

## JUDGMENT

**MOHSIN AKHTAR KAYANI, J.**----Through this writ petition, the petitioner has prayed for following relief:-

"In view of above, it is therefore, prayed that this Honourable Court in view of the facts and grounds forth hereinabove may graciously be pleased:-

- a. To declare that the respondents are not authorized to audit the accounts of the Petitioner Foundation as it does not fall within the ambit of Article 170(2) of the Constitution of the Islamic Republic of Pakistan read with sections 9 and 11 of the Auditor General's (Foundations, Powers and Terms and Conditions of Service) Ordinance, 2001;
- b. To declare that the letters dated 24-10-2018 and 13-11-2018 of the Respondent No.2 have no legal effect upon the petitioner Foundation and the respondents are refrained to act upon them till the disposal of the writ petition;
- c. And/or passing any other order as this Honourable Court may deem fit."

2. Brief facts referred in the instant writ petition are that the petitioner M/s. Telecom Foundation is a charitable organization established under the Charitable Endowment Act, 1890 and was notified under S.R.O No.1195(I)/91 dated 04.11.1991 published in official gazette on 27.11.1991; that the petitioner Foundation has been created for welfare of serving, retired employees and the dependants of the Pakistan Telecommunication Company, NTC, PTA, FAB and their subsidiaries; that as per claim of the petitioner neither the Federal Government or Provincial Government or other statutory autonomous bodies extended financial support to the petitioner nor any other donor agencies; that the petitioner generates funds at its own sources by renting out its premises, participating in tenders or other activities of like nature; that the petitioner has been successfully running various welfare schemes and countrywide TF School System where quality education is imparted on subsidized rate; that respondent No.2 called for audit of the petitioner vide letter dated 13.04.2018 on the ground that Supreme Court of Pakistan vide its order dated 07.02.2018 directed the Auditor General's Department to initiate the audit of the petitioner; that a similar letter was issued to the petitioner on 18.05.2018, which was responded through letter dated 29.05.2018.

3. Learned counsel for the petitioner contends that the petitioner foundation is charitable organization, which was established under the Charitable Endowment Act, 1890 and as per S.R.O, it is established that Rs.5,00,000/- was deposited at its inception and it is neither performing functions of government nor dealing with the affairs of government, therefore, the instant writ petition is not competent; that Board of Governors of the petitioner foundation is comprising of government officers but it does not mean that the petitioner foundation is controlled by the Federal Government and as such the petitioner foundation does not fall within purview of Article 170(2) of the Constitution of Islamic Republic of Pakistan 1973; that Article 170(2) of the Constitution of Islamic Republic of Pakistan, 1973 provides audit of accounts of Federal and Provincial Governments and the accounts of any authority or body established by, or under the control of the Federal or the Provincial Governments, which shall be conducted by the Auditor General in terms of Auditor General's (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001, whereby minimum requirement of application of law and exercise of jurisdiction by Auditor General is to be seen in the light of section 9 of the Ordinance, in which any body or authority, which is substantially financed by loans or grants from consolidated fund of Federal Government falls within purview of Auditor General and as such government has not funded the petitioner. In support of his arguments, learned counsel for the petitioner has relied upon 2018 SCMR 407 Sindh Rural Support Organization (SRSO) v. Federation of Pakistan).

4. Conversely, learned A.A.G. contends that in terms of Rules of Business 1973, the petitioner foundation is attached department of Ministry of Information Technology and Telecommunication and even the petitioner foundation represents its organizational working under the command of Ministry Information Technology and Telecommunication, whereby

Managing Director of the said company is appointed through Government of Pakistan; that seed money was provided by the Federal Government at the time of inception of the petitioner foundation as reflected from the record and as such in terms of Article 199(3) of the Constitution of Islamic Republic of Pakistan 1973, the petitioner's functions and working comes under the business of government as defined in the Rules of Business, 1973; that the Auditor General's (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001 was promulgated prior to 18th amendment in the Constitution of Islamic Republic of Pakistan, 1973, whereas Article 170(2) has been incorporated after 18th amendment, which prevails the present circumstances and as such any immunity claimed by the petitioner or any other entity of similar nature is not absolute as held in the recent judgment reported as 2013 SCMR 1880 (Hamid Mir and another v. Federation of Pakistan and others).

