IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

...

WRIT PETITION NO. 7852 OF 2017

AVINASH BHASKARRAO PATIL
VERSUS
COMMISSIONER CO-OPERATION CENTRAL BUILDING
PUNE AND OTHERS

...

WITH
WRIT PETITION NO.7854 OF 2017

RAMESH EKNATH SONAWANE
VERSUS
COMMISSIONER CO-OPERATION CENTRAL BUILDING
PUNE AND OTHERS

...

WITH
WRIT PETITION NO.7855 OF 2017

RATILAL HARLAL BIRHADE
VERSUS
COMMISSIONER CO-OPERATION CENTRAL BUILDING
PUNE AND OTHERS

...

Advocate for Petitioner : Mr Chavan Pravin P.
AGP for Respondents: Mr N T Bhagat

...

CORAM : V.K. JADHAV, J.

...

Reserved on November 09, 2017.
Pronounced on January 05, 2018.

...

COURT'S ORDER :-

1. Being aggrieved by separate three orders dated 28.4.2017 passed by Respondent No.1-Commissioner

Cooperation, Pune and pursuant to the orders passed by respondent No.1, the orders dated 4.5.2017 passed by Respondent No.4-Assistant Registrar, Amalner, District Jalgaon, District Special Auditor, Cooperative Societies, Jalgaon in respect of the petitioners, petitioners have preferred these separate three writ petitions.

2. Brief facts, giving rise to these three writ petitions are as follows :-

a] Petitioners are the auditors selected from the panel of certified auditors maintained by the Co-operative Societies. These three petitioners have conducted the audit of the accounts of Priyadarshini Urban Cooperative Credit Society for the years 2013-2014, 2014-2015 and 2015-2016 respectively. Respondent No.4-Assistant Registrar, Amalner, by order dated 14.10.2016 communicated to these three petitioners that on perusal of the audit report, it appears that, audit of the accounts of the aforesaid society has not been conducted in compliance with the provisions of Section 81 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the 'Act of 1960') and the Rule

69 of the Maharashtra Cooperative Societies Rules, 1961 (hereinafter referred to as the 'Rules of 1961'). It has been specifically contended in the said communication that except change in figures year wise, the audit reports are words to words similar. By the said communication, respondent No.4 has pointed out various irregularities, lacuna's, non-compliance of the provisions of Section 81 of the Act of 1960 and Rule 69 of the Rules, 1961 and circulars issued time to time by the Department for carrying out the audits of the accounts of the society. Thus, Respondent no.4 has specifically directed the auditor to lodge F.I.R. in the concerned police station in terms of the directions given by the Commissioner Cooperation, Pune in a circular dated 22.8.2015. It has been specifically directed in the said communication that, non compliance of the aforesaid directions would amount to negligence in the statutory duties and further inference could be drawn that the petitioners/auditors are also the part of the illegalities committed by the aforesaid society. Petitioners herein have submitted their detail explanation in writing on 2.11.2016 to respondent No.4.

Respondent No.4 Assistant Registrar Cooperative Societies, Amalnaer on perusal of the said explanation submitted a report dated 5.12.2016 to respondent No.1 Commissioner Cooperation, Pune strongly recommending therein deletion of the names of petitioners from the panel of auditors. By letter dated 5.1.2017, respondent No.1 Commissioner, Pune has directed the petitioners to submit their explanation within 15 days alongwith the relevant papers. Respondent No.1 also called upon respondent No.3 to submit the report in terms of the communication received from respondent No.2 Assistant Commissioner, Pune for deletion of the names of the petitioners from the panel of Auditors. Respondent No.3 has also called upon the petitioners to submit their explanation. Petitioners have submitted their detail explanation to respondent No.1 and respondent No.3 separately. By impugned order dated 28.4.2017 respondent No.1 has directed deletion of names of the petitioners from the panel of the auditors for five years from the date of the order. Pursuant to the said order, the District Special Auditor, Class-1, Cooperative Societies, Jalgaon has informed to the petitioners by impugned communication dated 4.5.2017 about deletion of their names for a period of five years from the panel of the auditors as directed by the Commissioner Cooperation, Pune. Hence, these writ petitions.

