

Gupta and Gupta and anr. Vs. Comptroller and Auditor General of India

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Court : Delhi

Decided On : Mar-14-2013

Judge : Rajiv Shakdher

Appellant : Gupta and Gupta and anr.

Respondent : Comptroller and Auditor General of India

Advocate for Def. : Mrs. Biji Rajesh, Mr. Gaurav Kanth

Advocate for Pet/Ap. : Mr. Sumit Thakur

Judgement :

\$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 1345/2011
GUPTA AND GUPTA AND ANR Petitioners Through: Mr. Sumit Thakur,
Advocate. versus COMPTROLLER AND AUDITOR GENERAL OF INDIA
Respondent Through: Mrs. Biji Rajesh and Mr. Gaurav Kanth, Advocates.
CORAM: HON'BLE MR. JUSTICE RAJIV SHAKDHER % 1. ORDER 14 03.2013
In this writ petition, the main grievance of the petitioners appears to be that they
were appointed as joint statutory auditors of Agriculture Insurance Company of
India Limited (in short AICIL) for the financial years 2009-2010 and that mandate
ought to have continued for the next four (4) years in the ordinary course. 1.1 It
may be stated, at the very outset, that it is not disputed before me that, had the
mandate to audit AICIL continued, it would have come to an end in March, 2013.

2. The grievance of the petitioner is that, the petitioners engagement with AICIL was abruptly brought to an end after the first financial year, i.e. 2009-2010 whereas it ought to continue till 2012-2013.

3. The broad facts in this behalf, which have been, set out in the petition and are relevant as of today, are as follows:

3. 1 Petitioner No.2, who is a partner with petitioner No.1, claims to have qualified as a Chartered Accountant in 1969. He appears to be the senior most partner in the petitioner No.1 firm (hereinafter referred to as the petitioner firm). 3.2 On 31.8.2009, the said firm along with another firm of Chartered Accountants, by the name of, M/s Kishore & Kishore, were appointed as joint statutory auditors qua AICIL. It is not disputed that, pursuant to the appointment, both the petitioner firm as well as M/s Kishore & Kishore, the other Chartered Accountant firm, executed the work entrusted to them. The details of the scope of the work are not relevant for the purposes of adjudication of the issue raised and that which survives in the present writ petition. 3.3 Suffice it to say, even though the petitioner firm and M/s Kishore & Kishore were appointed as joint auditors, undisputedly, they furnished separate audit reports. 3.4 Insofar as the petitioner firm is concerned, during the course of audit, certain qualifications were made which had to be met by the auditing company, i.e. AICIL. 3.5 The Comptroller and Auditor General of India (in short the CAG) on its part, had conducted a supplementary audit, based on which certain Preliminary Office Objections (in short POMs) got generated. These POMs, were put to AICIL. AICIL, on its part responded to the same vide communication dated 8.10.2010, in so far the POMs were related. The rest were left to be answered by the statutory auditors, which included the petitioner firm. Copies of communication dated 08.10.2010 were furnished by AICIL to the petitioner firm as well as to M/s Kishore & Kishore. 3.6 Significantly, in respect of the three POMs which are set out herein below, the petitioner firm responded by admitting that errors had crept in their audit reports. The said three POMs are as follows:

6. Point no (b) of Item No.3.2 of Auditors Report of M/s. Gupta & Gupta had referred the amount of Rs.9.69 crore credit given to Corpus fund. This is factually incorrect in the Auditors Report. On verification, it has been found that correct

amount is Rs.9.63 crores.

7. Point no.(ii) of Item No.3.4 of Auditors Report of M/s. Gupta & Gupta had referred the amount of Rs.676.57 crores relating to IBNR (NAIS) provision as on 31/3/2010. The amount stated in the Auditors Report is factually incorrect. On verification, it has been found that correct amount is Rs.675.87 crores.

8. Item No.3.7 Auditors Report of M/s. Gutpa & Gupta had referred the amount of Rs.22.4 crores relating to liability of claims. The amount stated in the Auditors Report is factually incorrect. On verification, it has been found that correct amount is Rs.22.07 crores. 3.7 The reply, which was sent by the petitioner firm, merely categorized the said errors, which ran into several lakhs as inadvertent errors, which according to it, had crept in on account of typographical mistakes. The relevant portion of the petitioner firms reply is extracted herein below:

