

Avtar Singh Chauhan And Ors vs Anoop Sharma And Ors on 13 December, 2021

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

\$~22 & 23

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 269/2019 & CM APPL. 14612/2019, 21977/2019, 25161/2019, 35683/2019, 22066/2020, 28553/2020, 32949/2020, 2794/2021, 10197/2021, 25553/2021, 27584/2021, 27737/2021, 27748/2021, 27750/2021, 31326/2021

AVTAR SINGH CHAUHAN AND ORS.

Through: Mr. Jayant Mehta, Sr. Adv.
Mr. Aaditya Vijay Kumar,
Ms. Akshita Katoch, Mr. A.
and Ms. Namrata Mohapatra

versus

ANOO P SHARMA AND ORS.

Through: Mr. Joby P. Varghese, Adv.
Dr. Surinder Singh Hooda,
CAG in CM. No. 27584/2021
Mr. Rajesh Gogna, CGSC w/
Vaibhav Anand and Mr. Ari
Ads. for R7.
Mr. Amar Narth, Nodal Off
Mr. Shyam Sunder Prasad f
Respondent No. 8.
Mr. Arun Birbal and Mr. S
Singh, Adv. for DDA.
Mr. Shohit Chaudhary, Adv
CGEWRA / applicant.
Mr. Jaideep Singh, Adv. f
impleaded applicant / own

AND

+ RFA 486/2019 & CM APPL. 23822/2019, 36886/2019, 53272/2021, 27751/2021

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KUMAR YADAV
Signing Date:17.12.2021

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ANOOP SHARMA

Through: Mr. Joby P. Varghese,
versus

BHUSHAN KUMAR NARULA & ORS

Through: Mr. Jayant Mehta, Sr.
Mr. Aaditya Vijay Kuma
Ms. Akshita Katoch, Mr
and Ms. Namrata Mohapa
for Respondent Nos. 4,
and 17-21.
Mr. Shohit Chaudhary,
CGEWRA / applicant.
Dr. Surinder Singh Hoo
CAG
Mr. Vivek Goyal, CGSC
Mr. Amar Narth, Nodal
Mr. Shyam Sunder Prasa
Respondent No. 8.
Mr. Jaideep Singh, Adv
impleaded applicant /

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 13.12.2021

CM No. /2021 (to be numbered) (for delay) in RFA 269/2

This is an application filed by Vijay Chibber applicant in CM 2794/2021 seeking condonation of delay in filing the submissions in CM 27584/2021.

For the reasons stated in the application, the delay is condoned and the submissions are taken on record.

Application is disposed of.

CM No. 27584/2021 in RFA 269/2019

1. This application has been filed by the Comptroller and Auditor General of India ('CAG', for short) with the following prayers:

"In view of the foregoing facts and circumstances, this Hon'ble Court may graciously be pleased to:

a) Recall and Modify the Order dated 18.3.2021 passed by this Hon'ble Court in RFA No. 269/2019 and RFA No. 486 of 2019 to the extent that instead of Audit by CAG, the audit of Commonwealth Games Village Apartment Owners Association accounts may be ordered to be carried out by any of the statutory Auditors defined under regulation 2 (41) of the Regulations on Audit and Accounts (Amendments) 2020. And in the alternative,

b) Recall and Modify the Order dated 18.3.2021 passed by this Hon'ble Court in RFA No. 269/2019 and RFA No. 486 of 2019 to the extent that instead of Audit by CAG, the Audit may be ordered to be conducted by Institute of Auditors of India (IPAI).

c) Pass any other or further Order(s) as deemed fit and proper in the facts and circumstances of the case."

2. On March 18, 2021, this Court in paragraphs 5 and 6 has stated as under:

"5. Mr.Amar Nath, Nodal Officer, has submitted that after he was appointed as Nodal Officer, he has carried out an internal audit. He also states that further audit be carried out by this Court. Learned counsel for the parties state that appropriate shall be that the audit is carried out by the Comptroller and Auditor General of India (CAG). Mr.Gaurang Kanth, learned Standing Counsel who appears for the CAG in this Court was called by this Court and is apprised about the subject matter of the appeals.

6. Noting the unanimity in the submissions made by the learned counsels for the parties for carrying out the audit by the CAG, this Court direct that the audit of the Commonwealth Games Village Apartment Owners Association w.e.f. April 01, 2012, the date on which when Common Area Maintenance (CAM) charges started to be levied, be carried out by the CAG.

For this purpose, Mr.Amar Nath states that Mr. Shyam Sunder Prasad, Administrative Manager of the Commonwealth Games Village Apartment Owners Association, who is present in the Court, has in his possession all books of accounts and other relevant record w.e.f. April 01, 2012 shall hand over the same to the designated Officer whose name shall be informed by Mr.Gaurang Kanth to Mr.Amar Nath within one week from today. On being handed over all the relevant record, the CAG shall carry out the audit and place on record of this Court the audit report. It is expected that the CAG shall complete the audit within a period of 12 weeks from today."

