(2010) 01 DEL CK 0243

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4834 of 1998 and C.M. No. 9784 of 1998 in Writ Petition (Civil) No. 2748 of 1998

National Dairy Development Board APPELLANT

Vs

Union of India (UOI) and the Comptroller and Auditor General RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Citation : (2010) 01 DEL CK 0243

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : A.M. Singhvi and Neeraj Kishan Kaul, Deepak Aggarwal, Shweta Bharti, Sumer Brar, O.P. Agarwal and Yogender Kumar, for the Appellant; A.S. Chandhiok, A.S.G., Sachin Dutta, Ritesh Kumar, Sandeep Bajaj and Amandeep Singh, for UOI Muneesh Malhotra, A. Mishra and Y.D. Sharma for CAG, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Writ Petition (Civil) No. 2748/1998 filed by National Dairy Development Board-the petitioner (hereinafter referred to as NDDB or the petitioner, for short) was disposed of on 20th August, 1998 referring the disputes raised to be examined by a Committee of Secretaries headed by the Cabinet Secretary. The disputes pertain to the right of the Comptroller and Auditor General of India (hereinafter referred to as CAG, for short) to conduct audit u/s 14(2) of the Comptroller and Auditor General''s (Duties, Powers and Conditions of Service) Act, 1971 (hereinafter referred to as CAG Act, for short) in terms of the letter dated 6th June, 1997.

2. The Committee of Secretaries heard NDDB and CAG and came to the conclusion that resolution of the disputes requires interpretation of the National Dairy Development Board Act, 1987 (hereinafter referred to as NDDB Act, for short) vis--vis provisions of CAG Act and after hearing the representatives, permission was granted to NDDB to pursue the writ jurisdiction in the High

Court. Consequent thereto, the NDDB filed Writ Petition (Civil) No. 4734/1998 as a substantive writ petition challenging CAG''s right to conduct audit in the case of the petitioner u/s 14(2) of the CAG Act and the letter dated 6th June, 1997. C.M. No. 9784/1998 was filed for revival of the Writ Petition (Civil) No. 2748/1998.

3. It is the contention of NDDB that the NDDB Act is a special Act and in view of the non obstante clause i.e. Section 47 giving overriding effect to the said Act over any other law for the time being in force, CAG does not have authority to invoke and exercise power u/s 14(2) of the CAG Act. It was submitted that NDDB Act was enacted in 1987 and CAG Act was enacted in 1971 and the non obstante clause and the overriding provision in Section 47 of the NDDB Act has to be given full play. Reference was made to Section 28 of the NDDB Act which relates to audit by an auditor appointed by the NDDB. It was submitted that NDDB is an autonomous Board and cannot be subjected to audit by CAG as this would erode their independence and would adversely affect their functioning and autonomy. In the alternative it was submitted that provisions of Section 14(2) of the CAG Act are not attracted. It was submitted that there was no grant/loan from the CAG and at best CAG is entitled to conduct limited audit u/s 15 of the CAG Act as the grants/loans at best were specific grants/loans.

4. The contentions of the parties require interpretation of the CAG Act and NDDB Act.

5. CAG Act was enacted in the year 1971 to prescribe conditions of service of the CAG and also prescribe its duties and powers. Chapter III of the CAG Act details the duties and powers of the CAG. Section 10 deals with compiling and maintenance of the accounts of the Union and the States. Section 11 stipulates that accounts will be submitted to the President, Governors and the Administrators. Sections 12 and 13 deal with the audit of accounts of the Union government, States Territory and the Union territories.

6. Section 14 of the CAG Act reads:

14. Audit of receipts and expenditure of bodies or authorities substantially financed from Union of State Revenues. 1*(1) Where anybody or authority is substantially financed by grants or loans from the Consolidated Fund of India or of any State or of Union territory having a Legislative Assembly, the Comptroller Auditor-General shall, subject to the provisions of any law for being in force applicable to the body or authority, as the case audit all receipts and expenditure of that body or authority and to him port on the receipts and expenditure audited by him.

(2) Notwithstanding anything contained in Sub-section the Comptroller and Auditor- General may, with the previous approval of the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, audit all receipts and expenditure of any body or authority where the grant or loan to such body or authority from the Consolidated Fund of India or of any State, or of any Union territory having a

Legislative Assembly, as the case may be, in a financial year is not less than rupees one crore.