3. Learned counsel for the petitioner/s submits that, after completion of the audit reports for the aforesaid period, neither the Assistant Registrar nor the District Special Auditor had issued the notice to the petitioners. By letter dated 14.10.2016, respondent No.4 Assistant Registrar, Amalner, District Jalgaon for the first time raised some queries and lacunas in respect of the audit report submitted by the petitioners. Learned counsel submits that, since 2009 affairs of said Priyadarshini Urban Cooperative Society (hereinafter called as said Society) came to be practically stopped. After 2009 said Society has not accepted any deposits or has not disbursed any loan. The audit report of the account of the said society for the period 2008-2009, 2009-2010 are conducted by the Chartered Accountant and for a period of 2010-2011, 2011-2012 and 2012-2013 the audit

of the account of the said Society came to be conducted by the Government Auditors, however, Chartered Accountants and Government Auditors have not mentioned the questioned transactions in their audit report. However, the petitioners have conducted the audit of the accounts as per norms and taken all points for discussion as per the circular issued by the Commissioner Cooperation time to time. Learned counsel submits that, however, respondent no.4 Asstt. Registrar Amalner had issued a letter to these petitioners without going through the Audit report. Learned counsel submits that, due to reply of the petitioners to the letter dated 14.10.2016, Respondent No.4 Assistant Registrar, Amalner got annoyed and submitted false, incorrect and misleading proposal to the Commissioner, Pune. Learned counsel for the petitioner/s further submits that, petitioners have submitted their reply to respondent No.3 District Deputy Registrar, Cooperation, Jalgaon on 20.2.2017 and further requested to grant time to make oral submissions. Petitioner/s had also pointed out to respondent no.3 that, already the matter is seized by the Commissioner, Pune. Learned counsel submits that, respondent no.2 had issued the notice for the hearing before respondent no.3 and the impugned order is passed by respondent no.1. Learned counsel vehemently submits that, respondent No.1 Commissioner Co-operation, Pune without giving any opportunity of being heard passed the impugned order. Respondent No.1 Commissioner, Pune even has not considered the reply submitted by the petitioners. Impugned order dated 28.4.2017 is perverse, erroneous, in gross violation of the principles of natural justice. Respondents have not considered that there are many complaints against the concerned Assistant Registrar, Amalner and inquiries are also pending against him. Learned counsel submits that, respondent no.1 has also not considered the enquiry under section 88 of the Act of 1960 came to be initiated against board of directors of the said society, however, all the inquiry officers did not find any loss or damage or any malfeasance or misfeasance on the part of Board of directors. Impugned order is a stigma on the petitioner/s and as such, action of respondent no.1 is serious one.

Impugned order, therefore, suffers from gross violation of principles of natural justice. Learned counsel submits that for audit purposes a format is provided to all the Co-operative offices, and as such, the audit reports of any such societies are obviously in the same format and language. Even, respondent No.1 has also not considered that all queries and lacunas as pointed out by respondent no.4 Assistant Registrar in his letter are already mentioned in the respective audit reports. Even though, petitioners have submitted a letter to respondent no.4 Assistant Registrar to inform names of the guilty Government Officers to lodge the complaints as directed, however, till this date, no names are informed to them for filing of the F.I.R.

4. Learned counsel for the petitioner/s in order to substantiate their contentions placed his reliance on following two cases :-

1. Union of India and others Vs. E.G.Nambudiri reported in AIR 1991 SC 1216.

2. State of Orissa Vs. Dr.(Miss) Binapani Dei and others reported in AIR 1967 SC 1269.

5. The learned A.G.P. for respondent/State authorities submits that, petitioners have completed the audit of Priyadarshini Urban Co-operative Society for the period 2013-2014, 2014-2015, 2015-2016 respectively and on going through the audit reports submitted by the petitioners for the said period, it appears that there are serious illegalities committed by the petitioners while conducting audit. Consequently, respondent No.4 had issued a order dated 14.10.2016 to the petitioners and further directed them to file FIR as provided under section 81 (5)(b) of the Act of 1960 against the concerned persons, however, the petitioners have not lodged any F.I.R. though specifically directed. Petitioners have deliberately not complied the said directions. Learned AGP submits that, it is the duty of the petitioners to conduct the audit of the accounts as per the provisions of Act of 1960 and Rules of 1961. Petitioners have not mentioned in their respective audit reports illegalities and irregularities committed by the Society. Learned AGP submits that, said society is in serious financial crises from 2007 and therefore, the respondents have issued certain restrictions about