3. This application has been filed by CAG and so contended by Dr. Surinder Singh Hooda that the jurisdiction and mandate of the CAG is governed by Articles 149 and 151 of Constitution of India as further elaborated by Section 13, 14 and 15 of the Comptroller and Auditor General's (Duties, Powers and conditions of service) Act 1971 ('Act', for short) as such, the CAG does not have jurisdiction / mandate to carryout audit of any authority or body where the funds of either the Union of India or any State are not involved in some measure.

4. According to him, the appellants / respondents in the appeals are private bodies and do not involve any public money or public interest in any manner. He states that as per Section 20 of the Act, the conditions precedent for carrying out the audit are the following:

"(a) Investment of a substantial amount by the central government or state government or the government of a union territory.

(b) Satisfaction of the Hon'ble president or the Governor of a state or the administrator of Union territory about the expediency and public interest involved in the matter.

(c) An opportunity to the concerned authority or body to make representation against such audit by CAG. The instant case does not qualify even under Section 20 of the Act as none of the aforementioned conditions are fulfilled."

5. He lay stress on the fact that the audit universe under the jurisdiction of CAG is very large and the applicant does not possess the manpower and resources to conduct the audit of all Auditee units under its jurisdiction. Accordingly, the CAG carries out audit by selecting Auditee units on the basis of risk assessment each year. Auditee units are categorized into high, medium and low risk category. Audit plans prepared for a year are approved by CAG. Audit plans provide for Audit of most of the high-risk Auditee units, some of the medium risk and very few of low-risk units in view of the constraints in terms of manpower resources. Audit plans are approved by CAG usually before onset of financial year. Thus, Audit plans set out the agenda to cover most of the important and largely high-risk audit units out of a very large audit universe. It is a scientific exercise. In addition to regular audits, certain audits within the mandate of the CAG which are of high public importance are also included in audit plans considering their current relevance.

6. He also states that the CAG has empanelled Chartered Accountant Firms to conduct statutory audit of accounts of any Government Company or other Government controlled companies under the provisions of Section 139(5) and 139(7) of the Companies Act, 2013. He prays that the audit of the Association may be ordered to be conducted by any of the statutory auditors as defined under Regulation 2(41) of the Regulations on Audit and Accounts (Amendments) 2020 on payment of proper audit fee. I note the CAG has also in the application stated that the court may also consider audit by the Institute of Auditors of India (IPAI) of which CAG is the patron. The IPAI has a large pool of experienced professionals who are primarily ex Indian Audit and Accounts Service (IA & AS) officers.

7. A reply has been filed by the appellants and so contended by Mr. Jayant Mehta that without prejudice to the appellants submission that the CAG audit was not warranted in the facts and circumstances of the case, the audit by other private bodies will not serve any purpose considering that audit of accounts of respondent No.8 has been carried out by different firms of Chartered Accountants and another firm of Chartered Accountants (on the panel of CAG) should not be allowed to sit in judgment on the audits carried out by other Chartered Accountant firms more so when no discrepancy either in the accounts or audits has been alleged by any of the parties to the

case. Further, the audit by another firm of chartered accountants would not only add to the financial costs but also involve spending considerable effort, time and deployment of resources of respondent No.8 to collate information and documents going back eight years.

8. That apart, it is the submission of Mr. Mehta that the audit of accounts has no correlation to the election process and the decision regarding holding of elections cannot hinge on the carrying out the audit of accounts under the aegis of CAG . If such an audit were to be directed, elections would be derailed for a further period of about 6-10 months depending on the manner that the audit is carried out and the residents would suffer immensely. That apart, he states that the respondent No.8 is already suffering a deficit of 2 Crores per annum as it has not been able to raise Common Area Maintenance ('CAM', for short) and collect outstanding dues in absence of an elected Governing Body and is eating into the IFSD amount to finance the deficit.

9. A reply has been filed on behalf of the respondent No.1 through Mr. Joby P. Varghese. He states that the application filed by CAG is in absolute contradiction with its mandate under Section 13 of the Act and also negates the categorical stand taken by Ministry of Urban Development ('MoUD', for short) in its submissions to the Nodal Officer wherein MoUD which owns about 35% of flats in the Village. According to him, the another Government Body Delhi Development Authority ('DDA', for short) also owns about 18% of flats in the Village. Thus, together both MoUD and DDA hold more than 51% of flats in the Village. Further, there are also Public Sector Undertakings like SBI, HPCL, AIC, PSB, OIL & GIC etc. who own another 6% of flats in Village, and therefore Government of India owns, and has always held since construction of the Village, around 60% of total flats in the Village.

