

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 5375 OF 2016

1.Dev Gajanan Heramb And Ors. ...Petitioners

*Versus*1.The Commissioner And Registrar, Co-operation
And Anr. ...Respondents

WITH

Writ Petition NO. 5374 OF 2016

Sou. Gayatridevi Ganpatrao Patwardhan ...Petitioner

*Versus*The Commissioner And Registrar, Co-operation
And Anr. ...Respondents

WITH

Writ Petition NO. 5376 OF 2016

Shri. Ishwardas Premraj Chordiya ...Petitioner

Versus

The Commissioner And Registrar And Anr. ...Respondents

*Mr.PS.Dani, Senior Advocate with Mr.Amit B.Borkar, for the Petitioners in
W.P.No.5375/16 & WP 5374/16.**Mr.Y.S.Jahagirdar, Senior Advocate with Mr.S.S.Kanetkar, for the Petitioners
in W.P.No.5376/16.**Mr.C.P.Yadav, AGP for the State.*

CORAM : ANOOP V. MOHTA &
G.S. KULKARNI, JJ.

DATE : 3rd August, 2016

ORDER:

1. The parties agreed that the petitions can be disposed of finally. Heard the learned Counsel for the parties.

2. On hearing the learned Counsel appearing for the parties, we are inclined to interfere with order dated 21 April 2016 passed by Respondent No.2 – Special Auditor, thereby rejected the petitioners' application dated 21 March 2016 and decided even the show cause notice without assigning reasons to the specific reply given by the Petitioners dated 15 February 2016 and 21 March 2006. On 2 March 2016 in Writ Petition No.2456 of 2016, this Court has directed the concerned Respondents to decide the impugned show cause notice considering the reply of the Petitioner including the issue of the jurisdiction. Admittedly first reply dated 15 February 2016 was already filed to the impugned show cause notice. After the above order, another application/reply was filed on 21 March 2016 whereby the specific prayers are raised to deal with the main order dated 16 July 2013, and all the consequential actions

or orders arising out of the same. A request was also made to decide the jurisdictional issue and/or refer the matter to the Commissioner. The Commissioner was party to the earlier Writ Petition.

3. After hearing the learned Counsel appearing for the parties and after going through the impugned order, we have noted that except giving reference to the reply or the inquiry report, there are no reasons to deal with the specific defences raised by the Petitioners. The effect of this, according to us, is quite serious and ultimately the civil and the criminal consequences would follow immediately against the Petitioners. It is settled that reasons are required to be given before taking any drastic decision/ action against the parties. This Court has passed the order to consider the case as recorded above, therefore also reasons should have been given on the issues so raised. Therefore, in the interest of justice, we are inclined to set aside order dated 21 April 2016.

4. We further direct Respondent No.2 to pass a reasoned order dealing with the defences so raised in their replies to the show cause notice dated 3 February 2016 including application/reply dated 21 March 2016.

5. Liberty is granted to the Petitioners to file additional reply/documents, if so instructed, within two weeks. Learned AGP appearing for the State is objecting to this permission to file documents. For the above reasons we are directing to re-consider the case of the Petitioners by giving all the opportunity to the concerned parties. Therefore, this order. The show cause notice be decided in accordance with law keeping in mind the above observations within a period of four weeks after additional reply/document, if any, are filed by the Petitioners as directed above.

6. It is also made clear that as the contention is raised by the learned AGP that the Petitioners have alternate remedy available against the orders and the action so challenged in the Petitions, we are permitting the Petitioners to invoke appropriate remedy in accordance with law including the remedies against order dated 16 July 2013 and other orders. The contentions of all the parties are kept open.

7. All the petitions are disposed of accordingly. No costs.

(G.S.KULKARNI, J.)

(ANOOP V. MOHTA, J.)