Banking transactions of the said Society. The State Government has sanctioned financial help to the said society. Learned AGP further submits that, there are illegalities in the financial transactions of the said society and while conducting audit of the accounts, the same should have been reported/mentioned in the audit report by the petitioners, however, deliberately the petitioners have not reported the same in the audit report. Consequently, respondent no.4 has filed proposal to respondent no.1 about deletion of the names of petitioners from the panel of the petitioners maintained by the Departments. Learned AGP submits that, petitioners have been granted an opportunity to file reply. Petitioners have submitted their reply, however, said reply was not found satisfactory and accordingly respondent no.1 has rightly passed the impugned order. There is no merit in the writ petitions and Writ petitions are thus liable to be dismissed.

6. In terms of the provisions of Rule 69 of the Rules 1961, the audit of the accounts of the Societies are required to be conducted by the Departmental Auditors

or by Certified Auditors appointed by the Registrar from time to time on such terms and conditions as it deems fit. Rule 69 is reproduced herein below :-

Rule 69 Procedure for appointment of auditors and for conducting audit :-

(l) The audit or accounts of societies shall be conducted by Departmental Auditors or by certified auditors appointed by the Registrar from time to time on such terms and conditions as he deems fit :-

Provided that, any society or class of societies notified by the Registrar may get their accounts audited by an auditor selected from the panel of certified auditors maintained by the Registrar and published by him in the Official Gazette.

Explanation 1:- For purposes of this Chapter, audit shall include annual or periodical audit, continuous or concurrent audit and test or super audit and re audit.

Explanation 2:- For purposes of this rule, "a certified auditor" includes-

(a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949,

(b) a person who holds a Government diploma in co-operative accounts or a Government diploma in co-operation and accountancy, or

(c) a person who has served as an auditor in the Co-operative Department of the State Government, and whose name has been included by the Registrar in the panel of certified auditors maintained and published by him in the Official Gazette at least once every three years.

(2) The audit under section 84 shall in all cases extend back to the last date of the previous audit and shall be carried out up to the last date of the co-operative year immediately preceding the audit or where the Registrar so directs in the case of any particular society or class of societies, such other date as may be specified by the Registrar.

(3) The auditor shall submit an audit memorandum to the society and to the Registrar in the Form specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as

on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him, the said accounts give all the information required by the Act in the manner so required and give true and fair view :-

(i) in the case of the balance sheet, of the state of society's affairs as at the end of the financial year or any other subsequent date up to which the accounts are made up and examined by him, and

(ii) in the case of the profit and loss account, of the profit or loss for the financial year, or the period covered by the audit, as the case maybe.

(4) The audit memorandum shall state -

(i) whether the auditor had obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit;

(ii) whether in his opinion proper books of accounts, as required by the Act, the rules and the bylaws of the society have been kept by the society so far as it appears from the examination of these books ; and

(iii) whether the balance sheet and profit and loss account examined by him are in agreement with the books or accounts and returns of the society.

(5) Where any of the matters referred to in sub-rule (4) are answered in the negative or with a qualification, the audit memorandum shall specify the reasons for the answer.

(6) The audit memorandum shall also contain schedules with full particulars of -

(i) all transactions which appear to be contrary to the provisions of the Act,the rules or the bylaws of the society ;

(ii) all sums which ought to have been but have not been brought into account by the society ;

(iii) any material impropriety or irregularity in the expenditure or in the realization of moneys due to the society ;

(iv) any money or property belonging to the society which appears to the auditor to be bad or doubtful debt; and

(v) any other matters specified by the Registrar in this behalf.

(7) The summary of audit memorandum as prepared by auditor shall be read out in a general meeting. The audit memorandum together with its accompaniments shall be open to inspection by any member of the society. The Registrar may however direct that any portion of the audit memorandum which appears to him to be of objectionable nature or not justified by facts shall be expunged and the portion so expunged shall not form part of the audit memorandum.

(8) The Registrar may from time to time specify the from or forms in which the statements of accounts and information shall be prepared for audit, by the society.

(9) On completion of his statutory audit, the auditor shall award an audit classification letter to the society whose accounts he has audited in accordance with the instructions issued by the Registrar from time to time. The list of societies to be published under sub-section (3) of section 12 shall also specify the audit class of the society.

