

Sarvesh Bisaria Vs. Uoi and Ors

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Court : Delhi

Decided On : Dec-03-2014

Judge : Rajiv Sahai Endlaw

Appellant : Sarvesh Bisaria

Respondent : Uoi and Ors

Judgement :

-* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

3. d December, 2014. + W.P.(C) 8502/2014 SARVESH BISARIA Through: Petitioner Petitioner-in-person. Versus UOI AND ORS Through: Respondents Mr. Sanjay Jain, ASG with Mr. Jasmeet Singh, CGSC, Ms. Pallavi Shali & Ms. Kritika, Advs. for UOI. Mr. R.V. Sinha with Mr. A.S. Singh, Advs. for R-3/CVC. CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL) seeks the following relief:

It is therefore, most respectfully prayed that Your Lordships may graciously be pleased to issue a writ of mandamus or any other suitable writ, order or directions to the respondents to treat the CAG Annual Reports are (sic for as) complaint/reference in terms of the provisions of CVC Act and Lok Pal and Lokayuktas Act and proceed further in accordance with the said statute in a time

bound manner, or may pass any other order or orders or directions as may deem fit and proper in the interest of justice, and also award costs in favour of the Petitioner.

against the respondents No.1&2 Union of India (UOI), respondent No.3 Central Vigilance Commission (CVC), respondent No.4 Lok Pal and the respondent No.5 Office of Comptroller & Auditor General (CAG).

2. Though the petition is filed by a practicing Advocate of this Court but in the entire petition, no basis in law, for the aforesaid reliefs claimed is disclosed. All that the petition does is:(i) give the history of Comptroller & Auditor Generals (Duties, Powers and Conditions of Service) Act, 1971 (CAG Act), by referring to Exchequer and Audit Departments Act, 1866 and the Government of India Act, 1935; (ii) plead the high respect which the reports of the CAG have enjoyed since times immemorial; (iii) reproduce Articles 148, 149 and 151 of the Constitution of India; (iv) reproduce Sections 15(1), 18(1) and 20(1) of the CAG Act; (v) plead the organizational structure of the Indian Audit and Accounts Department headed by the CAG; (vi) plead the importance of audit; (vii) plead the queries made by the petitioner to the office of the CAG and the replies received thereto; (viii) plead the history of CVC, leading to the Central Vigilance Commission Act, 2003 (CVC Act); (ix) reproduce Sections 8 & 17 of the CVC Act; (x) draw attention to the Lokpal and Lokayuktas Act, 2013 (Lokpal Act); (xi) plead the queries under the Right to Information (RTI) Act, 2005 made by the petitioner to the Lok Sabha and Rajya Sabha Secretariats and the reply received thereto; (xii) urge the grounds; (xiii) from the reply received from the Lok Sabha Secretariat contend that no punitive action has ever been taken by the Lok Sabha on the basis of the CAG report; (xiv) urge that since crores of rupees are spent on the office of the CAG and the independence of the CAG is unquestionable, Govt. has erred in not taking any action on the basis of the said reports; (xv) urge that the provisions of the CVC Act and the Lokpal Act should be used to take action on the basis of the CAG reports; and (xvi) urge that the Public Accounts Committee (PAC) of the Parliament to which the CAG reports are finally sent is a silent spectator and till date has not taken the CAG reports to their logical conclusion by referring them to the CVC or the Lokpal.

3. We at the outset only enquired from the petitioner appearing in person, whether not the petitioner was wanting us to rewrite the Constitution. Chapter V (titled Comptroller and Auditor General of India) of Part V (titled The Union) of the Constitution deals with the Comptroller & Auditor General of India (CAG). Article 148 therein prescribes for a CAG to be appointed by the President and the manner and terms and conditions of appointment and removal thereof. Article 149 thereunder prescribes the duties and powers of the CAG. Article 150 provides that the accounts of the Union and of the State to be kept in such form as the President may, on the advise of the CAG prescribe; and finally Article 151 provides that the reports of the CAG relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of the Parliament and the reports of the CAG relating to the accounts of a State shall be submitted to the Governor of the State who shall cause them to be laid before the Legislature of the State. It thus follows that it is the Parliament / Legislature of the State which has to peruse the audit reports of the CAG. Though it is not expressly provided but it also follows that it is the Parliament / Legislature of the State which has to thus take action also on the basis of the said reports.