(3) Where the receipts and expenditure of any body or authority are, by virtue of the fulfillment of the conditions specified in Sub-section (1) or Sub-section (2), audited by the Comptroller and Auditor- General in a financial year, he shall continue to audit the receipts and expenditure of that body or authority for a further period of two years notwithstanding that the conditions specified in Sub-section (1) or Sub-section (2) are not fulfilled during any of the two subsequent years. Explanation.- Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year is not less than [rupees twenty five lakhs] and the amount of such grant or loan is not less than seventy five per cent of the total expenditure of that body or authority, such body or authority shall be deemed, for the purposes of [this Sub-section] to be substantially financed by such grants or loans as the case may be. Functions of Comptroller and Auditor-General in the case of grants or loans given to other authorities or bodies.

7. Under Sub-section (1) to Section 14, CAG has power to audit all receipts and expenditure of any body or authority which is substantially financed by grants or loans from the Consolidated Fund of India (hereinafter referred to as the CFI, for short), by a State or a Union Territory having a Legislative Assembly. The term substantially financed has been defined in the Explanation. Section 14(1) of the CAG Act, however, is subject to provisions of any other law for the time being in force applicable to the body or authority. Section 14(1) therefore accepts that power of the CAG under the said Sub-section can be curtailed, conditional or even prohibited under any law for the time being in force as applicable to the said body or authority. Right of CAG u/s 14(1) is vulnerable and amenable to restrictions or bar under another law.

8. Section 14(2) of the CAG Act stipulates that notwithstanding anything contained in Section 14(1), CAG may with a prior previous approval of the President, Governor or the Administrator of an Union Territory audit all receipts and expenditure of any body or authority which has been given grant/loan from the CFI or the State or Union Territory having a Legislative Assembly in a financial year of not less than Rs. 1 crore. Section 14(2) of the CAG Act is a non obstante Sub-section which applies even if a body or authority cannot be subjected to audit of receipts and expenditure under Sub-section (1). Irrespective of the prohibition or bar under Sub-section (1) to Section 14 of the CAG Act, CAG has power and authority to conduct audit u/s 14(2). Thus, Section 14(2) of the CAG Act is an independent Section which will apply once the conditions mentioned in the said Section are satisfied. Further if the conditions mentioned in Sub-section (2) of Section 14 of the CAG Act are satisfied the fact that the authority or the body cannot be subjected to audit under Sub-section (1) of Section 14 is irrelevant.

9. Section 15 of the CAG Act reads:

15. (1) Where any grant or loan is given for any specific purpose from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly to any authority or body, not being a foreign State or international organisation, the Comptroller and Auditor- General shall scrutinise the procedures by which the sanctioning authority satisfies itself as to the fulfillment of the conditions subject to which such grants or loans were given and shall for this purpose have right of access, after giving reasonable previous notice, to the books and accounts of that authority or body:

Provided that the President, the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, may, where he is of opinion that it is necessary so to do in the public interest, by order, relieve the Comptroller and Auditor- General, after consultation with him, from making any such scrutiny in respect of any body or authority receiving such grant or loan.

(2) Except where he is authorised so to do by the President, the Governor of a State or the Administrator of Union territory having a Legislative Assembly, as the case may be, the Comptroller and Auditor-General shall not have, while exercising the powers conferred on him by Sub-section (1), right of access to the books and accounts of any corporation to which any such grant or loan as is referred to in Sub-section (1) is given if the law by or under which such corporation has been established provides for the audit of the accounts of such corporation by an agency other than the Comptroller and Auditor-General:

Provided that no such authorisation shall be made except after consultation with the Comptroller and Auditor-General and except after giving the concerned corporation a reasonable opportunity of making representations with regard to the proposal to give to the Comptroller and Auditor-General right of access to its books and accounts.

