



2025:DHC:4171



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 14.05.2025**

+ **W.P.(C) 8116/2024 and CM APPL.33353/2024**

ANJUMAN MOINIA FAKHRIA
CHISHTIYA KHUDDAM KHWAJA SAHIB
SYEDZADGAN (REGD.) DARGAH SHARIF, AJMER

.....Petitioner

Through: Mr. Akshay Makhija, Sr. Adv., Mr. Atul Agarwal, Mr. Ashish Kumar Singh, Mr. Vagish Kumar Singh, Mr. Mayank Sethi, Ms. Sushalini Sethi and Mr. Anupam, Advs. along with petitioner in person.

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Mr. Mukul Singh, CGSC and Ms. Ira Singh and Mr. Aryan Dhaka, Advs. for R-1.
Mr. Arun Sanwal, Adv. for R-2.

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+ **W.P.(C) 3733/2025 and CM APPL.17370/2025**

ANJUMAN MOINIA FAKHRIA
CHISHTIYA KHUDDAM KHWAJA SAHIB
SYEDZADGAN REGD DARGAH SHARIF AJMER

.....Petitioner

Through: Mr. Akshay Makhija, Sr. Adv., Mr. Atul Agarwal, Mr. Ashish Kumar Singh, Mr. Vagish Kumar Singh, Mr. Mayank Sethi, Ms. Sushalini Sethi and Mr. Anupam, Advs. along with petitioner in person.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Amit Tiwari, CGSC, Mr. Himanshu Bidhuri, GP, Mr. Ayush



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Tanwar and Ms. Ayushi Srivastava,
Advs. for UOI.
Mr. Arun Sanwal, Adv. for R-2.

**CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA**

SACHIN DATTA, J. (ORAL)

W.P.(C) 8116/2024

W.P.(C) 3733/2025

1. W.P. (C) 8116/2024 has been filed by the petitioner assailing the notice/letter dated 15.03.2024 issued by the Ministry of Minority Affairs (respondent no.1), which states as under:-

“Subject: Regarding audit of Anjumans of Khadims in Dargah Khwaja Saheb, Ajmer.

Sir,

I am directed to state that in order to improve the administration and management of Dargah Affairs at Ajmer the Ministry of Minority Affairs, on the advice of Ministry of Home Affairs, had proposed to the CA&G to conduct the audit of income / expenditure of both the Anjumans viz. (i) Anjuman Moinia Fakhriya Chishtiya Khuddam Khwaja Saheb (Syedzadgan) (ii) Anjuman Moinia Fakhriya Chishtiya Khuddam Khwaja Saheb (Shaikhzadgan), as per mandate of C&AG.

2 . However, as per Section 20(c) of the DPC Act, 1971, this Ministry is required to provide reasonable opportunity to both the Anjumans to make representation with regard to the proposed audit.

3. You are therefore, requested to make your representations, if any, to this ministry at the earliest.”

2. Thus, the aforesaid communication has been purportedly issued under Section 20(1) of the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971 [hereinafter ‘*the CAG Act*’] in furtherance of providing the petitioner a reasonable opportunity to make a representation with regard to its proposed audit to be conducted by the Comptroller and



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Auditor General of India (CAG).

3. In W.P.(C) 3733/2025, the petitioner has assailed the audit sought to be conducted by the CAG in respect of the petitioner society.

4. The said audit is premised on the basis that the Presidential assent, required in terms of Section 20(1) of the CAG Act for the conduct thereof, stands granted.

5. A perusal of the counter-affidavit filed on behalf of the respondent no.2 reveals that an order/communication dated 30.01.2025 was issued by the Budget Division of the Department of Economic Affairs to the CAG, stating as under:-

“Subject: Entrustment of audit of accounts of Anjuman Moinia Fakhriya Chishtiya Khuddam Khwaja Saheb (Syedzadgan), and Anjuman Moinia Fakhriya Chishtiya Khuddam Khwaja Saheb (Shaikhzadgan) to the Comptroller and Auditor General of India for the period of five years from 2022-23 to 2026-27 under Section 20(1) of the C&AG's (DPC) Act, 1971- reg.

Sir.