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the petitioner is aggrieved with the action initiated by Auditor General of Pakistan, whereby audit of the petitioner foundation has been initiated. The petitioner foundation claims that they are not amenable under Auditor of General's (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001 as they did not receive any financial assistance from Government of Pakistan nor they have been established through the financial support of Government of Pakistan through consolidated fund.

7. Record further reveals that the petitioner foundation was established vide S.R.O No.1195(I)/91, dated 04.11.1991 under the Charitable Endowment Act, 1890. The relevant extract of the S.R.O Nos.1194(I)/91 and 1195(I)/91 are reproduced as under: -

"S.R.O. 1194(I)/91.- WHEREAS the Board of Directors of the Pakistan Telecommunication Corporation established under the Pakistan Telecommunication Corporation Ordinance, 1990 (XVI of 1990) has applied for the vesting in the Treasure of Charitable Endowments for Pakistan of the amount of five lacks rupees to be applied by the said Corporation in trust for a charitable purpose, known as Telecom Foundation, the objects of which would extend to the whole of Pakistan:

Now, THEREFORE, in exercise of the powers conferred by subsection (1) of section 4 of the Charitable Endowments Act, 1890 (VI of 1890), the Federal Government is pleased to order that the said amount shall vest in the Treasurer of Charitable Endowments for Pakistan and that the said amount and the income thereof shall be applied in accordance with terms of scheme to be settled under section 5 of the said Act.

S.R.O. 1195(I)/91.- WHEREAS the Board of Directors of the Pakistan Telecommunication Corporation established under the Pakistan Telecommunication Corporation Ordinance, 1990 (XVI of 1990) has applied for settlement by the Federal Government of a scheme for administration of the amount of five lacks rupees which is to be applied in trust for a charitable purpose, to be known as the "Telecom Foundation" and which is to be vested in the Treasurer of Charitable Endowments for Pakistan:

NOW, THEREFORE, in exercise of the powers conferred by subsection (1) of section 5 of the Charitable Endowments Act, 1890 (VI of 1890), the Federal Government is pleased to settle the scheme set out in the Schedule below for administration of the said Telecom Foundation."

8. The above referred S.R.Os clarifies the position that the petitioner has been established on the initiative of Board of Directors of the petitioner under the Pakistan Telecommunication Corporation Ordinance, 1990 and the Board of Directors applied for settlement to the Federal Government for scheme of administration of amount of Rs.5,00,000/-. This aspect declares that amount of Rs.5,00,000/- is seed money, which was provided by the Federal Government, who was pleased to settle the scheme set out in the schedule for administration, whereas section 1-A of the Scheme for the Administration of Telecom Foundation defines the beneficiaries, which means persons who have served or reserving the Corporation or any of its subsidiaries

and are citizen of Pakistan, hence, the beneficiaries are entitled for the benefit of the said scheme, whereby section 2 of the Scheme for the Administration of Telecom Foundation provides aims and objectives, which are reproduced as under:-

"2. Aims and objects.- The trust properly or income thereof may be applied for all or any one of the following purposes, namely.

- i) to delay all proper costs, charges and expenses of or incidental to the administration of the Foundation:
- ii) to extend and improve medical facilities to the beneficiaries and their dependants;
- iii) to advance, whether as a loan or stipend grants to the dependents for the purpose of education at approved institutions both technical and others;
- iv) to provide for construction of low-cost houses of various categories and their sale on terms and conditions to be decided by the Board to beneficiaries:
- v) to provide for rest houses/centers which the beneficiaries and their dependents may use for rest and recreation at such terms and conditions as the Board may decide:
- vi) to provide any other facility or help which the Board may decide from time to time and which comes under the broad terms of "Welfare" of the beneficiaries:
- vii) to provide lump sum grants at a rate to be decided by the Board in case of death of or injury to be a beneficiary;
- viii)to open, finance, run, maintain, aid, promote and continue educational and vocational schools, colleges or other similar institutions for the beneficiaries and their dependents; and
- ix) to establish, maintain and run boarding houses and residential institutions for the beneficiaries and their dependents."