10. Section 15 of the CAG Act applies when a loan or grant is made from the CFI or by a State or Union Territory having Legislative Assembly to any authority or body for a specific purpose. In such cases, CAG is entitled to scrutinize the procedures by which the sanctioning authority had satisfied itself as to the fulfillment of the conditions subject to which grant or loan was granted. The audit enquiry u/s 15 of the CAG Act is limited to scrutiny of the procedures followed by the sanctioning authority i.e. department of the government, to satisfy whether the body or authority had fulfilled the requisite conditions on which the loan or grant was granted. For this purpose, the CAG has a right to access the books and accounts of the authority or the body to which grant is given for a specific purpose. u/s 15, therefore, there is no audit of the authority or the body unlike Section 14(2) where there is audit of receipts and expenditure of the authority or the body. CAG u/s 15 scrutinises the account/records of the sanctioning authority to ensure that the proper procedures were followed by the said department to satisfy themselves that the conditions for grant of loans were complied with. Section 15(2) of the CAG Act further stipulates that CAG does not have right to

access books and accounts of any corporation to which loan or grant has been granted, if under law, accounts of the said corporation are audited by an agency other than CAG, except when authorized by the President, the Governor or Administrator as the case may be. The said authorisation can be granted by the President, the Governor or the Administrator after giving reasonable opportunity to the authority or body.

Inter play between Sections 14(2) and 15 of the CAG Act:

11. Sections 14(2) and 15 of the CAG Act are independent sections. They come into operation when the pre-conditions mentioned in the said sections are satisfied. They may overlap or both the provisions may become applicable in some cases but this by itself does not mean that Section 15 overrides Section 14(2) of the CAG Act or vice versa. They being independent provisions will come into operation once the conditions mentioned in the said sections are satisfied. The said provisions co-exist and are not contradictory.

12. As held above, Section 15 does not confer right to conduct a general audit of the books and accounts of the authority or the body to which loan or grant is made from the CFI or by the State Government or the Union Territory. Section 15 authorises CAG to conduct scrutiny of the records of the sanctioning authority to satisfy themselves that procedures were followed and the sanctioning authority had taken care to satisfy themselves about fulfillment of the conditions on which the loan/grants were granted. CAG is not permitted to have access to books and accounts of any corporation to whom loan or grant is given if otherwise CAG cannot conduct audit of the said corporation. In such cases, CAG can inspect the books of accounts only if it is authorized to do so by the President, Governor or the Administrator. Such authorization can be given after consultation with the CAG and after giving reasonable opportunity of making a representation to the concerned corporation. Once permission is granted and conditions of Section 14(2) are satisfied, CAG has the right to audit receipts and expenditure of the concerned body or authority to whom loan or grant of more than Rs. 1 crore is given from the CFI or State Government or Union Territory in a financial year. The audit is that of the body or authority which has been given a grant/loan of more than Rs. 1 crore. The scope of audit pertains to the receipts and expenditure of the said body or authority and is not limited as in the case u/s 15 where CAG is concerned with scrutiny of the procedures followed by the sanctioning authority and for this purpose CAG can examine the books and accounts of the body or authority to satisfy whether the said conditions on which the loan/grant was made were satisfied.

Section 19 of the CAG Act and its scope

13. Section 19 of the CAG Act reads:

19. (1) The duties and powers of the Comptroller and Auditor-General in relation to the audit of the accounts of Government companies shall be performed and exercised by him in accordance with the provisions of the Companies Act, 1956

(1 of 1956).

(2) The duties and powers of the Comptroller and Auditor-General in relation to the audit of the accounts of corporations (not being companies) established by or under law made by Parliament shall be performed and exercised by him in accordance with the provisions of the respective legislations.

(3) The Governor of a State or the Administrator of a Union territory having a Legislative Assembly may, where he is of opinion that it is necessary in the public interest so to do, request the Comptroller and Auditor-General to audit the accounts of a corporation established by law made by the Legislature of the State or of the Union territory, as the case may be, and where such request has been made, the Comptroller and Auditor-General shall audit the accounts of such corporation and shall have, for the purposes of such audit, right of access to the books and accounts of such corporation:

Provided that no such request shall be made except after consultation with the Comptroller, and Auditor-General and except after giving reasonable opportunity to the corporation to make representations with regard to the proposal for such audit.