10. He also states that when the order was passed on March 18, 2021 by this Court, the same was in the presence of the counsel for the CAG, who did not raise any objection at the time of the passing of the order. He states that the MoUD in its written submission to the Nodal Officer contained as Annexure-III to the Report of the Nodal Officer dated September 10, 2020 specifically and categorically provided that the accounts of the Society have not been audited since 2013, therefore before elections are held an impartial audit of the Society has to be conducted to ascertain whether the subscription / contribution / CAM charged by Society is in accordance with its maintenance expenditure. This is essential as public fund is spent to pay CAM charges to the society. And, it is a matter of fact that huge public funds have been spent by DDA to pay more than 14 Crores of Interest Free Security Deposit (IFSD) to CWGVAOA in 2014, in accordance with the Project Development Agreement for CWGV, towards the CWGVAOA corpus fund and as a security for CAM default, along with a huge payment of CAM itself of more than 10 Crores in 2014 He states that even during the course of hearing, MoUD has taken a categorical stand that it has made sufficient payment towards CAM charges to the Society and hence an audit is necessary to ascertain whether the CAM charged by the Society is in accordance with its maintenance expenditure.

11. He submits that as per the CAG, it has a mandate to audit all expenditure from the Consolidated Fund of India and to ascertain whether the money 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. Therefore, the CAG has the mandate to Audit the accounts of Association. Without prejudice, he submits that even

if the audit has to be carried out, the same need to be from the Chartered Accountants who are on the CAG panel other than the one at Sr. No.1 who has already been appointed by this Court to carry out the audit for the current financial year.

12. Written submissions have also been filed by CGERWA and so contended by Mr. Shohit Chaudhary that the present application filed is totally misconceived and the case of the applicant / CAG that it does not have the mandate nor the resources to conduct the audit of the Association is untenable / without basis. According to him, the MoUD / respondent No.7, makes payment towards the CAM charges to the respondent No.8 / Society.

Further, since the officers of the respondent No.7 reside in the apartments in the CWG Village, the payment of 3.50 per sq. ft., towards CAM, is made in the following manner:

"- Rs.1.26 per sq. ft. is deducted from each of the resident central government employee's salary at the beginning of each month and retained by Respondent No.7

- Rs.2.24 per sq. ft. is paid by the Respondent No.7 from the Consolidated Fund of India."

13. He also states that a total of 649 apartments are with the respondent No.6 / DDA, respondent No.7 / MoUD and other Public Sector Undertakings. Out of this a total of 378 apartments have been allotted to the respondent No.7. Thus, CAM charges paid for a total of 649 apartments x 3.50 (per sq. ft) x 2100 for ten years 2012-2021 is 57,24,18,000/-. Thus, as per the respondent No.8, a sum of 33 Crores has been paid by the respondent No.7 out of the Consolidated Fund of India solely and more than 57 Crores have been paid by all the government entities put together. He states that this itself is a ground that the audit of the accounts of the respondent No.8 should be carried out by the CAG.

14. That apart, in 2014 the Interest Fee Security Deposit @ 100/- per sq.ft. has also been paid for these 649 apartments by the respondent No.6 and the money is lying in FDR and the respondent No.8 is earning interest upon it.

15. He also relies upon the affidavit filed by respondent No.7 in W.P.(C) 7284/2018, wherein it is stated as under:

"(i) It has relied upon its own „Note on the Stand of Ministry of Housing and Urban Affairs on Payment of Interest on CAM Charges and Election of CWGVAOA, wherein, it has, inter-

alia, stated-

"As per Respondent No.1, the accounts of the AoA have not been audited since 2013. Therefore, before election is held an impartial audit of the AoA is to be conducted to ascertain whether the subscription / contribution /CAM charged by AoA is in

accordance with its maintenance expenditure. This is essential as the public fund is spent to pay CAM charges to the AoA."

(ii) It also filed 'Copies of Audited Accounts of CWGVAOA which were sought from CWGVAOA by this Directorate and they provided the same for last 4 years from 2016 to 2019'. This, inter-alia, shows the income generated by the Respondent No. 8 for CAM charges, which is to the tune of more than Rs.10 crores per annum."

16. Additionally, he states that Section 13 of the Act which stipulates that it shall be the duty of the CAG to audit the expenditure from the Consolidated Fund of India and to audit all transactions of the Union relating to Public Accounts. He also states that it is on the consent from all the counsel present including the counsel for Private Owners of Apartment, namely, Mr.Jaideep Singh and Mr.A. Singh Sirohi, Advocates the order was passed. He seeks the dismissal of the application.