9. Similarly, the administration has been explained in section 3 of the Scheme for the Administration of Telecom Foundation, which includes [Secretary, Communications Chairman], [Chairman Pakistan Telecommunication Corporation Vice Chairman], [Chief Executive/Managing Director of the Telecom Foundation Member] and other officials of PTC and TIP, however, vide notification dated 03.06.2011 issued by Government of Pakistan, Secretary CADD through S.R.O. by way of amendment administration of the foundation has been changed in the following manner:-

i.	Secretary, Ministry of Information Technology	Chairman
ii.	Additional Secretary, Ministry of Information Technology	Vice Chairman
iii.	Managing Director, Telecom Foundation	Member
iv.	Joint Secretary, Capital Administration and Development Division (dealing with Social Welfare subject).	Member
v.	Executive Vice-president (Finance), PTC	Member
vi.	One retired officer of PTCL not below the rank of EVP to be nominated by the Board for three years.	Member
vii.	General Manager (Finance) or Secretary, Telecom Foundation.	Member

This aspect provides the insight of management in the petitioner foundation, which has been controlled and managed by the representatives of the Federal Government.

10. The aims and objects of the petitioner foundation spell out the benefit extended to the beneficiaries referred in section 2(a) of Scheme for the Administration of Telecom Foundation but not limited to medical facilities, education, low cost houses, re-creation, finance facilities,

vocational institutions and boarding houses etc, whereas all these functions are otherwise functions of state towards the citizen under the Constitution of Islamic Republic of Pakistan, 1973. Therefore, this Court is of the view that the functions performed by the petitioner are otherwise functions of the state. The minimum requirements regarding the affairs of the Federation as held in PTD 1975 SC 244 (Salahuddin and others v. Taj Muhammad Khanzada) are that:

"Now, what is meant by the phrase "performing functions in connection with the affairs of the Federation or a Province." It is clear that the reference is to governmental or state functions, involving, in one form or another, an element of exercise of public power. The functions may be the traditional police functions of the State, involving, the maintenance of law and order and other regulatory activities; or they may comprise functions pertaining to economic development, social welfare, education, public utility services and other State enterprises of an industrial or commercial nature. Ordinarily, these functions would be performed by persons or agencies directly appointed, controlled and financed by the State, i.e., by the Federal Government or a Provincial Government. However, in recent years, there has been manifest a growing tendency on the part of Government to create statutory corporations for undertaking many such functions, particularly in the industrial and commercial spheres, in the belief that free from the inhibiting effect of red tapism, these semi autonomous bodies may prove more effective, flexible and also profitable. Inevitably, Government retains effective control over their functioning by appointing the heads and other senior officers of these corporations, by regulating their composition and procedures by appropriate statutes, and by finding funds for financing their activities.

Examples of such statutory corporations are the National Bank of Pakistan, the West Pakistan Water and Power Development Authority, the National Shipping Corporation, the Agricultural Development Bank of Pakistan, and the large number of Universities functioning under their respective statutes. On account of their common attributes, as mentioned in the preceding paragraph, they have all been regarded as persons performing functions on connection with the affairs of the Federation or a Province.

(See Deputy Managing Director, National Bank of Pakistan v. At-ul-Haq (PLD 1963 SC 201), Wali Muhammad v. General Manager, WAPDA, Lahore (PLD 1964 Pesh. 167), Chairman, East Pakistan Industrial Development Corporation v. Rustam Ali (PLD 1966 SC 848), Muhammad Ashraf Pervaiz v. Agricultural Development Bank of Pakistan (PLD 1973 Lah. 425), Abdur Razzaq v. WAPDA (PLD 1973 Lah. 188) and R.T. II. Janjua v. National Shipping Corporation (PLD 1974 SC 146).

However private organizations or persons, as distinguished from government or semi government agencies and functionaries cannot be regarded a person performing functions in connection with the affairs of the Federation or a Province simply for the reason that their activities happen to be regulated by laws made by the State. Accordingly, a joint stock company, incorporated under the Companies Act, for the purpose of carrying on commercial or industrial activity for the benefit of its shareholders, cannot be regarded as a person performing State functions, just for the reason that its functioning is regulated by law or that the distribution of its manufactured products is, subject to governmental control in the public interest. The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving same exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Government; and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not."