14. Section 19 of the CAG Act is a clarificatory provision. It does not confer any special or new powers on the CAG. Sub-section (1) stipulates that CAG will carry out audit of accounts of the Government companies in accordance with the provisions of the Companies Act, 1956. Sub-section (2) to Section 19 stipulates that audit of accounts of a corporation; not being companies, established by or under the law made by Parliament shall be performed and exercised in accordance with the provisions of the respective legislations. In so far as corporations established by the State Governments, Union Territory are concerned, CAG can audit the accounts of a corporation on a request made by the Governor or the Administrator of the Union Territory having Legislative Assembly. However, in such cases the concerned corporation has to be given a reasonable opportunity to make a representation when there is a proposal for audit by the CAG.

15. It is not possible to accept the contention of the petitioner that Section 19(2) has the effect of overriding Section 14(2) and other provisions of the CAG Act. Section 19(2) has to be read harmoniously along with Section 14(2) of the CAG Act keeping in mind the object and purpose behind the two provisions. Section 19(2) protects the power and the right given to the CAG to audit accounts of the corporations under the law made by the Parliament by which they were established. Thus, Section 19(2) clarifies as a matter of abundant caution that CAG will continue to exercise right to audit when the said power or right has been conferred by any enactment of the Parliament under which the corporation was established. This does not mean that CAG cannot conduct any audit under Sections 14(2), 14(1) or 15 of the CAG Act in respect of any corporation when under the respective legislation annual financial audit is not undertaken by the

CAG. Sections 14 and 15 are independent and authority of the CAG to conduct audit depends upon the satisfaction of the conditions mentioned in the said sections. The requirement of Section 19(2) cannot be read into and made part and parcel or a pre-condition for invoking Sections 14 and 15 of the CAG Act. In a given case, audit by CAG may be permissible under Sections 14 or 19 of the CAG Act or scrutiny may be permissible u/s 15 of the CAG Act. If audit u/s 19(2) is to be done then of course resort to Section 14(2) or Section 15 may not be required. However, CAG has the right to conduct audit under Sections 14(2) and 15 even when it does not have authority to conduct audit under the statute by which the corporation has been established. In case the interpretation put forward by the petitioner is accepted, Section 14(2) would not be applicable to corporations established by the Parliament, State Legislatures or Union Territories having Legislative Assembly unless the conditions mentioned in Sub-sections (2) and (3) to Section 19 are satisfied. This will be contrary to the language of as well as purpose and objective behind Sections 14(2) and 15 of the CAG Act. These sections will be rendered almost meaningless and superfluous. This is not the intention behind Section 19(2) and (3) of the CAG Act.

Section 47 of the NDDB Act and over-riding effect

16. My attention was drawn to Section 47 of the NDDB Act which reads:

47. Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Companies Act, the Industrial Disputes Act, 1947 or any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, or in any decree or order of any Court, tribunal or other authority.

17. Section 47 is a non obstante clause which stipulates that the provisions of the NDDB Act will have overriding effect even if they are inconsistent with the Companies Act, Industrial Disputes Act or any other law for the time being in force on the date when the said Act was enforced. However, the key to application of Section 47 is to examine whether there is anything inconsistent between the provisions of the NDDB Act and Section 14(2) of the CAG Act. In this regard, reference was made to Section 28 of NDDB Act which reads:

28. Audit. (1) The accounts of the National Dairy Development Board shall be audited by auditors duly qualified to act as auditors of companies under the Companies Act, and the appointment of auditors and remuneration payable to them shall be subject to the approval of the Central Government.

(2) Every auditor in the performance of his duties shall have at all reasonable times access to books, accounts and other documents of the National Dairy Development Board.

(3) The auditors shall submit their report to the Board which shall forward a copy of their report to the Central Government.

18. Section 28(1) states that accounts of NDDB will be audited by auditors and not by the CAG by necessary implication. Anyone authorized to work as an auditor under the Companies Act can be appointed as an auditor of NDDB and their appointment and remuneration is subject to approval of the Central Government. The report of the auditors under Sub-section (3) to Section 28 is to be forwarded to the Central Government. Section 19(2) of the CAG Act protects audit of accounts of corporations established by law under the respective Parliamentary enactment. In view of Section 19(2) of the CAG Act and Section 28 of the NDDB Act there is no conflict between the two Acts.

