

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.97 of 2016

Saudi Pak Industrial & Agricultural Investment Company Limited.

Vs.

The FOP through Secretary, Cabinet Division & 3 others.

Petitioner's by: Azid Nafees, Advocate.

Respondents by: Syed Hasnain Ibrahim Kazmi, DAG.

Date of hearing: 13.04.2016.

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AAMER FAROOQ, J.- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (**the Constitution**) the petitioner has assailed letter dated 31.08.2015 whereby the petitioner has been asked to render cooperation regarding its audit.

02. The facts, in brief, are that the petitioner is a public limited company (unlisted) and is registered under the Company laws of Pakistan. It was established in pursuance of a joint venture agreement between the Kingdom of Saudi Arabia and Islamic Republic of Pakistan in 1980. In the referred joint venture agreement 50% of the shares in the Company are held by Kingdom of Saudi Arabia and the remaining 50% by the State Bank of Pakistan in the name of Government of Pakistan. Vide the impugned letter the respondents No.2 to 4 have expressed their desire to conduct audit of the petitioner company, which was resisted and has been impugned in the instant petition.

03. Learned counsel for the petitioner, inter alia, submitted that respondents No.2 to 4 are seeking to conduct audit of the petitioner company under Article 174(2) of the Constitution which is not applicable in case of the petitioner inasmuch as it is not a company under the control of Federal Government. In this behalf it was contended that Federal Government owns 50% shares in the company and the remaining shares are held by the Kingdom of Saudi Arabia; that the Board of Directors comprises of six (6) Members including Vice Chairman & Deputy Chairman; the Chairman is to be a nominee of the Kingdom of Saudi Arabia and Deputy Chairman is to be a nominee of Government of Pakistan and in case of division the Chairman has casting vote meaning thereby the control is exercised by the Kingdom of Saudi Arabia. Learned counsel also submitted that respondents No.2 to 4 have issued the impugned letter in pursuance of the judgement of the Hon'ble Supreme Court of Pakistan dated 08.07.2013 in CMA No.3330, 3470 and 3594/2013 in Constitutional Petition No.105/2012, however, the petitioner does not fall in the list of bodies enumerated in para-8 of the referred decision.

04. The learned Deputy Attorney General, inter alia, contended that in addition to the list contained in the judgement of the Hon'ble Supreme Court of Pakistan it also provided the criteria for conducting the audit of the entities created or controlled by the Federal Government. It was also submitted that since 50% share holdings in the petitioner company is of Federal Government, therefore, the Auditor General is entitled to conduct audit viz-a-viz investment made by the Federal Government.

05. The office of Auditor General of Pakistan is provided in Article 168 of the Constitution of Islamic Republic of Pakistan, 1973. In this behalf under Article 169 the Auditor General shall in relation to the accounts of the Federation and of the Provinces and the accounts of the Authority or Body established by the

Federation or a Province performs such functions and exercise such powers as may be determined by or under the Act of the Parliament. In this behalf under Article 170 (2) of the Constitution the Auditor General has the following powers:

“The audit of the accounts of the Federal and of the Provincial Governments and accounts of any Authority or Body established by or under the control of the Federal or Provincial Government shall be conducted by the Auditor General who shall determine the extent and nature of such audit ”

06. The bare reading of the above provision of law shows that the Auditor General shall conduct audit of the Bodies/Companies established by or under the control of the Federal or a Provincial Government.

07. The petitioner company was created in pursuance of a joint venture agreement between the Kingdom of Saudi Arabia and Government of Pakistan in 1980. In this behalf the share holding of both the Governments is equal. Similarly, the Board of Directors comprises six Directors, three (3) nominated by each Government; however, the Chairman is nominated by the Kingdom of Saudi Arabia and the Deputy Chairman by the Government of Pakistan and in case of equal split the Chairman has the casting vote. In the referred position it cannot be said that the Federal Government has the dominant control over the petitioner company, however, the fact remains that the petitioner was established by the Federal Government in joint venture with the Kingdom of Saudi Arabia. In this behalf the investment/funding was provided by the Government of Pakistan to the extent of its share holding and three (3) of nominees of the Federal Government including the Deputy Chairman are on the Board of Directors. **In response to the query of the Court both the counsels submitted that profit earned from the investment made by the Federal Government are deposited in the consolidated fund of the Federal**

Government. The very purpose of making companies/entities/bodies established or controlled by the Federal Government susceptible to audit by the Auditor General is to ensure that the public money/funds of the Federal Government are being utilized in a transparent and proper manner. The Legislature keeping in view such a situation that an entity or a company can have share holding of the Federal Government in a company which might not be 100% or majority but where the investment of the Federal Government is involved, therefore, for this reason in Article 170(2) it is provided that the Auditor General shall determine the nature and extent of the audit. In this behalf where public money/Federal Government investment is involved the audit might be a surgical audit to the extent of share holding of the Government investment and of utilization of the referred funds.

08. In view of above situation, the stance by the petitioner company that it does not fall within the scope of an entity established or controlled by Federal Government is not tenable. In this behalf the Hon'ble Supreme Court of Pakistan while elucidating the issue regarding scope of the Auditor General's constitutional mandate and the purported exclusion of secret service funds from audit observed as follows:

10. The answer to this question is given with reasonable clarity by the express words of sub-Article (2) of Article 170 of the Constitution. It states that '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.' The broad scope and wide significance of this article has been noted in our Order dated 07.05.2013: "The Constitution does not recognize any exception to the provisions of Article

170(2)...In this view of the matter, the Consolidated Fund and Public Accounts cannot remain unaudited”.

11. Even before the introduction of Article 170(2) in 2010, the Auditor General’s (Functions, Powers and Terms & Conditions of Service) Ordinance, 2001, made it “abundantly clear that where the amount is charged on the Consolidated Fund or relates to the Public Accounts of the Federation or the Provinces, the same must be audited by the Auditor-General without exception.” (Order dated 07.05.2013, para 11). Also in our Order of 07.05.2013, (para 13), we noted that “sub-Article (2) of Article 170 of the Constitution was added by the 18th Amendment which amply empowers and directs the Auditor General to fulfill his constitutional obligations as watchdog of the people of Pakistan. It is only through audit that it can be ensured that the hard earned income of citizens of this country is being spent for lawful purposes. Without the audit specified by the Constitution and the two statutes, referred to hereinabove, there can be little or no room for any transparency. Absence of audit by the Auditor General, apart from being violative of the Constitution and law, is a sure and certain invitation to corruption and lack of accountability.”

09. Since in the petitioner company 500 shares are held by Government of Pakistan, therefore, it cannot claim complete exemption from conduct of audit by the Auditor General for Pakistan. Respondent No.2, in this behalf keeping in view the nature and extent of the share holding can determine the nature and extent of the audit to be conducted.

10. In view of the foregoing reasons, instant petition is without merit and is hereby dismissed.

**(AAMER FAROOQ)
JUDGE**

Ataf Malik

Approved For Reporting.