I am directed to state that the President is pleased to request the Comptroller & Auditor General of India for entrustment of audit of accounts of Anjuman Moinia Fakhriya Chishtiya Khuddam Khwaja Saheb (Syedzadgan), and Anjuman Moinia Fakhriya Chishtiya Khuddam Khwaja Saheb (Shaikhzadgan) to the Comptroller and Auditor General of India for a period of five years from 2022-23 to 2026-27 under Section 20(1) of C&AG's (DPC) Act, 1971.

2. As required under the said Section, the Office of the Comptroller & Auditor General of India has been consulted and their consent has been received vide their Letter. No. 22/15 - PPG/(A.B.)/2012 Vol. II dated 13.01.2025.

3. Provisions of sub-section (3) of section 20 of the said Act are satisfied in this case.

4. The Terms and Conditions for conducting the Audit of the Accounts of the said Institution shall be as per usual Terms and Conditions (Copy enclosed).”



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6. The said order/communication dated 30.01.2025 also enclosed along with it certain terms and conditions which are in the following terms.

“The conditions for undertaking audit of a body or authority at the request of the President or the Governor of a State or the Administrator of a Union Territory having a legislative assembly under Section 20(1) are the following:

(1) Audit shall be entrusted to the Comptroller and Auditor General if and as agreed to, by the Comptroller and Auditor General.

(2) The arrangement may be reviewed if requested by the Government or Comptroller and Auditor General.

(3) The scope, extent and manner of audit shall be decided by the Comptroller and Auditor General.

(4) The Comptroller and Auditor General may appoint a primary auditor to conduct audit on his behalf and in accordance with the directions or guidelines issued by him.

(5) The Comptroller and Auditor General or any other person so authorised in connection with the audit of accounts of the body or authority shall have the same rights, privileges and authority as the Comptroller and Auditor General has in connection with the audit of accounts of Government.

(6) The Comptroller and Auditor General, or an officer so authorised in this regard, will communicate the results of audit to the governing body of the body or the authority. The governing body shall submit a copy of the report to the concerned Government along with its observations. The Comptroller and Auditor General or an officer so authorised in this regard, will also forward a copy of the report to the concerned Government. The Comptroller and Auditor General shall have the right to report the results of audit to Parliament or the State legislature or Union Territory legislature.

(7) Any expenditure incurred by the Comptroller and Auditor General in connection with the audit of the body or authority, including the expenditure incurred for the services of the primary auditor, if any, shall be paid by the body or the authority to the Comptroller and Auditor General.”

7. It is the case of the petitioner that the proposed audit of the petitioner



by the CAG is in utter infraction of Section 20 of the CAG Act. The said provision reads as under -

“20. Audit of accounts of certain authorities or bodies.—(1) Save as otherwise provided in Section 19, where the audit of the accounts of any body or authority has not been entrusted to the Comptroller and Auditor-General by or under any law made by Parliament, he shall, if requested so to do by the President or the Governor of a State or the Administrator of a Union Territory having a Legislative Assembly, as the case may be, undertake the audit of the accounts of such body or authority on such terms and conditions as may be agreed upon between him and the concerned Government and shall have, for the purposes of such audit, right of access to the books and accounts of that body or authority:

Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General.

(2) The Comptroller and Auditor-General may propose to the President or the Governor of a State or the Administrator of a Union Territory having a Legislative Assembly, as the case may be, that he may be authorised to undertake the audit of the accounts of any body or authority, the audit of the accounts of which has not been entrusted to him by law, if he is of opinion that such audit is necessary because a substantial amount has been invested in, or advanced to, such body or authority by the Central or State Government or by the Government of a Union Territory having a Legislative Assembly, and on such request being made, the President or the Governor or the Administrator, as the case may be, may empower the Comptroller and Auditor-General to undertake the audit of the accounts of such body or authority.

(3) The audit referred to in sub-section (1) or sub-section (2) shall not be entrusted to the Comptroller and Auditor-General except where the President or the Governor of a State or the Administrator of a Union Territory having a Legislative Assembly, as the case may be, is satisfied that it is expedient so to do in the public interest and except after giving a reasonable opportunity to the concerned body or authority to make representations with regard to the proposal for such audit.”