19. However, it is not possible to accept the contention of the petitioner that Section 47 read with Section 28 of the NDDB Act is in conflict and overrides Section 14(2) or Section 15 of the CAG Act. The said provisions operate in different fields and serve different purpose or object. Section 19(1) and (2) of the CAG Act and Section 28 of the NDDB Act deal with the normal financial audit exercise which is undertaken each year. This audit is to be done by a qualified auditor under the Companies Act and whose appointment is approved by the Central Government. All companies have to get their accounts audited from an independent auditor and this ensures transparency and enables the stake holders to know the true and correct state of financial affairs and whether necessary statutory compliances have been made.

20. Audit of the receipts and expenditure u/s 14(2) of the CAG Act serves a different purpose and objective. It is different from statutory annual financial audit under the Companies Act or the provisions of the enactment under which the corporation has been established. Audit and role of CAG is different from a statutory annual audit and role of a statutory auditor. Statutory auditor is primarily concerned with the financial position/affairs of the company or the corporation, maintenance of accounts and records and whether statutory compliances have been made. Role of CAG is much wider and is not merely concerned with normal scrutiny of accounts, fraud, misfeasance etc. but includes enquiries into aspects like faithfulness, wisdom and economy in expenditure and receipts. The CAG not only examines whether the corporation has acted in conformity with the prescribed law, rules and procedure but also whether there was improper, extravagant or infructuous expenditure. Audit by CAG is in the nature of appropriation audit in which CAG also examines whether the expenditure was imprudent or wasteful and connected aspects. Examining the role of CAG, the Central Public Accounts Committees. Fourth Report in Lok Sabha had observed:

The Committee are, therefore, definitely of the view that it is the function of the Comptroller and Auditor General to satisfy himself not only that every expenditure has been incurred as per prescribed rules, regulations and laws, but also that it has been incurred with faithfulness, wisdom and economy. If, in the course of his audit, the Comptroller and Auditor General becomes aware of facts which appear to him to indicate an improper expenditure or waste of public money, it is his duty to call the attention of Parliament to them, through his Audit Reports. At the present time when there is heavy taxation and heavy expenditure, the Committee hope that Comptroller and Auditor General will pay even greater attention than in the past to this aspect of his duties and that Government will given him every facility to perform them..

21. Different type of audits, which are undertaken by the CAG is apparent when we examine Regulation on Audit and Accounts, 2007 (hereinafter referred to as, the Regulations for short) framed u/s 23 of the CAG Act. The term audit has been defined in Regulation 2(5) to mean examination of accounts, transactions and records in performance of duties and exercise of powers prescribed under the Constitution and the Act and includes performance audit or any other type of audit. Under Regulation 4, objectives of the audit have been defined as:

4. Broad objectives of audit.

The broad objectives of audit are to ensure legality, regularity, economy, efficiency and effectiveness of financial management and public administration mainly through assessment as to:

(l) whether the financial statements are properly prepared, are complete in all respects and are presented with adequate disclosures (financial audit);

(2) whether the provisions of the Constitution, the applicable laws, rules and regulations made there under and various orders and instructions issued by competent authority are being complied with (compliance audit); and

(3) the extent, to which an activity, programme or organisation operates economically, efficiently and effectively (performance audit).

22. Thus the audit can be financial, compliance audit and performance audit. Financial audit is normally undertaken by the auditors under the provisions of the Companies Act or the relevant enactment. Auditors can deal with some aspects of compliance audit when they submit audit report under the Income Tax Act, 1961 and when they report compliance of the provisions of the Companies Act or other statutory enactments. However, statutory or annual auditor normally does not perform duties and functions of a performance audit unless specifically asked for or required. The scope and purpose of performance audit is different.

23. This is apparent when we examine the Regulations, which separately deal with financial, compliance and performance audit. Chapter V of the Regulations deals with financial audit. Chapter VI deals with compliance audit and has two separate headings relating to audit of expenditure and audit of receipts. There is also a separate heading under Chapter VI relating to audit of grant in aids and loans. Regulation 69 in Chapter VII deals with performance audit and explains the three objectives of performance audit; economy, efficiency and effectiveness and reads:

69. Three Es of performance audit.

Performance audit assesses:

(a) Economy Economy is minimising the cost of resources used for an activity, having regard to appropriate quality. Economy issues focus on the cost of the inputs and processes. Economy occurs where equal-quality resources are acquired at least cost.

(b) Efficiency Efficiency is the relationship between the output, in terms of goods, services or other results and the resources used to produce them. Efficiency exists where the use of financial, human, physical and information resources is such that output is maximised for any given set of resource inputs, or input is minimised for any given quantity and quality of output.