7. In terms of the Section 81 of the Act of 1960, Registrar Cooperative Societies has the power to audit or cause to be audited at least once in each Co-operative year, through a person authorized by him by general special order in writing in this behalf, the account of the every society which has been given final assistance by the State Government. Audit must be conducted by the auditors from the panel of the auditors maintained by the Registrar. Section 81 of the Act of 1960 is reproduced herein below :-

“Section 81. : AUDIT :-

(1) (a) The Registrar shall audit, or cause to be audited, at least once in

each co-operative year, by a person authorized by him by general or special order in writing in this behalf, the accounts of every society which has been given (financial assistance including guarantee by the State Government [or Government undertakings, from time to time, and the accounts of the apex societies. State and District Level Federal Societies, District Central Co-operative Banks, Co-operative Sugar Factories, Urban Co- operative Banks, Co-operative Spinning Mills, District and Taluka Co-operative Sale and Purchase Organizations, and any such Society of class of Societies which the State Government may, from time to time, by notification in the Official Gazette specify.

[Provided that, the audit of the District Central Cooperative Bank and the State Co-operative Bank shall be conducted by the Chartered Accountant approved by the National Bank;]

(b) The societies other than the societies referred to in clause (a) shall arrange to get their accounts audited, at least once in each co-operative year, by an auditor from the panel of auditors maintained by the Registrar, or by a chartered accountant holding a certificate in co-operative audit issued by the Institute of Chartered Accountants of India.

Provided that, the Registrar may, for reasons to be recorded in writing, audit or cause to be audited accounts of any such societies of any year and at any time.]

[Provided further that, the primary agricultural credit cooperative societies shall arrange to get their accounts audited at least once in each cooperative year by an auditor from the panel of auditors maintained by the Registrar; or by a Chartered Accountant holding a certificate in cooperative audit issued by the Institute of Chartered accountants of India. The District Central Cooperative Bank and the State Cooperative Bank shall arrange to get their accounts audited at least once in each cooperative year through a Chartered Accountant from the panel of auditors approved by National Bank]-

(2) The audit under sub-section (1) shall include examination or verification of the following items, namely :—

(i) over-dues of debts, if any ;

(ii) cash balance and securities and a valuation of the assets and liabilities of the society ;

(iii) whether loan and advances and debts made by the society on the basis of security have been properly secured and the terms on which such loans and advances are made or debts are incurred are not prejudicial to the interest of the society;

(iv) whether transactions of the society which are represented merely by book entries are not prejudicial to the interest of the society ;

(v) whether loans and advances made by the society have been shown as deposits. (vi) whether personal expenses have been charged to revenue account ;

(vii) whether the society has incurred any expenditure in furtherance of its objects.

(viii) whether the society has properly utilized the financial assistance granted by Government or Government undertakings or financial institutions, for the purpose for which such assistance was granted;

(ix) whether the society is property carrying-out its objects and obligations towards member.

(2A) Where, in the opinion of the State Government, it is necessary in the public interest to do so in relation to any society or class of societies for ensuring management thereof in accordance with sound business principles or prudent commercial practices, the State Government may, by order, direct [that such society or class of societies shall prepare and maintain its accounts in the form determined by the State Government, from time to time and] that cost audit or performance audit or both, of such society or class of societies, as may be specified in the order, shall be conducted.

(2B) Where any order is issued under sub-section (2A), the Registrar shall cause such audit of such society or class of societies to be conducted by a cost accountant who is a member of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959.]

(3)[a] The Registrar or the person authorized shall, for the purpose of audit, at all 'time have access to all the books, accounts, documents, papers, securities, cash and other properties belonging to or in the custody of the society, and may summon any person in possession or responsible for the custody of any such books accounts, documents, papers, securities, cash or other properties to produce the same at any place at the head-quarters of the society or any branch thereof.

(b) The Registrar shall be competent to depute Flying Squad to a society or societies for examination of books, records, accounts, and such other papers and for verification of cash balance. The report of the Flying Squad shall be deemed to be an audit report for the purpose of taking further action, if necessary.

(c) The registrar or the person authorized by him in this behalf may carry out or cause to be carried out the test audit of the accounts of any society. The test audit shall include the examination of such items as maybe prescribed.]

(4) Every person who is, or has at any time been, an officer or employee of the society, and every member and past member of the society, shall furnish such information in regard to the transactions and working of the society as the Registrar, or the person authorized by him, may require.