8. POM NOS.11.6 to 11.8: These were either typographical erros or change in original figures. We regret the inadvertent errors. However, in case the financial statements are to be revised as proposed by the Company the error will be corrected in the revised report... We, however, regret the inadvertent error which may not be material for the reader of the report. (emphasis supplied) 3.8 There was another significant POM, in respect of which, a response was sought from the petitioner firm. This POM related to the state of branch audit, in respect of which the petitioner firm had evidently reported as follows: in the light of the advice of IRDA, our reference to the certification of accounts by the branch auditors not being in formats prescribed should be considered as statement of facts with a purpose to draw attention, not a qualification. 3.9 While noting the above observations, the CAG on its part, in the POM, recorded the fact that contrary to the aforementioned statement the petitioner firm had actually qualified the report by stating that the audit returns received from the Branch (ROs) were not adequate for the purpose of their audit. The qualification was, apparently, entered in paragraph 4(c). The CAG also went on to note that, the petitioner firm had not set out the financial impact of the qualification, in their audit report. This was apart from the finding of the CAG, that the branch auditors had furnished adequate returns with proper disclosures in their branch audit returns. Faced with this, the

petitioner firm skirted the issue by responding that what it had stated was based on their professional judgment, pivoted on the facts, on record.

4. The petitioner firm went on to state that, the financial impact of paragraphs 3.1 and 3.3 was not set out in their audit report since, those paragraphs were not qualifications, but were intended to draw attention to the specific dispensation/relaxation given by IRDA. 4.1 A bare reading of the POMs issued by CAG, alongwith the reply furnished by the petitioner firm, would show that the petitioner firm had contradicted itself. If, as stated by the petitioner firm, there was no need for a qualification qua the branch audit then, where was the need to qualify its audit report. As rightly noted by CAG if there were qualifications then the petitioner firm had to go further and evaluate the financial impact of the qualifications and incorporate the same in its audit report. 4.2 This is apart from the fact that joint auditors did not furnish a joint/common statutory report. 4.3 Based on the aforesaid broad grievance, a writ petition was filed, on which, notice was issued by this Court, on 28.2.2011. A counter affidavit was filed by respondent No.1, i.e., the CAG, followed by a rejoinder by the petitioner. Respondent No.1, i.e., the CAG has also placed on record a surrejoinder. 4.4 On a perusal of the replies filed, what has come through is that, while the CAG has referred to the said POMs, of which I have made a mention above, it has gone on to state that they did not intend to penalise the petitioner and, therefore, fresh assignment in the form of new engagement was given to the petitioner firm. Admittedly, the petitioner has been engaged as a statutory auditor for Paradip Port Road Company Limited. The CAG has, however, defended its stand in not continuing the petitioner firm as a statutory auditor with AICIL on the ground that the said entity constituted a major auditee, and since, the petitioner firm did not meet, as per their policy of empanelment, the eligibility criteria it was not continued as a statutory auditor. This situation arose as the audit fee was raised by AICIL from Rs. 1.5 lacs to Rs. 1.60 lacs. The policy criteria insofar as it is relevant is extracted hereinafter: ..Selection of CA firms for appointment as statutory auditors of PSUs where audit fee is above Rs 1.50 lakh (Major Audits) (a) Criteria for short-listing eligible firms of CAs for allotment of Major Audits are as under: (i) The firm should have at least 6 CAs (out of which 5 should be full time partners and one could be a full time paid CA employee), which is indicative of capacity to handle big audits . (ii) At least one

partner should have an association of 10 years or more with the firm and at least 3 partners of the firm should have an association of 5 years or more with the firm and the remaining two should have an association of one year or more with the firm, to demonstrate stability over time. (iii) The firm itself should have been in existence for 10 years or more, to prove that it is a well established firm. (b) Allotment of major audits is based not only on the size of the firm considering the number of partners, and their association with the firm, number of Chartered Accountant employees, and the Zone in which the firms head office is located but also on the basis of factors such as sectoral experience, service tax paid by the firm on assurance services, capability of handling big audits, past performance, eligibility of the firm to conduct a particular audit, location of the firms branch offices etc. [1] Full time partner does not include A person who is (a) a partner in other firms (b) Employed full time/part time elsewhere, practicing in their own name or engaged in practice otherwise or engaged in other activity which would be deemed to be in practice under Section 2(2) of the Chartered Accountants Act, 1949.

5. The above mentioned facts are the broad contours of the case insofar as it is relevant today, when the initial period in respect of which the petitioners claim relief, is almost coming to an end. 5.1 It is the contention of the learned counsel for the petitioner that the CAG never found fault with the mode and manner in which the audit was conducted by the petitioner firm; there was no requirement in law for the petitioner firm to furnish a joint audit report and, lastly, the stand of the CAG that it did not fulfil the policy criteria for being engaged to conduct an audit of a major auditee such as AICIL, is factually erroneous.