(c) Effectiveness Effectiveness is the extent to which objectives are achieved and the relationship between the intended impact and the actual impact of an activity. Effectiveness addresses the issue of whether the scheme, programme or organisation has achieved its objectives.

24. Chapter VIII of the Regulations deals with audit of body and authority other than Government establishments and companies. The term body and authority has been defined as:

79. Meaning of the expression body and authority

The expression authority. means a person or body exercising power or command vested in it by virtue of the Constitution or any law made by the legislature. The expression body. means an aggregate of persons, whether incorporated or unincorporated, and includes an institution or organisation set up as an autonomous organisation under a specific statute or as a society registered under the Societies Registration Act, 1860 or Indian Trusts Act, 1882 or any other statute, voluntary organisation or non-Government organisation, urban or rural local self Government institution, co-operative society, society or club, etc.

25. Regulation 82 thereafter deals with audit u/s 14(1) and (2) and Regulation 88 deals with audit u/s 15 of the CAG Act.

26. Part (d) of Chapter VIII deals with audit of corporation set up by or under the law made by the Parliament as stipulated in Section 19(2) of the CAG Act. Part (e) deals with audit u/s 19(3) of the CAG Act and Regulation 107 deals with conditions of audit u/s 20(1) of the CAG Act. Chapter IX of the Regulation deals with audit of the Government companies u/s 19(1) of the CAG Act and defines the role of CAG with regard to audit by a statutory auditor. The regulations therefore draw a clear distinction between audit under Sections 14, 15 and 19(1) and (2) of the CAG Act. These are separate types of audits.

27. u/s 20 of the CAG Act, on request made by the President, Governor of a State or Administrator of a Union territory having Legislative Assembly, CAG can conduct audit of accounts of a body or authority even when he is not entrusted and required u/s 19 of the CAG Act to conduct audit. The request for conducting

audit in such cases can be made after consultation with CAG. u/s 20(2) of the CAG Act, the CAG can also submit a proposal to the President, Governor of a State or the Administrator of a Union territory having a Legislative Assembly that they may be authorized to undertake the audit of accounts of any body or authority, the audit of the account of which has not been entrusted to them by law, if CAG is of the opinion that substantial amount has been invested in, or advanced to, such body or authority. Thus, u/s 20 of the CAG Act, CAG can conduct audit even if u/s 19, CAG does not have authority to conduct statutory audit.

28. NDDB Act is a special Act and the same was enacted in 1987, subsequent to CAG Act, which was enacted in 1971. CAG Act is also a special Act, which deals with power and functions of CAG and stipulates their powers, functions and contours. It is not possible to accept the contention of the petitioner that CAG Act is a general Act in relation to NDDB Act. Both Acts are special Acts and, therefore, ordinary principle that a special law overrides a general law cannot afford any solution to the legal questions raised.

29. NDDB Act was enacted to constitute a body corporate and have NDDB as an institution of national importance with regard to milk, milk products and other commodities. Assets and all properties belonging to Indian Dairy Corporation were vested with NDDB. The said board is to discharge functions and act on sound business principles with due regard to public interest. NDDB has been granted fair decree of autonomy and freedom and is not treated and regarded as a department of the government. NDDB Act ensures that the Board''s autonomy is safeguarded and that Board does not suffer from disadvantages and problems associated with and faced by the government departments. At the same time, NDDB does serve the public purpose and to this extent, the NDDB Act does provide for regulatory supervision/control. Section 25 of the NDDB Act prescribes restriction on receipt of gifts, grants and donation from foreign government or any other source outside India without the prior Central Government approval. Section 27 deals with appointment of Auditor and his remuneration and requirement to submit audit report to the Central Government. Section 29 provides that report of the Auditor will be placed before the Parliament as soon as may be after such report is received by the Central Government. Section 23 states that the Board with previous approval of the Central Government or in accordance with the terms of any general or special authority given to it by the Central Government can borrow money from sources. Section 24 stipulates that the Central Government after due appropriation made by the Parliament by law can give grants or loan to NDDB. Section 16(4) & (5) also authorize the Central Government or the State Government to entrust NDDB with activity other than those specified and need for approval of the Central Government in case NDDB wants to participate in any organization in financial manner or in any other manner. The contention that if CAG conducts audit u/s 14(2) of the CAG Act, autonomy and freedom of the NDDB will be compromised contrary to the provisions of the NDDB Act, is rejected.