(5) The auditor appointed under sub-section (1) shall have the right to receive all notices, and every communication relating to the annual general meeting of the society and to attend such meeting and to be heard there at, in respect of any part of the business with which he is concerned as auditor.

(5A) If, during the course of audit of any society, the auditor is satisfied that some books of accounts or other documents contain any incriminatory evidence against past or present officer or employee of the society the auditor shall immediately report the matter to the Registrar and, with previous permission of the Registrar, may impound the books or documents and give a receipt thereof to the society.

(5B) The auditor shall submit an audit memorandum duly signed by him to the society and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period up to which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him by the society the said accounts give all information required by or under this Act and present the true and fair view of the financial transaction of the society.]

(6) If it appears to the Registrar, on an application by. a society or otherwise, that it is necessary or expedient to re-audit any accounts of the Society, the Registrar may by order provide for such re-audit and the provisions of this Act applicable to audit of accounts of the society shall apply to such re-audit.

(7) Special audit of Co-operative bank if requested by the Reserve Bank of India shall be conducted and report thereof shall be submitted to the Reserve Bank of India under intimation to the Registrar alongwith the Special Audit Report.

8. Needless to mention here that, the Cooperative Department is empowered to monitor the work done by such auditors appointed by the Registrar or the societies themselves. The work includes allotment of the Societies, coordination, control, guidance, rectification, follow-up action, supervisory functions, etc. The purpose of the audit is to detect financial frauds or errors. Concerned auditor has access to books, records, accounts, documents, vouchers etc. He may direct to seize the records and also power to call for information and issue summons. Even, auditors may advise the Registrar to take action under section 88 of the Act of 1960.

9. Cooperative Department has issued various circulars including the circular dated 19.5.1997 wherein, certain guidelines are framed as to the care and caution required to be taken by the Auditor while preparing the audit report and, also the directions as to the reasoning, remarks, violation of the Rules, illegalities committed by the Society while transacting the business etc. It has been specifically advised in the

said circular that audit report must be self explanatory, legal and to the point fixing the responsibilities specifically against the erring staff members/officers/office bearers of the Society.

10. In the instant case, by communication dated 14.10.2016 respondent no.4 Assistant Registrar, Amalner has informed to the petitioners near about 15 points thereby specifically pinpointing the illegalities/irregularities, lacunas in the audit reports submitted by the petitioners for the respective years. Petitioners have submitted their detail explanation by communication dated 2.11.2016 alleging therein that respondent no.4-Assistant Registrar himself is responsible for not taking any action against the erring staff members and office bearers of the Society. It has been also stated in the said explanation that, respondent no.4 has no knowledge about the provisions of the audit manuals and he has not correctly understood the circulars issued by the Cooperative Department from time to time. It has been also alleged in the said explanation that respondent no.4 himself is

trying to save certain officers and as such no report is submitted to the Government. It has been also stated in the said explanation that audit has been carried out in terms of the provisions of Act of 1960, Rule 1961 and circulars issued by the Cooperative Department from time to time in this regard. Respondent No.4 on perusal of the said explanation, by communication dated 5.12.2016 submitted the report to respondent no.1 for deletion of the names of petitioners from the panel of auditors maintained by the Registrar on the ground that there is gross dereliction of the duties being auditors.

11. It further appears from the documents submitted alongwith these writ petitions and affidavit-in-reply filed by the respondent nos. 1 to 4 that simultaneously respondent no.1 has directed the petitioners herein to submit their explanation and also directed the respondent no.3 District Deputy Registrar Cooperation, Jalgaon to submit the self explanatory report in respect of the report submitted by respondent No.4 against the petitioners for deletion of their names from panel of the auditors. Respondent No.3 District Deputy Registrar

Cooperation Jalgaon has also called upon the petitioners to submit their explanations. Petitioners have submitted their explanations to both the authorities i.e. respondent no.1 and 3, respectively. It thus, appears that, petitioners have submitted their detail reply/explanation firstly to respondent No.4-Assistant Registrar, Amalner, secondly to respondent No.3 - District Deputy Registrar, Jalgaon and thirdly respondent No.1 Commissioner Cooperation, Pune.