4. The CAG Act also, by Section 11 thereof provides for the CAG to submit the accounts i.e. reports, to the President or the Governor of the State as the case may be and no further. Similarly, neither the CVC Act nor the Lokpal Act has any provision, empowering the CVC and / or the Lokpal constituted thereunder to act on the basis of the CAG reports. The petition though seeks a mandamus for the CVC and the Lokpal / Lokayukta to act on the basis of the CAG reports but does not cite, under which power / statute / principle. A writ of mandamus lies, only when the State or its instrumentalities, though required by any law to act in a particular manner, inspite of demand being made in that regard, have failed to act.

5. It was in this context that we had posed the query aforesaid to the petitioner in person.

6. Not only so, the matter is found to be no longer res integra. A Division Bench of this Court in CWP No.1716/2000 titled B.L. Wadhwa Vs. Union of India decided on 16th May, 2001 was concerned with the grievance that the functioning of the

CAG has been rendered irrelevant because of inaction of the Ministries and Departments of the Union of India and the States. It was the contention that there was no follow-up action on the reports of the CAG pointing out irregularities or illegalities. A direction to the Union, to file status report indicating action taken / proposed to be taken with reference to irregularities or illegalities pointed out by the CAG, was sought from the Court. A preliminary objection was however taken by the UOI to the maintainability of the petition, on the ground that the subject matter of the petition was within the specific domain of the Parliament and it would be inappropriate for the Court to give any direction as to how the Parliament should look at the matter and that such a direction, if issued, will transgress and interfere with the powers of the Parliament to act within its specified area of functioning. The Division Bench of this Court, with reference to Articles 122 and 212 of the Constitution of India inter alia to the effect that the validity of any proceedings in the Parliament shall not be called in question in the Court, held that once it is found that the Legislature has the power and privilege, it must be left to the House itself to determine, whether there in fact has been any breach of privilege. Further, the judgment of the Supreme Court in Pandit M.S.M. Sharma Vs. Dr. Shreekrishna Sinha AIR 1960 SC1186 was relied on as having held:

9.... no Court can go into those questions which are within the special jurisdiction of the Legislature itself which has the power to conduct its own business. It was further opined that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privilege, and in this regard, the Legislature is vested with competent jurisdiction to carry on its proceedings in accordance with its rules of business and mere non-compliance with the rules and procedures cannot be a ground for issuing a writ. In this connection, it was also observed that Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction.

The contention of the petitioner that even if no direction could be given to the Parliament, it could certainly be given to the concerned Ministries / Departments, was rejected and it was held:

10....The two aspects regarding the action to be taken in the report and follow-up action, if any, are closely interlinked and it would not be desirable to dissect them. It is within the domain of the parliamentary power to work out the modalities and procedures.

Accordingly, the petition was held to be not maintainable.

7. A Division Bench of the High Court of Sikkim in *Subba Associates Vs. Union of India* MANU/SI/0002/2005 was also concerned with a similar issue. In the said case, search and seizure operation under Section 132 of the Income Tax Act, 1961 were carried out on the basis of preliminary draft and unsigned report of CAG with regard to the business of lottery of the State of Nagaland. The final CAG report was subsequently laid before the Legislative Assembly of the State of Nagaland and was referred to the PAC. The Legislative Assembly found the CAG report to be unsustainable on facts. The contention before the High Court was that the CAG report which did not acquire legal authenticity could not be construed as information within the meaning of Section 132(1) supra. It was held, (a) that after the CAG report is laid before the Assembly, it is dealt with by the Rules and procedure of the Legislative Assembly, which govern and provide the manner in which the said report has to be dealt with; (b) that the rules of the Legislative Assembly required the same to be referred to the PAC of the Legislative Assembly; (c) that the PAC examined the correctness of the CAG report; the sittings of the PAC, as per the rules, are to be private; (d) that the PAC may direct that the whole or a part thereof or a summary thereof may be laid on the Table and no part of the evidence, report or proceeding of the PAC which has not been laid on the Table shall be open to inspection by anyone except under the authority of the Speaker; (e) that the evidence given before the PAC is not to be published by any member or by any other person unless it has been laid on the Table; (f) that the report of the PAC is to be presented to the Legislative Assembly; (g) that the CAG report thus is a legislative paper and is the property of the House and its members; (h) that it is the exclusive prerogative of the House and its members to deliberate on the same, as the report falls within the special jurisdiction of the House or its Committee; (i) that the Executive or Judiciary thus cannot be in legal and / or constitutional possession of the said report; (j) that even if any Executive