30. While determining the question of overriding effect of the NDDB Act or the CAG Act, I have considered the purpose and policy underlying the two Acts and the intendment conveyed by the language of the provisions of the two enactments. This principle of interpretation was approved by the Supreme Court in Shri Ram Narain Vs. The Simla Banking and Industrial Co. Limited, and Shri Sarwan Singh and Another Vs. Shri Kasturi Lal, . In Sarwan Singh''s case (supra) it was held that fair meaning has to be given to the language of a provision. Keeping in view the language of the provisions of the two enactments, the test that the later enactment must prevail over the earlier one cannot be applied. In the present case, the two enactments can be interpreted and so called conflict resolved by reference to purpose, objective and policy in the two enactments and intendment conveyed by the language of the relevant provisions. This principle was approved by the Supreme Court in Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others, . In the said case, the Supreme Court was examining the effect of the overriding provision of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the Delhi Rent Control Act, 1958 and the resultant conflict. In the said judgment, it was observed as under:

61. The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as Special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. We propose to consider this matter in the light of this principle.

31. As noticed above, both CAG Act and the NDDB Act contain non obstante clauses. The ordinary rule of construction is that later enactment with non obstante clause will prevail but application of this rule depends upon the context of the statute incorporating the non obstante clause. Each non-obstante clause is to be given effect to but can be confined and restricted keeping in mind the legislative policy. In A.G. Varadarajulu and Another Vs. The State of Tamilnadu and Others, , the Supreme Court has observed:

16. It is well settled that while dealing with a non-obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. The Court has referred to Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, , The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously.

32. A non obstante clause is no doubt a very potent clause and is intend to exclude every consideration arising from other provisions of the same statute or other statute, as the case may be, and therefore has to be strictly construed, specially, when it does not refer to any specific provisions of the statute but refers generally to all enactments in existence. CAG Act is not specifically

referred to in Section 47 of the NDDB Act. Search in the present case has to be made with a view to determine the scope of the non-obstante clause and decide, whether and which provision, aspects and description are covered by the non-obstante clause. Legislative intention, scheme and the context in which the non-obstante clause is enacted is required to be examined on reading the whole statue. Contextual interpretation may be required and has been made, without ignoring the textual language. In R.S. Raghunath Vs. State of Karnataka and another, reference was made to earlier decision of the Supreme Court in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, and it was observed as under:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

11. ...the non obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non obstante clause need not necessarily and always be coextensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.

33. It was submitted that the petitioner does not receive any loan or grant from CFI and the grants received by the petitioner were pursuant to the tripartite agreement between the World Bank, the Central Government and the NDDB. This contention has no merit as in this case there was no disbursal of available funds from the World Bank u/s 25 of the NDDB Act. There is difference between loans and grants given by the Central Government u/s 24 and gifts and grants received directly from private parties u/s 25 of the NDDB Act. The World Bank disbursed

and made funds available to the Central Government and thereafter grants were made by the Central Government from the CFI to the petitioner. The immediate source of the funds was the CFI though funds may have originated from and could be traced to the World Bank. As per the tripartite agreement accepted by the NDDB, the funds/grants had come and were made available from the CFI. These loans/grants were u/s 24 of the NDDB Act. In these circumstances, Section 14(2) of the CAG Act would be applicable, if the total amount of grant from loan from the CFI exceeded Rs. 1 crore. Admitted position is that total disbursements made to NDDB from the CFI exceeded Rs. 1 crore.

34. In the light of the aforesaid, I do not find any merit in the contentions raised by the petitioner. The writ petition and the application are liable to be dismissed. However, during the course of hearing counsel for the CAG had produced before me letter dated 20th November, 2009, stating inter alia, that no useful purpose would be served in auditing old accounts for the period 1987 to 1994 at this stage, and therefore, CAG is not any more interested in the said audit. CAG made a request that as question of law had arisen for consideration, the same should be decided. The said letter has been taken on record and question of laws relating to the provisions of the CAG Act and NDDB Act have been decided. No costs.

