3) of the Act, it is open, to take up audit under Section 14(1), 14(2) or 20(2), as the case may be subject to the conditions specified in each section being satisfied.

The second condition in Section 14 is that the grant and/or loan must be paid from the Consolidated Fund. Cases in which the grants or loans are received by a body or authority through another body or authority which is itself financed by the Central or State Government, have to be excluded for purposes of audit under Section 14, unless it could be clearly established that the intermediary body or authority was a mere agency for remitting the grant/loan provided by Government.

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

The third condition in this section is to be read with the "Explanation" under the sub section. If the amount of the grant or loan or both to a body or authority in

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

The fourth condition for audit under section 14 is that audit is not intended to confine itself to the grant or loan and utilisation thereof, but has to cover all receipts and expenditure of the body or authority from whatever source they are derived. The type, scope, nature and periodicity of audit to be conducted is entirely at the discretion of the Comptroller and Auditor General under Section 23 of the Act.

With the amendment of the Act in 1984, an enabling provision has been made vide sub-section (2) of Section 14, for the audit by the Comptroller and Auditor General with the prior approval of the President/Governor of a State/Administrator of a Union Territory having a Legislative Assembly to audit all receipts and expenditure of any body or authority where the grants and/or loans to such body or authority from the Consolidated Fund(s) is not less than rupees one crore in a financial year.

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

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

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

(i) the authority or body is not a foreign State or International organisation.

(ii) the President/Governor/Administrator concerned may, if he is of the opinion, in public interest, by order, relieve the Comptroller and Auditor General after consultation with him, for making any such scrutiny in respect of any body or authority;

(iii) the right of access to the books and accounts of any corporation where the law establishing it (or the rules and regulations framed under that law) provides (which includes appointment by Government or any such authority under powers conferred by that law) for audit by an agency other than the Comptroller and Auditor General is available only with the authority of the President/Governor/ Administrator concerned. Such authorisation is made after prior consultation with the Comptroller and Auditor General and after giving the concerned corporation a reasonable opportunity of making representation with regard to the proposal.

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

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

3.2 Dutiesandresponsibilitiesinrelationtoauditofreceipts

Section 16 of the Act provides for audit of all receipts which are payable into the Consolidated Fund of India and of each State and of each Union Territory having a Legislative Assembly by the Comptroller and Auditor General of India. It also requires him to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and to make for this purpose such examination of the accounts as he thinks fit and report thereon.

Even prior to the enactment of the CAG Act, audit of receipts was entrusted to the Auditor General on consent basis. As per Para 13(2) of the "Government of India (Audit and Accounts) Order, 1936, the Auditor General could with the approval and on the request of the Governor General or Governor of any Province, audit the receipts of the Government.

3.3 Duties and responsibilities in relation to audit of accounts of stores and stocks

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

3.4 Duties and responsibilities in relation to audit of Government Companies

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

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

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

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

Under section 139 and 143 of the Companies Act 2013:

(1) the auditor of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, shall be appointed by the CAG,

(2) The CAG shall direct the manner in which the accounts of the Government company are required to be audited,

(3) the auditor shall submit a copy of the audit report to the CAG which shall include the directions, if any, issued by the CAG, the action taken thereon and its impact on the accounts and the financial statements of the company,

(4) The CAG shall have the right to conduct a supplementary audit of the financial statements of the Company by such person or persons as he may authorise in this behalf, and for the purposes of such audit require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form as the CAG may direct, and comment upon or supplement such audit report and any such comments upon or supplement to the audit report shall be sent by the company to every person entitled to copies of audited financial statements and also be placed before the annual general meeting of the company,

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

Under section 394 and 395 of the Companies Act 2013,

(1) where the Central Government is a member of a Government Company, the Central Government shall cause an annual report on the working and affairs of that company to be (a) prepared within three months of its annual general meeting before which the comments given by the CAG and the audit report is placed under the proviso to Section 143 (6) ; and (b) as soon as may be after such preparation, laid before both Houses

of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the CAG;

(2) where in addition to the central government, any state government is also a member of a Government Company, that state government shall cause a copy of the annual report prepared under Section 394 (1) to be laid before the House or both House of the state legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred to in Section 394(1).

