

BOMBAY HIGH COURT REFUSES TO INTERVENE IN THE CONSTITUTIONAL VALIDITY OF MARKET STABILISATION SCHEME [Dated 27-06-2009]

'The timing, scope and extent of audit are all matters which fall within the jurisdiction of the Comptroller and Auditor (CAG) of India and this is certainly not a matter on which the Court ought to tread'. The Hon'ble High Court of Bombay held this in a Public Interest Litigation filed by one Shri R.S. Kelkar of Pune challenging the constitutional validity of Market Stabilisation Scheme (MSS) framed by the Central Government in March 2004 in agreement with the Reserve Bank of India (RBI).

The MSS provided for issue of Treasury Bills and/or dated securities by the Government in addition to their normal market borrowing programme up to an annual aggregate ceiling. Amounts, thus, raised were to be credited to and held in a separate identifiable cash account with the RBI titled 'MSS Account' and were not to be pumped back into the economy or utilized for any purpose other than for redemption and for buy back of treasury bills and/or dated securities. The exchange gain or loss arising from the transaction of foreign currency assets and liabilities of the RBI were to be accounted for in the Currency and Gold Revaluation Account (CGRA) operated by the RBI and forming part of its audited balance-sheet.

Audit of RBI not being with the CAG, this account was not audited by the CAG. Contending that the amount in the MSS Account was kept out of Consolidated Fund of India and that the CAG had failed in its duty to conduct necessary audit, the Petitioner prayed for issuance of direction to the RBI to transfer the amount to the Consolidated Fund of India and to the CAG for auditing the accounts of the RBI and also to estimate the profit or loss to the country on account of depletion in the CGRA and interest on the scheme. In answer, the Government denied that the amount in MSS Account does not form part of the Consolidated Fund of India. The CAG also stated that receipts and disbursements under the MSS are duly budgeted by the Government in the receipt and expenditure budget which is subject to parliamentary control and the accounts of Ministry of Finance and appropriation account of the Government are audited at 'regular frequency'. After examination of the of the rival contentions, the Division Bench of Hon'ble Mr. Chief Justice Swatanter Kumar and Hon'ble Justice Dr. D.Y. Chandrachud was pleased to dismiss the submissions of the Petitioner.

The Hon'ble Bench also held that there was neither a constitutional nor statutory dereliction of duties by the CAG and it was undoubtedly for the CAG to consider whether and if so to what extent a specific audit should be undertaken. Defining the parameters for judicial intervention in such cases, the Hon'ble High Court also held that the jurisdiction of the Court is exercised where there is breach of a constitutional or statutory prescription and in absence of such a breach the exercise of administration should be left to where it is intended to belong in a democratic set up based on separation of powers.