12. In a case Union India and others Vs. E.G.Nambudiri reported in AIR 1991 SC 1216 (supra) relied upon by learned counsel for the petitioners in paragraph nos. 8, 9 and 10 the Supreme Court has made following observations :-

> 8. The question is whether principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions

do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of it decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions. See: Regina v. Gaming Board for Great Britain ex p. Benaim and Khaida [1970] 2 QB 417 at 431. Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefore desirable that reasons should be stated.

9. There are however, many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the Court for judicial review, the reasons for the decision may be placed before the court. The superior authority while considering the representation of a Government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the Government servant. The decision, rejecting the representation does not adversely affect any vested right of

the Government servant nor does it visit him with any civil consequences. In many cases having regard to infinite variations of circumstances, it may not be possible to disclose reasons for the opinion formed about the work and conduct or character of the Government servant. In the instant case adverse remarks as contained in item Nos. 1 to 4 were expunged but those at serial numbers 5 and 6 were not expunged and the respondent's representation to that extent was rejected. On a careful scrutiny of the two remarks, it would appear that observation contained in Item No. 5 "that nothing adverse has come to notice regarding your integrity" is not adverse to the respondent's work and conduct. These remarks are neutral in nature, and they do not adversely comment upon the respondent's work, conduct or character, though they are no commendatory in nature. As regards the remarks at Serial No. 6, they are self-explanatory, which show that inspite of oral and written warnings the respondent the respondent did not improve. If the superior authority was not satisfied with the explanation of the respondent as contained in his representation, what reasons could be stated, except that the authority was not satisfied with the explanation. The superior authority was not obliged to write detail judgment or order giving details of the warnings or the material on which he formed opinion.

10.There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the office awarding the adverse entries and the officer counter-signing the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. it is always open to an administrative authority to produce evidence alinude before the court to justify its action.

13. In a case State of Orissa Vs. Dr. (Miss) Binapani Dei and others reported in 1967 SC 1269 (supra) the Supreme Court in paragraph no.9 of the Judgment has made following observations :-

> 9.The first respondent held office in the Medical Department of the Orissa Government. She as holder of that office, had a right to continue in service according to the rules framed under Art. 309 and she could not be removed from office before superannuation except"for good and sufficient reasons." The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for refixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity of correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of

> the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitution 'setup that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be perform; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the tails of justice be ignored and an order to the prejudice of 'a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

14. In the light of the observations made by the Apex Court, in the facts and circumstances of the present case, I find that the petitioners herein have been given opportunity to submit their explanations to adverse report made against them by respondent no.4-Assistant Registrar, Amalner, District Jalgaon. It is not disputed that, said adverse communications made by respondent no.4 (copies thereof supplied to the petitioners well in advance), the petitioners have also submitted their explanations thrice before respondent Nos. 1, 3 and 4

respectively. Respondent No.1-Commissioner, Pune has considered the communication by subordinate authorities and also explanation submitted by petitioners and thereafter passed the reasoned order. Pursuant to the said reasoned order, the District Special Auditor, Class-1, Cooperative Department, Jalgaon has communicated the petitioners the order passed by respondent No.1, however, in the said order does not contain any reason, the order cannot be held to be bad in law or in violation of the principles of natural justice. I do not think that, there is violation of principles of natural justice. It appears from the documents submitted alongwith writ petitions and affidavit-in-reply filed by respondent nos. 1 to 4 that sufficient opportunity has been given to the petitioners and after considering their explanations, respondent no.1 has passed the impugned order. Respondent no.1 Superior authority was not satisfied with the explanations of the petitioner/s. Respondent no.1 has given opportunity to the petitioner/s to set up their version or defence and also an opportunity to correct or to controvert the adverse remarks which is sought to be relied upon against the prejudice of the petitioners. Petitioners are well informed the case which they are called upon to meet and their affidavits to support thereof. Respondent No.1 Commissioner has considered the audit report submitted by the petitioners, recommendations made by respondent No.4-Assistant Registrar, Amalner, District Jalgaon, after pointing out the illegalities committed by the petitioners while submitting the audit report and after considering the explanations submitted by the petitioners with regard to their audit reports, the impugned orders came to be passed without reasons.

15. In view of the above discussion, I do not find any substance in these writ petitions. Writ Petitions are thus liable to be dismissed. Hence following order.

O R D E R

1. Writ Petitions are hereby dismissed.
2. In the circumstances, there shall be no order as to costs.

sd/-

(V.K. JADHAV, J.)

...

AAA/-