(3) where Central Government is not a member of a Government Company, each State Government (s) which is member of that company, shall cause an annual report on the working and affairs of the company to be (a) prepared within the time specified in section 394 (1); and (b) as soon as possible laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section;

(4) The provisions of section 394 and section 395 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

3.5 Audit of Corporations established by Parliament

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

3.6 Audit of corporations established by States

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

the competence of a State Legislature to make provision in the enactment for audit by the Comptroller and Auditor General of any corporation established by it. The Act, however, contains an enabling provision in Section 19(3), whereby audit of corporations established by law by the legislatures of States and Union Territories can be entrusted to the Comptroller and Auditor General. It authorises the Governor of a State or the Administrator of a Union Territory having a legislature to request the Comptroller and Auditor General, in public interest to audit the accounts of such a corporation; this request can, however, be made only after consultation with the Comptroller and Auditor General and after giving a reasonable opportunity to the concerned corporation to make representations with regard to the proposal for such audit. On such a request being made, the Comptroller and Auditor General shall audit the accounts of such a corporation.

3.7 Laying of reports relating to accounts of Government Companies and Corporations

Under Section 19 A of the Act, the reports of the Comptroller and Auditor General in relation to the accounts of a Government Company or a Corporation audited under Section 19 are to be submitted to the Government or Governments concerned for being laid before the Parliament/legislature.

3.8 Audit of accounts of other authorities and bodies

Section 20 of the Act is another enabling provision, in terms of which audit of accounts of certain bodies or authorities, not covered by Section 19 or whose audit has not been entrusted by or under any law made by Parliament to the CAG, can be entrusted to him. Such entrustment can be made only in public interest and after giving a reasonable opportunity to the concerned body or authority to make representation with regard to proposal of such audit. The audit under Section 20(1) is to be entrusted on such terms and conditions as may be agreed upon between the CAG and the government concerned. Sub-Section (1) authorises the entrustment to the Comptroller and Auditor General of the audit of the accounts of any authority or body not otherwise entrusted to him by or under any law made by Parliament, by the President/Governor of a state/Administrator of a Union Territory having Legislative Assembly. Sub-section (2) provides that the Comptroller and Auditor General may propose to the President, the Governor of a state or the Administrator of a Union Territory having a Legislative Assembly to authorise him to undertake the audit of the

accounts of any body or authority not entrusted to him if he is of the opinion that such audit is necessary, in public interest, because of substantial investments in or advances made to such body or authority by the Central or State or Union Territory Government.

4. Other Provisions

4.1 Powers in connection with audit of accounts

Under section 18 of the Act, the Comptroller and Auditor General has the authority (a) to inspect any office of accounts under the control of the Union or a State, including treasuries and such offices responsible for keeping of initial or subsidiary accounts as submit account to him (b) to require the production of any accounts, books, papers or other documents which deal with or form the basis of or are otherwise relevant to the transactions to which his duties in respect of audit extend and (c) to put such questions or make such observations as he may consider necessary and to call for such information as he may require for the preparation of any accounts or report. Sub-section 2 of this section enjoins on the persons in charge of any office or department the accounts of which are inspected and audited by the Comptroller and Auditor General, to offer all facilities for such inspection and to comply with requests for information in as complete a form as possible and with all reasonable expedition. It may be noted that the Comptroller and Auditor General has also been given right of access to the books and accounts of bodies and authorities to be audited by him, specifically under section 15, 19(3) and 20.