comes into possession of the said report, he cannot use the contents of the same for any purpose, as it is the exclusive prerogative of the House to deal with the same; (k) that the parliamentary or legislative papers cannot be dealt with by the Executive for any collateral purpose, as it would lead to conflict; (l) that Article 212 of the Constitution of India also prohibits the validity of any proceedings in the Legislature of the State to be called in question for any proceeding; (m) as per *Tej Kiran Jain Vs. N. Sanjiva Reddy* (1970) 2 SCC272 the matter pending before the Legislative Assembly and which is to be dealt with by the House, cannot be subject to scrutiny by the Executive or the Courts; (n) that the PAC conducts a review of the report of the CAG under the Legislative Assembly Rules; (o) that during the period of such review / investigation, no question on audit reports is permitted to be raised in the House; (p) that if the PAC recommends an action to be taken, the same is accepted and acted upon by the Government and action taken report submitted before the House, which is discussed on the floor of the House; (q) that when the House or its Committee assume exclusive jurisdiction, even to the extent of follow-up action taken on its reports by the Government, no Government authority can conduct parallel investigations; (r) that the Executive and the Courts will have no jurisdiction to base their belief or use the information contained in the CAG report, for the purposes of initiating any action; (s) that it is only the Legislative Assembly, which has the exclusive jurisdiction over the CAG report; (t) that the final report of the PAC is binding on the Executive, particularly any investigating authority that undertakes to perform an investigative function that is to be discharged and / or has already been discharged by the PAC; (u) that the CAG report, right from its inception is the property of the House, and the Executive cannot in any circumstance deal with the property of the House by treating it to be its own property; (v) that the CAG report cannot thus be the basis of a search and seizure under Section 132 of the Income Tax Act; (w) that the CAG report begins and terminates within the House and the provisions of Articles 122 and 212 of the Constitution of India are applicable thereto.

8. We find that SLP(C) No.8049/2006 preferred against the said judgment of the Sikkim High Court is still pending consideration.

9. Interestingly, a Division Bench of the Gauhati High Court also, in *M.S. Associates Vs. Union of India* MANU/GH/0322/2005 was concerned with the use of CAG report as information within the meaning of Section 132 of the Income Tax Act, with respect to same search and seizure operation which was the subject matter of the judgment of the Sikkim High Court supra. The High Court of Gauhati, though also independently concluded that the CAGs report is initially meant for the Parliament / Legislature and is undoubtedly a property of the House, went on to hold that for the purpose of starting an investigation into evasion of tax, the source of information is not material and when the Legislature itself has not restricted the authorities concerned under Section 132 supra from acting upon information which may be derived from the report of CAG which has not been laid / discussed by State Legislature it would be realistic to hold that the legislative intendment is that even if the authority concerned received information about evasion of tax from report of the CAG, there is no legal impediment on part of authorities concerned to act upon such information.

10. We do not find any SLP to have been preferred against the judgment aforesaid of the Gauhati High Court.

11. The aforesaid two judgments of the High Courts of Sikkim and Gauhati are also thus in consonance with the judgment supra of this Court in *B.L. Wadhwa*. No direction can be given by this Court, for the CVC or the Lokpal or for that matter, the government, to take any action on the basis of the reports of the CAG. The case built up by the petitioner is without any foundation and alas, without regard to the judgments. We are constrained to observe that an impression seems to be gaining ground that in filing a PIL, no law / precedents are to be studied.

12. Mention may however be made of the judgment of a Division Bench of this Court in *Gajendra Haldea Vs. State of NCT of Delhi* MANU/DE/2262/2007 concerned inter alia with the challenge to the creation of private monopolies in the power sector, under the Delhi Electricity Reforms Act, 2000. In support thereof, reliance was placed on the report of the PAC of Delhi Legislative Assembly which in turn was based on the comments of the CAG (in the Audit Report for Delhi-Year 2002-2003) with respect to the methodology adopted by such private monopolies

for determining AT&C losses and valuation of assets. The Division Bench, without noticing the earlier judgment in B.L. Wadhwa supra, held, (i) that it could not avoid taking note of reports of the PAC and CAG, which on basis of respective expertise had come to certain conclusions; (ii) that the Court however does not have means to assess the findings returned by the PAC or correctness of conclusions reached by the CAG; (iii) that the findings of the CAG deserve the most serious consideration at the hands of other constitutional functionaries; (iv) that the Court can certainly seek to know what action the GNCTD had taken on basis of fact finding reports of the CAG and PAC; (v) that though it is open to the GNCTD not to accept the CAG report, but the GNCTD must indicate its reasons in a reasoned decision. Accordingly, direction was issued to the GNCTD to take reasoned decision on the action proposed to be taken or not to be taken on basis of the CAG report.