8. Learned senior counsel for the petitioner submits that Section 20 of the CAG Act, which is the only basis for the audit sought to be conducted by the CAG, contemplates as follows:



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- i. The President or Governor of a State may propose an audit of such a body or authority [in terms of Section 20(1)].
 - ii. However before making any request for such an audit, the President or Governor ought to consult the CAG and agree upon terms and conditions of the audit [in terms of Proviso to Section 20(1)].
 - iii. The President or Governor must record satisfaction that the audit is expedient in public interest. [in terms of Section 20(3)].
 - iv. Public interest for purposes of Section 20(3) of the Act, would mean misutilisation of public funds and ought to be read in accordance with other provisions in Chapter III of the Act.
 - v. Detailed and specific proposal/terms and conditions of audit should be provided to the Body or Authority so that the body or authority can make an effective representation and reply to such proposal. An opportunity of hearing should be granted to the concerned body or authority to make representations with regard to the proposal of such audit.
 - vi. Effective representation and reply to proposal is not a mere formality because a proposal for audit is extremely intrusive in the day to day affairs of a body or authority. Reasonable opportunity of hearing should also be granted to prevent abuse of power under the CAG Act.
9. It is submitted that when the aforesaid impugned communication dated 15.03.2024 came to be issued by the Ministry of Minority Affairs, the CAG had not even assented to the conduct of audit pursuant to proposal of the respondent/concerned Ministry in this regard. As such, the so called opportunity to the petitioner to make a representation in terms of communication dated 15.03.2024 was a farcical/pre-mature exercise.



10. Next, it is contended that even on 13.01.2025, when the Budget Division, Department of Economic Affairs, Ministry of Finance instructed the CAG to proceed with the conduct of audit of the petitioner society for a period of 5 years from 2022-23 to 2026-2027 (on the basis of the presidential assent), the terms and conditions had still not been agreed upon in terms of Section 20 of the CAG Act. He submits that the framework of Section 20 contemplates that the terms and conditions of audit should have been agreed upon and provided to the concerned body or authority [of which, the proposed audit is to be conducted], prior to the stage of making of a representation by the said authority/body in response to the proposal as regards the conduct of such an audit.

11. In this regard reliance is placed on the judgment of a Division Bench of this Court in *United RWAS Joint Action v. Union of India and Ors.* 2015 SCC OnLine Del 13089. It has been, *inter alia*, held as under:-

“(VII)..... Thus, a proposal for audit can be said to have concretised only after consultation with CAG and after the terms and conditions of audit have been settled between the concerned Government and CAG.

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(XIX) Thus, before the body or authority proposed to be audited under Section 20 is given an opportunity to represent against the proposal, there must be a consultation with the CAG and upon CAG agreeing to the audit, terms and conditions thereof should have been agreed.

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(XXII) The mere fact that CAG accepted the terms and conditions of audit contained in the directive issued under Section 20(1) cannot be a substitute for the legislative requirement of arriving of an agreement between the concerned government and CAG and which agreement has to be arrived at before an opportunity to represent there against is given to the body or authority to be audited; it is well nigh possible, the body



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or authority proposed to be audited may not have any objection to an audit of a limited nature; thus, the opportunity to represent against has to be against a concrete proposal arrived at after an agreement between the concerned government and CAG;.....”

12. During the course of hearing, two specific queries have been posed to the learned counsel for the CAG:-

(i) Whether the CAG had agreed to the conduct of audit of the petitioner society as of 15.03.2024, when the aforesaid letter (that is the subject matter of challenge in W.P.(C) 8116/2024), was issued?

(ii) Whether as of 13.01.2025 (the aforesaid communication issued by the Budget Division, Department of Economic Affairs, Ministry of Finance was issued to the CAG for conduct of audit), the terms and conditions as regards conduct of audit had been agreed upon or not?

13. The candid answer of learned counsel for the CAG, to both the above queries, is in the negative. The same lends credence to the petitioner's contention that the requirements under Section 20 of the CAG Act have not been applied/satisfied in the present case. It is also informed by the learned counsel appearing for CAG that the audit of the petitioner has not yet commenced even thereafter.

14. In the circumstances, as an interim measure, it is directed that till the next date of hearing, no further steps shall be taken by the CAG pursuant to communication dated 30.01.2025.

15. List for further consideration on 28.07.2025.

SACHIN DATTA, J

MAY 14, 2025/at