Similarly, such requirements have also been appreciated and noted in case reported as PLD 2010 SC 676 (Pakistan International Airline Corporation v. Tanweer-ur-Rehman and others), wherein it has been held that:

"12. Now let us see what is meant by the expression 'performing functions in connection with the affairs of the Federation'. The expression clearly connotes governmental or State functions involving an element of exercise of public power. The functions may be the traditional police functions of the State, involving the maintenance of law and order or they may be functions concerning economic development, social welfare, education, public utility services and other State enterprises of an industrial or commercial nature. Generally, these functions are to be performed by persons or agencies directly appointed, controlled and financed by the State; either by Federation or a Provincial Government. On the other hand, private organizations or persons, as distinguished from Government or Semi-Government agencies and functionaries, cannot be regarded as a person performing functions in connection with the affairs of the Federation or a Province, simply for the reason that their activities are, regulated by laws made by the State. The primary test must always be:

- (i) whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power;
- (ii) whether the control of the organization vests in a substantial manner in the hands of Government; and
- (iii) whether the bulk of funds is provided by the State.

If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province, otherwise not [see *Salahuddin v. Frontier Sugar Mills and Distillery Ltd.* (PLD 1975 SC 244)].

13. Now we have to see whether the functions entrusted to the appellant-corporation are indeed functions of the State involving some exercise of sovereign or public power. The expression 'sovereign power' has been defined in Black's Law Dictionary 6th Ed. (1990) as "that power in a State, to which none other is superior or equal, and which includes all the specific powers necessary to accomplish the legitimate ends and purposes of government". The expression 'public power' has not been defined in any legal instrument, however, the word 'public' means "the whole body politic, or the aggregate of the citizens of a State, district or municipality" whereas the word 'power' means "the right, ability, or faculty of doing something" [Black's Law Dictionary 6th Edn. (1990)]. The above definitions of words 'public' and 'power' collectively suggest that 'public power' means "the right or authority vested in the whole body politic or the aggregate of the citizens of a State, District or Municipality to do something".

14. In order to understand the above proposition, it would be advantageous to have a glance to *Maqsood Ahmed Toor v. Federation of Pakistan* (2000 SCMR 928) and *Aitchison College v. Muhammad Zubair* (PLD 2002 SC 326). In *Maqsood Ahmed Toor's* case (supra) it has been held that an organization, not performing the functions of the State involving some exercise of the public powers, would not fall within the definition of a person. However, while applying the above referred tests in *Aitchison College's* case (supra), this Court observed that "we feel no hesitation in drawing inference that the Board of Governors, Aitchison College, Lahore headed by the Governor of the Province as its President along with other officers i.e. Secretaries Education, Finance and General Officer Commanding as well as unofficial Members are involved in providing education which is one of the responsibility of the State and by taking over its management and control the Board, exercises sovereign powers as well as public powers being a statutory functionary of Government who in order to provide it full legal/Constitutional protection had brought it into the folds of its Education Department by amending the Provincial Rules of Business as back as in 1994 and even if for sake of arguments if it is presumed that no financial aid is being provided to the College from the Provincial Public exchequer, even then, the College remains in dominating control of the Provincial Government through Board of Governors; therefore, the above test stands fully satisfied and we are persuaded to hold that