13. We however find that vide interim order dated 24th August, 2007 in SLP(C) No.15007/2007 preferred against the aforesaid judgment, the operation thereof has been stayed. The SLP is found to be still pending.

14. Though the Division Bench of this Court in Gajendra Haldea appears to have taken a different view from that in B.L. Wadhwa but we do not still feel the matter to be res integra, in view of the subsequent judgments of the Supreme Court.

15. The Supreme Court, in Centre for Public Interest Litigation Vs. UOI (2012) 3 SCC1 was concerned with the challenge to the manner in which the Government had granted, what is commonly known as

2. Telecom Licenses. The petitioner, in support of its contention heavily relied on CAG Report. The Supreme Court however held that the CAG Report was being examined by the PAC and Joint Parliamentary Committee of Parliament, it would not be proper for the Court to refer to the findings and conclusions contained therein.

16. The Supreme Court, in Arvind Gupta Vs. Union of India (2013) 1 SCC393 dismissing the challenge to the validity of Performance Audit Reports of the CAG on the ground of being violative of the Constitution, also observed that the audit

reports which are submitted by CAG are, thus, subject to scrutiny by the Parliament or the Legislature of the State, as the case may be.

17. The learned ASG appearing on advance notice has also contended that the question is covered by the dicta of the Supreme Court in Arun Kumar Agrawal Vs. Union of India (2013) 7 SCC1 That petition filed in public interest challenged the approval granted by the Govt. of India for the acquisition of majority stake in Cairn Energy India Ltd. (CEIL) and sought a direction to the Oil and Natural Gas Corporation (ONGC) to exercise its right of pre-emption over the sale of shares of CEIL. Reliance was placed on some comments in the CAG report. The Supreme Court held that CAG report is always subject to scrutiny by the Parliament and the Government can always offer its views on the report of the CAG and the CAG report is always subject to the parliamentary debates and it is possible that the PAC can accept the concerned Ministry's objection to CAG report or reject the CAG report. It was further held that undisputedly CAG is a constitutional functionary but it is for the Parliament to decide, whether after receiving the report, to make comments thereon or not.

18. We may add that recently in Pathan Mohammed Suleman Rehmatkhan Vs. State of Gujarat (2014) 4 SCC156 the Supreme Court was concerned with the dismissal by the Gujarat High Court of a Public Interest Litigation primarily based on the report of CAG and seeking investigation by the Central Bureau of Investigation (CBI). The High Court held that CAG is not entitled to question the merits of the policy objectives of the State Government. W.P.(C) No.8502/2014 observing that though the CAG is a key figure in the system of Parliamentary control of finance but the report of the CAG is subject to scrutiny of the PAC and the Joint Parliamentary Committee and it would not be proper to refer to the findings and conclusions contained therein.

19. We may yet further add that the Supreme Court in Association of Unified Tele Services Providers Vs. Union of India (2014) 6 SCC110 concerned with the challenge to the order of audit by CAG of Tele Services Providers, explained that Parliamentary democracy envisages inter alia the accountability of the Council of Ministers to the Legislature.

20. The role of CAG Reports thus, is to enable the legislature to oversee that functioning of the Government and it is for the legislature to take action on the basis of CAG Reports or to direct the Government to take action on the basis thereof and till the legislature has not so directed, this Court cannot direct any action to be taken on the basis of the CAG Reports. The Supreme Court, in Centre for Environment & Food Security Vs. Union of India (2011) 5 SCC668 concerned with directions sought for proper implementation of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, ordered investigation by CBI in reference to the CAG Report, only after satisfying itself that the CAG Report had been accepted by the Government and the Government itself had directed follow up action in terms thereof. The petitioner herein however wants us to issue a mandamus, for the CAG Reports, even before they are placed before the Parliament / Legislature and before the Parliament / Legislature has accepted or rejected the same, to become the basis of investigation by CVC and / or Lokpal / Lokayukta. The same is clearly not permitted under the Constitutional scheme.

21. The petition is thus thoroughly misconceived and is dismissed. We however refrain from imposing any costs, inasmuch as, to our knowledge the petitioner is a regularly practising Advocate of this Court and in the matter of filing this petition appears to have been swayed by emotion, to set right the malady afflicting the system. RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE DECEMBER03 2014 Bs..

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