17. Insofar as the stand of the MoUD / respondent No.7 is concerned, Mr. Gogna has finally left it to the Court to decide whether the audit of the account of the Association are to be conducted by the CAG or by some other body as pleaded by the CAG. A reply has been filed by the applicants in CM 2794/2021 represented through Mr.Jaideep Singh wherein it is stated that regular audits of the Society have been carried out since its inception by a firm of Chartered Accountants appointed by the Governing Body for the financial years 2013-14 to 2017-18 and by the Nodal Officer appointed by this Court for the financial years 2018-19 and 2019-20. No errors or discrepancy in any audit so far have been pointed out by the respondent No.1 or any others who have received and seen the audit reports repeating all the audits again would further delay elections considerably and be an unnecessary cost on the Association, especially in light of the fact that audit for the period of the last RWA i.e. 2018 -2020 has also been conducted by the Nodal Officer and now only 2021 audit remains.

18. Further, the audit reports have been placed before the respective governing bodies and mailed to all owners of apartments before each election by the Association, details of which have been placed on record as Annexure-A-7 by the impleaded applicants in application being CM 25553/2021 in RFA 269/2021. The stand of the CAG corresponds with the submissions made by Union of India vide letter dated July 06, 2018 which is the subject matter of challenge in WP (C) 7284/2018 by impleaded applicants CGERWA where the MoUD is on record to state that as Association is a Society registered under the Societies Registration Act, the Ministry cannot direct them to conduct any audit, as they are required to do so independently. Therefore, the Court may take note of duplicacy of prayers before two benches of this Court at the same time, and of any changed position by the Ministry, if any, in specific light of the CM 27584/2021 by the CAG, clarifying again that they do not have the mandate to carry out audit of an independent society.

19. He also states that the audit has no relation with the elections to be conducted as the data showing pending / outstanding CAM payments is already available with the office of the Association.

20. Having heard the learned counsel for the parties on this application, at the outset, I may state that the order dated May 18, 2021 was passed on the submissions made by the counsel for the parties. As Mr. Gaurang Kanth represents the CAG in this Court, he was called to the Court and was apprised of the appeals. In other words, CAG was not heard before the order was passed.

21. Having said that, the counsels for the parties are divided in their submissions, inasmuch as some states that the order requires no modification, whereas others state there is no need to carry out the audit as the same has been carried out in the past and another Chartered Accountant firm from the panel of CAG should not be allowed to sit in judgment over the audits carried out earlier.

22. On other hand, Mr. Gogna has left it to the Court to decide whether audit of the accounts of the Association has to be conducted by the CAG or any other body as pleaded by CAG.

23. Mr. Varghese, without prejudice has stated if a Chartered Accountant Firm from the panel maintained by the CAG need to be appointed, the same should not be the firm at Serial No.1 of the list as it has already been appointed for Auditing the Accounts of the current financial year. There is no dispute that 50% of the flats in the village are of the Government / Government bodies. It is represented that public fund is being used to pay CAM charges to the Association. But the fact of the matter, as pleaded by Dr. Hooda is that the CAG prepares the audit plans well in advance. The Audit Universe under the jurisdiction of GAG is very large and it does not possess the manpower and resources to conduct the audit of all auditee units under its jurisdiction. According to him, the CAG has its own panel of Chartered Accountants, who does the statutory audit of the Government Companies / other Government controlled companies under the Companies Act and the audit can be done by them. The application also refers to Institute of Auditors of India.

24. Noting the above, this Court is of the view, it is important and necessary that the Audit need to be carried out, if not by CAG, in view of the difficulties expressed, that it lacks manpower and resources, surely by a Statutory Auditor / Chartered Accountant Firm who also audit the accounts of the Government Companies or other Government controlled companies, as per the panel maintained by the CAG. Accordingly, this Court appoint ASC & Associates, F-7, Lajpat Nagar-III, New Delhi to carry out the audit of the respondent No.8 / Association in terms of the order dated March 18, 2021. The Statutory Auditor / Chartered Accountant Firm shall adhere to the timeline prescribed in the order dated March 18, 2021. The fee of the Auditor shall be paid as per the rates prescribed by the CAG.

25. The application is disposed of.

RFA 269/2019, CM Nos. 14612/2019, 21977/2019, 25161/2019, 35683/2019, 22066/2020, 28553/2020, 32949/2020, 2794/2021, 10197/2021, 25553/2021, 27737/2021, 27748/2021, 27750/2021 & RFA 486/2019, CM APPL. 23822/2019, 36886/2019, 53272/2019 & The appeals and the connected applications be listed for final hearing on January 19, 2022 at 2.15 PM.

V. KAMESWAR RAO, J.

DECEMBER 13, 2021/aky