organization of the Aitchison College, Lahore falls within the definition of a person". Likewise, in *Ziaullah Khan Niazi v. Chairman Pakistan Red Crescent Society* (2004 SCMR 189), while discussing the status of the Pakistan Red Crescent Society, it has been observed that "the respondent-Society was constituted by the provisions of section 2 of the Pakistan Red Crescent Society Act, 1920; its operational area covers the whole of Pakistan; the President of Islamic Republic of Pakistan is the President of the Society as provided by section 3 of the Act; by section 4 of the Act it is a body corporate having perpetual succession and a common seal with power to hold and acquire property, movable and immovable and may sue or be sued by the name of the Society; as enumerated in the General Principles of Society, its object and principal aims include the prevention and alleviation of the suffering with complete impartiality both at national and international level. The Society cannot be treated as a person performing functions in connection with the affairs of the Province; therefore, the employees of the Society cannot be treated as civil servants of the Province of Punjab, by any stretch of imagination". Subsequently, in *Pakistan Red Crescent Society v. Nazir Gillani* (PLD 2005 SC 806), the Court while following the dictum laid down in above mentioned case held that "a careful perusal of the above mentioned observations would reveal that it has been decided in a categorical manner that the Pakistan Red Crescent Society cannot be treated as a person performing function in connection with the affairs of the Federation or Province; we are conscious of the fact that the President of Pakistan is the President of the Pakistan Red Crescent Society and Minister Health, Government of Pakistan, is the ex officio Vice-President but it would have no substantial bearing on the legal character of the Society because no budget allocation has been made by the Federal Government and no share capital is involved; the Pakistan Red Crescent Society generates its income from the donation made by public and allocation from International Agencies having a charitable character. It is pertinent to point out that under section 5 of the Act the management and control of the affairs of the Society exclusively vests in the Managing Body; ..In the light of what has been mentioned hereinabove, the only inescapable conclusion would be that Federal or Provincial Governments have nothing to do with the affairs of the Society and vice versa". It has been further held that "a careful perusal of the said rule would indicate that the "Managing Body" is competent to frame rules for the management, control and procedure of the Society; the rule-making powers has been conferred upon the Managing Body in an unambiguous manner and from whatever angle it is interpreted no role for framing of rules has been assigned to the Government and more so no such role has been reserved by the Government for itself; it is worth-mentioning that no sanction or approval from any quarter including the Government is required for framing of such rules, which shall be framed by the "Managing Body" alone. It can thus safely be inferred that the powers qua rule-making exclusively fall within the jurisdictional domain of "Managing Body" and the ultimate conclusion would be that the rules or regulations framed by the Managing Body are non-statutory."

15. Another key factor in determining the status of an organization to be within the effective control of the Government is the factum of having controlling shares in it by the Government. This proposition has been elaborately examined by a larger Bench of this Court in *Muhammad Mubeen-us-Salam v. Federation of Pakistan* (PLD 2006 SC 602), wherein following the rule pronounced in *Printing Corporation of Pakistan v. Province of Sindh* (PLD 1990 SC 452), the Court held that "the fact that the part of the capital has been subscribed by the Government does not in any manner establish that the Federal Government controls the affairs of the appellant and the workers of the appellant are in the service of the State; similarly, if the Government has provided working capital, it would be a loan to the appellant, which has to be repaid; therefore, it cannot be said by any reason or logic that by doing so the Federal Government controls the affairs of the appellant or the workers of the appellant could be considered to be in the service of the State". It is also pertinent to mention here that in *Muhammad Idrees v. Agricultural Development Bank of Pakistan* (PLD 2007 SC 681) the impact of *Muhammad Mubeen-us-Salam's* case (supra) was reconsidered but as far as the

above findings are concerned, these were not disturbed for the reason that there was no challenge to it.

16. A careful perusal of the above referred case law reveals that the facts of each case are distinct and different from each other but the question of law, to some extent, is similar i.e. whether any organization/corporation/society is performing functions in connection with the affairs of the State."

12. The other important element is seed money of Rs.5,00,000, which has been notified in S.R.O. dated 04.11.1991, through which the petitioner has been established under the Charitable Endowments Act, 1890 further justifies the command and control of Federal Government although the petitioner has taken specific plea that the said amount has been re-deposited/returned to the Federal Government, however, proof in this regard has not been placed on record suggesting that any amount provided by the Federal Government was returned.

13. Besides the above referred background, the petitioner foundation is working under control of Ministry Information Technology and Telecommunication as referred in Item Nos.17A and 18 of the schedule of the Rules of Business, 1973, even its Board of Director has been notified by the Government of Pakistan on 03.06.2011, wherein Secretary, Ministry of Information has been nominated as Chairman along with four members, that covers the function test as laid down by the Islamabad High Court in case reported as 2015 PLC (C.S.) 710 Islamabad (Dr. Kamran Jahangir v. Chancellor Shifa Tameer-e-Millat University).

14. The Managing Director of the petitioner is also appointed by Ministry of Information Technology and Telecommunication, whereas Ministry of Law and Justice while dealing with similar proposition has given its point of view, whereby it has been held that the petitioner has 55% shares of Pakistan Datacom Ltd. and it falls within Public Sector Company (Corporate Governance) Rules, 2013 despite the fact that it has been established under the Charitable Trust under Endowment Act, 1890 but its managing authority has been established under Public Sector Company (Corporate Governance) Rules, 2013 and the petitioner has no independent authority to appoint Managing Director, which further substantiates that controlling authority vests with Government.