6. On the other hand, Ms. Biji Rajesh, who appears for the CAG, submitted that there is no vested right in the petitioner firm in being continued for a full period of four (4) years. The mandate, in respect of that, if at all can only be given if the work is found satisfactory. The replies to POMs by the petitioner firm would show that there were issues, with regard to conduct of audit. It is the submission of Ms. Biji that, in any event, there was no termination of the mandate as mandate exhausted itself after the expiry of financial year 2009-2010. The petitioner firm, as indicated in CAGs sur-rejoinder, has not been penalised and has, in fact, been

given a mandate to audit another public sector undertaking, i.e. Paradip Port Road Company Limited. 6.1 It is also her submission that because the petitioner firm did not fulfil the policy criteria, to which reference has been made hereinabove, would itself indicate that it could not have continued as the auditor of AICIL after the expiry of the first financial year i.e. 2009-2010.

7. The issue which got crystallized, after hearing arguments on behalf of both the petitioner as well as the respondent was, in one sense, as to whether the stand taken by CAG that the petitioner firm did not fulfil the policy criteria, was a correct deduction.

8. In my view, this writ petition could have been disposed of simply by holding that the petitioner will not be disqualified from being engaged in future assignments by the CAG on the basis of the policy criteria, indicated in the CAGs sur-rejoinder. The reason for this is that Mr. Sumit, learned counsel for the petitioner, has drawn my attention to a certificate issued by the Institute of Chartered Accountants of India (in short ICAI), which is appended at page 452 of the paper book and is dated 13.2.2009. Evidently, the said whomsoever certificate of ICAI is indicative of the fact that the petitioner firm prima facie has within its fold the requisite number of Chartered Accountants with necessary experience. Since, CAG did not have the occasion, perhaps, to examine this matter threadbare as the underlying documents are not on record, mainly the partnership deeds etc., no firm finding could have been returned on this aspect of the matter by the CAG, without actually calling upon the petitioner firm to establish the same. 8.1 This exercise may, however, have been relevant if this Court were to decide the issue while, a substantial part of the tenure was still available, so that effective relief could have been granted to the petitioners.

9. Mr. Sumit, learned counsel for the petitioner, however, says that even this averment of the CAG that the petitioner firm did not meet the policy criteria, i.e., in other words, did not have as partners requisite number of Chartered Accountants with necessary qualification, is stigmatic and, therefore, would hamper future engagement.

10. According to me, this is not the scope of the present writ petition. The relief sought in the present writ petition does not seek any such declaration. Even otherwise, according to me, the stand taken by the CAG in the pleadings that the mandate to audit AICIL was not continued because the petitioner firm did not meet the policy criteria, cannot by itself be categorized, as being stigmatic. Even according to the common dictionary meaning, stigma would include any expression of opinion which discredits or imputes the reputation or integrity of a person. The stand taken by the CAG to the effect that the petitioner firm did not meet the policy criteria for empanelment as a statutory auditor qua a major auditee, in my view, cannot be stigmatic. 10.1 The very fact that the CAG has in no uncertain terms indicated that discontinuation of the petitioner firm as an auditor of AICIL was based on what, in their assessment, was the failure of the petitioner firm to meet the policy criteria shows that, no imputation was cast on the reputation or professional integrity of the petitioner firm or its partners. 10.2 In any event, since the petitioners claim that they fulfil the policy criteria of the CAG for engagement as statutory auditors qua a major auditee is an aspect, which would have to be considered afresh by CAG as and when the petitioner firm applies for such an engagement. In a partnership firm the position with regard to partners cannot remain static for all time to come. Therefore, at this stage when it seeks fresh empanelment, perhaps the petitioner firm may have to, not only put forth the certificate issued by the ICAI but may, also have to, place on record, other underlying documents such as the partnership deed, in case the same is demanded by the CAG. 10.3 The learned counsel for the respondent i.e. CAG has categorically stated before me that, for future engagement qua a major auditee, petitioner firms case would be considered uninfluenced by the stand taken by it, in the pleadings filed in this court, in the instant petition.

11. With this stand of the CAG on record, in my view, no further orders are called for. The writ petition has, in one sense, been rendered infructuous on account of the lapse of time.

12. The writ petition is disposed of. RAJIV SHAKDHER, J MARCH 14 2013 s.pal