4.2 Delegation of powers of the CAG

Section 21 authorises the Comptroller and Auditor General to delegate any power exercisable by him under the provisions of the Act, to any officer of his department, by general or special order. Under these provisions, the Indian Audit and Accounts Department functioning under him obtains the powers for performance of its duties on behalf of the Comptroller and Auditor General. The delegation is, however, subject to the condition that no officer shall be authorised to submit on behalf of the Comptroller and Auditor General any report which the Comptroller and Auditor General is required by the Constitution or the Government of the Union Territories

Act, 1963 to submit to the President or the Governor of a State or Administrator of a Union Territory having Legislative Assembly except during his absence on leave or otherwise.

4.3 Power of Central Government to make rules

Section 22 of the Act enables the Central Government to make rules after consultation with the Comptroller and Auditor General for carrying out the provisions of the Act in so far as they relate to maintenance of accounts.

4.4 Power to make regulations

Section 23 of the Act authorises the Comptroller and Auditor General to make regulations for carrying into effect the provisions of the Act, in so far as they relate to scope and extent of audit including laying down the general principles of Government accounting and the broad principles in regard to audit of receipts and expenditure for the guidance of the Government departments.

In exercise of such power, "Regulation on Audit and Accounts, 2007" have been made. The instructions given for audit as contained in the Manual of Standing Orders (Audit) and in other departmental publications issued under the authority of the Comptroller and Auditor General would also be covered under the provisions of this section.

4.5 Power to dispense with detailed audit

Section 24 of the Act authorises the Comptroller and Auditor General to dispense with, when circumstances so warrant, any part of detailed audit of any account or class of transactions and to apply such limited checks in relation to such accounts or transactions as he may determine. The provisions in the Memorandum of Secret Instructions regarding extent of audit and other circulars issued from time to time under the authority of the Comptroller and Auditor General on the quantum and extent would derive their authority from this section.

8

Annexure-I

RELEVANT PROVISIONS OF COMPANIES ACT 1956

617. Definition of "Government Company"

For the purposes of this Act, Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined.

619. Application of section 224 to 233 to Government Companies-

1) In the case of a Government company, the following provisions shall apply, notwithstanding anything contained in sections, 224 to 233.
2) The auditor of a Government company shall be appointed or reappointed by the Central Government on the advice of the Comptroller and Auditor- General of India:

Provided that the limits specified in sub-sections (1-B) and (1-C) of section 224 shall apply in relation to the appointment or re-appointment of an auditor under this sub -section.

3) The Comptroller and Auditor-General of India shall have power –
   (a) to direct the manner in which the company's accounts shall be audited by the auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such;
   (b) to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorize in this behalf; and for the purpose of such audit, to require information or additional information to be furnished to any person or persons so authorized on such matter by such person to persons, and in such form, as the Comptroller and Auditor General may, by general or special order direct.
4) The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor-General of India who shall have the right to comment upon , or supplement, the audit report in such manner as he may think fit.

5) Any such comments upon, or supplement to the audit report shall be placed before the annual general meeting of the Company at the same time in the same manner as the audit report.

9

Annexure-II

RELEVANT PROVISIONS OF COMPANIES ACT 2013

Extracts of provisions on Government Companies

2 (45): "Government company" means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

139 (5): Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

139 (7): Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

143(5): In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

143 (6): The Comptroller and Auditor-General of India shall within sixty (60) days from the date of receipt of the audit report under sub-section (5) have a right to,—

(a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorize in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorized, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and

(b) comment upon or supplement such audit report: Provided that any comments given by the Comptroller and Auditor General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

143 (7): Without prejudice to the provisions of this Chapter, the Comptroller and Auditor General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

394 (1): Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be—(a) prepared within three months of its annual general

meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

394 (2): Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred to in sub-section (1).

395 (1) : Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—

(a) prepared within the time specified in sub-section (1) of section 394; and

(b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.

(2) The provisions of this section and section 394 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

Note: The provisions of the Act shall come into force on such date as the Central Government may notify in the official gazette.