15. I have gone through the Article 170(2) of the Constitution of Islamic Republic of Pakistan 1973, which is reproduced as under:-

170. Power of Auditor-General to give directions as to accounts. [(1)] The accounts of the Federation and of the Provinces shall be kept in such form and in accordance with such principles and methods as the Auditor-General may, with the approval of the President, prescribe.

[(2) The audit of the accounts of the Federal and of the Provincial Governments and the accounts of any authority or body established by, or under the control of, the Federal or a Provincial Government shall be conducted by the Auditor-General, who shall determine the extent and nature of such audit.]"

16. The above referred article has been included by way of Constitutional amendment in the year 2010, whereby the powers of Auditor General to give directions as to accounts have been explained, even it empowers and authorized the Auditor General to exercise its jurisdiction upon any authority or body established by or under the control of Federal Government or Provincial Government, such wide and exclusive authority is only meant to protect the legitimate right and interests of the state on behalf of the citizen in terms of Constitution of Islamic Republic of Pakistan, 1973.

17. The basic judgment, which has been relied upon by both the sides is judgment of Hon'ble Sindh High Court reported as PLD 2017 Sindh 79 (Sindh Rural Support Organization (SRSO) through Authorized Attorney v. Federation of Pakistan through Secretary Cabinet Division and 3 others). However, the apex Court in judgment reported as 2018 SCMR 407 (Sindh Rural Support Organization (RSO) v. Federation of Pakistan and others) while dealing

with the proposition also considered provisions of sections 9 and 11 of Auditor General's (Functions, Powers and Terms and Conditions of Service) Ordinance, 2001 and held as under:-

"In terms of provisions noted above, any body and or authority that is in receipt of amount not less than five million rupees and or where the amount of such grant for loan is not less than 51% (fifty one percent) of the total expenditure out of Federal, Provincial consolidated funds or of any District, such authority or body is categorized as "substantially financed body and or authority" and falls within the realm of Auditor-General of Pakistan. Admittedly from the own showing of the petitioner entire finding for the purposes of its activity are provided by the Provincial Government, it cannot be lost sight of the fact that the petitioner is fully Government funded initiative. The Auditor General of Pakistan, in exercise of its authority per mandate of constitution may conducting such studies and analysis and audit of such "substantially financed authority or body" from time to time as may be required by the Federal, Provincial or District Government (section 10 *ibid*) and to carry out scrutiny of the accounts by which the sanctioning authority satisfies itself as to the fulfillment of the conditions on which such grant or loan was given to any such substantially funded body and or authority (section 11 *ibid*). Thus it could be seen that the purpose and object of audit as mandated under the constitutional dispensation serves entirely different purpose than the statutory annual audit of a company including one licensed under section 42 of the Companies Ordinance, 1984 (per sections 252 to 260 of the Ordinance, 1984), which essentially relates to statutory compliance and to keep a vigil and eye on financial health, misfeasance and or malfeasance of the company by the, directors, shareholders and the regulatory authority i.e. Securities and Exchange Commission of Pakistan, non-compliance thereof is visited by penal consequence. Role of Auditor General of Pakistan is constitutional and as noted above, is much wider than statutory auditors under the Ordinance, 1984 *ibid*. It is an Auditor General who has to determine as to how the accounts in respect of funds and or loan received by the 'substantially funded bodies and or authorities' are to be kept, in what form and manner, in accordance with such principles or the methods as may be determined in accordance with rules and regulations as may be framed thereunder. Purpose of audit of 'substantially funded bodies and or authorities' is to enable the respective Federal Provincial and District Government make informed opinion that such funds have been put to proper use for the purpose it was placed at their disposal in best possible, effective and in a most transparent manner. Petitioner-company is "substantially financed body" within the contemplation of section 9 *ibid*; thus liable to audit of receipt and expenditure by the Auditor General of Pakistan, cannot be absolved from such audit as directed through the impugned notice. Section 11 of the Order, 2001 gives right to the Auditor General of Pakistan to have access, after giving reasonable notice in advance, to examine books and account of the "substantially financed body", therefore, no exception to the impugned judgment could be taken."

18. The above referred view of the apex Court further clarified the authority of Auditor General of Pakistan. The conditions for application of Auditor General's functions enumerated in the Ordinance, 2001 *ibid* are only to be applied where the grant or loan was given to the body or authority, which has subsequently been funded. The purpose behind the audit of any company or the organization is that the funds have been put to proper use for the purpose to be placed at the disposal in the best possible effective and in most transparent manner, therefore, no organization, body corporate or authority can claim the grievance against such basic concept of transparency. Article 170(2) of the Constitution of Islamic Republic of Pakistan, 1973 has enlarged the scope of the Auditor General of Pakistan and there is no denial that Rs.5,00,000/- was provided by Federal Government as seed money. Such aspect has further been strengthened in Sindh Rural Support Organization (SRSO) case *supra*, wherein it has been held as under:-

"Another significant aspect that is lost sight by the learned ASC for the petitioner is sections 9 to 11 of the Ordinance, 2001 *ibid*. When the provision of the Articles 169 and 170 of the Constitution, 1973 noted above are read together with sections 8, 9, 10



and 11 of the Ordinance XXIII of 2001 (PLD 2001 SC 546) as amended, it is abundantly clear that Auditor General has jurisdiction in relation to the accounts of the Federation and of the Province and district and so also the accounts of "any authority or body established by the Federation and or a Provinces" within the contemplation of Article 169 and so also sub-Article (2) (of Article 170 of the Constitution).

9. On bare reading Constitutional mandate as reproduced in the preceding paragraph. It is abundantly clear that it is the account of the Federation, Province and the District as the case may be that needs to be audited and secondly; in respect of "any authority or body established by under the control of Federal or Provincial Governments". It is true that the petitioner is neither any authority nor a body established by or under the control of Federal or Provincial Government, but the test that needs to be run for the purposes of determining the authority of the Auditor General to carry out the audit is in respect of the all sums of money either in the form of loan and or grants doled out of the consolidated funds of the Federation, Provinces or any District Governments and placed at the disposal of any authority or body; for utilization and spending"

19. The Apex Court has considered it appropriate to apply the principles discussed above and type of company or authority for the purpose of audit where no budgetary allocation has been received by such type of companies or organization but despite this fact the Auditor General was allowed to continue with the audit. The apex Court while rendering judgment in a case reported as 2013 SCMR 1880 (Hamid Mir and another v. Federation of Pakistan and others) has given certain directions in Para 27(b), which is reproduced as under:-

"27. In light of the discussion above, we hold, declare and direct that:-

(a) Sub-Rule (5) of Rule 37 of the General Financial Rules, whereby the actual accounts for secret service expenditure are taken beyond the jurisdiction of the Auditor General, is illegal, unconstitutional, and of no legal effect;

(b) The Auditor General, in order for him to fulfill his duties under Articles 169 and 170 of the Constitution, is not only authorized but also obliged to seek access to any and all records actually maintained by all federal and provincial governments, as well as all entities established by or under the control of the federal and provincial government, regardless of the designation of such records as secret or otherwise."

20. The petitioner has failed to justify any of its legal ground, which excludes it from the purview of Auditor General of Pakistan. Learned counsel for the petitioner has been confronted to explain the circumstances, in which the petitioner foundation being charitable organization is aggrieved with the audit, which is meant for transparency and protection of the beneficiaries referred in the scheme for administration of petitioner foundation, hence, the Foundation being a juristic person cannot claim exemption from the audit nor the petitioner foundation claims to be aggrieved against the principle of transparency, which is based upon fairness, even otherwise when no mala fide has been attributed to Auditor General of Pakistan, whereby his role has been defined in the Constitution of Islamic Republic of Pakistan, 1973 for the purpose of effective audit of authority, organization, company, which finally gives complete insight and benefit to the general public, who are citizens of Pakistan, however, learned counsel for the petitioner could not substantiate his stance through any confidence inspiring legal backing.

21. In view of above discussion, the instant writ petition is not maintainable, therefore, the same is hereby DISMISSED.

22. At the time of filing of instant writ petition, the petitioner filed. C.M. No.01/2018 and prayed for suspension of audit proceedings, however, this Court directed the respondents to continue with the audit of the petitioner foundation for the year 2018-19 and restricted the Auditor General to the extent of its notification.

23. The Auditor General of Pakistan is directed to notify the audit findings of the petitioner foundation for the year 2018-19 within three days from the date of receipt of copy of this judgment.

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