IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION (ST.) NO. 34547 OF 2017

The Maharashtra Certified Auditors
Association through its Secretary … Petitioner
V/s.
The State of Maharashtra
through the Chief Secretary & Ors. … Respondents

Mr. Ramdas P. Subban for the Petitioner.
Ms. Jyoti P. Jadhav, A.G.P. for the Respondents.

CORAM : A.A. SAYED AND
RAVINDRA V. GHUGE, JJ.

DATE : 18th APRIL, 2018.

P.C. :

1 The prayers in the Contempt Petition are as follows :

a) *This Hon'ble High Court may be pleased to punish the respondents under Article-215 of the Constitution of India & under the provisions of the Contempt of Court Act, for violating the order dated 13-08-2004 passed in the Writ Petition Nos.2632 of 1996 & the Writ Petition No.8812 of 2003, passed by this Hon'ble High Court;*

b) *This Hon'ble High Court may be pleased to punish the respondents under Article-215 of the Constitution of India & under the provisions of the Contempt of Court Act, for violating the order dated 13-07-2004 passed in the Civil Appeal Nos.82, 83, 84 & 85 of 2013, passed by the Hon'ble Supreme Court of India;*

2 An Affidavit-in-Reply dated 19.12.2017 has been filed by the District Special Auditor-Class-I Co-operative Societies. In paragraphs 2 to 4 it is stated as follows :

> *"2 I say that, as per the order passed by the Hon'ble Supreme Court, audit fee is to be paid to the Chartered Accountants which they have deposited @ 20% in the treasury during the period 1992 to 1995. I further say that, there are 9 divisions and 38 districts in the State of Maharashtra and information is sought from abovementioned 9 Divisions and 38 Districts and for the further procedure and the said information is awaited from the concerned Divisions and Districts.*
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> *3 I further say that, the record being 20 years old, it will take considerable time and in addition to that it needs to be considered that majority of the staff from the Co-operative Department is being engaged in the loan waiver scheme for the agriculturists.*
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> *4 I say that, the Respondents are ready and willing to comply with the order passed by this Hon'ble Court and in case the Petitioners provide the requisite information to concerned Co-operative department, it would be useful and helpful for the Respondents. I further say that on 03.10.2017, the Co-operative Department had filed three Misc. Applications for extension of time before the Hon'ble Supreme Court and prayed for 9 months period to collect the requisite information and to pay the due amount to the Petitioners i.e. Chartered Accounts. I say that, letter dated 15.09.2017 issued to all Divisions and District Heads informing to send the requisite information in prescribed format in pursuance of the order passed by the Hon'ble Supreme Court and the copy of the letter attached with the Misc. Applications. I say that, decision of the Misc. Applications filed by Respondent is still pending before the Hon'ble Supreme Court. Hereto annexed and marked as* ***Exhibit-1(Colly.)*** *are the copies of the Misc. Applications filed in the Hon'ble Supreme Court."*

3 In the additional Affidavit-in-Reply dated 09.04.2018 in paragraphs 5 to 11 it is stated as under :

> *"5. I say that, with a honest intention of implementation of the Order dated 13/7/2017 passed by the Hon'ble Supreme Court, New Delhi in Civil Appeal No. 82-83 of 2013, Civil Appeal No. 84 of 2013 & Civil Appeal No. 85 of 2013 AND implementation of Order dated 13/8/2004 passed by the Honourable High Court, Bombay, in WP No. 2632/1996 & In WP 8812/2003, the Respondent No.5 has issued letters dated 15/9/2017 & 12/10/2017 to his subordinate offices to provide information in the prescribed format of the auditors who has claimed to refund of 20% audit fees deposited as per the Circular No. CC/ADT/A dated 4 June 1992 issued by Office of Commissioner for Co-operation & Registrar Co-operative societies, Maharashtra State, Pune.* ***Hereto annexed and marked as <u>Exhibit-A(Colly.)</u> are the copies of the said letters dated 15/9/2017 & 12/10/2017.***
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> *6. I say that, on November 2017, the Respondent No.5 has collected the information from several subordinate offices of state in respect of 20% audit fees claimed by the total 48 auditors of 1148 societies and amount is refund to them is total Rs.6,87,792/-. According to the information provided by the subordinate offices of state, the Respondent No.5 has taken sufficient grants from the Government of Maharashtra in respect of refund 20% audit fees to the Auditors. Thereafter, the Respondent No.5 has refunded Rs.6,82,752/- in the month of February 2018 and March 2018, by account payee cheques to the concerned auditors through his subordinate offices by submitting bills to respective Government Treasuries. At present, 20% audit fees refund cheque of Rs.5,040/- is pending. The Respondent No.5 is unable to refund the said 20% audit fees to the concerned auditor, as he is expired and up till now none of his legal heir/s claimed pending 20% audit fees refund of Rs.5,040/-.* ***Hereto annexed and marked as Exhibit-B (Colly.) are the copies of the statement of accounts of refund @ 20% audit fees.***

7. In addition to this, I submit that, the Respondent No.5 has issued letter dated 19th December 2017 to the Petitioner Association to submit detail name list of its members along with proofs (Challans) regarding refund of 20% audit fees to the members of the Petitioner Association. Even, the Respondent No.5 has sincerely emailed the said letter dated 19th December 2017 to Mr. Dinesh Prabhu, who is one of the Petitioner in Writ Petition No.8812/2003 of Hon'ble High Court, Mumbai. But, the Petitioner Association has returned the said letter dated 19th December 2017 as "Unclaimed" to the Respondent No.5. ***Hereto annexed and marked as Exhibit-C is the copy of the letter dated 19.12.2017 and email sent report.*** *Even, Mr. Dinesh Prabhu, has also not replied with detail list of its members along with detailed information regarding pending refund of 20% audit fees up till now.*

8. I say that, the Respondent No.5 has already been refunded 20% audit fees directly to the concerned auditors on the basis of information & proofs maintained by his subordinate offices. All auditors are deposited 20% audit fees in the Government Treasuries individually and not through the Petitioner Association. So, it is not proper to handover 20% audit fees refund amount to the Petitioner Association for disbursement among its member auditors, instead of this the information & proofs of 20% audit fees deposited by them in the Government Treasuries is not submitted by the Petitioner Association to the Respondent No.5 up to till date.

9. Further, I say that in view of the above, this Honourable High Court, Mumbai may please not be passed order, relief or direction in favour of the Petitioner Association. For full and proper implementation of Judgment Order passed on 13/8/2004 by this Hon'ble High Court, Mumbai in Writ Petition No.2632/1996 & 8812/2003 and Judgment Order passed on 13/7/2017 by the Hon'ble Supreme Court, New Delhi, this Hon'ble High Court, Mumbai may please be passed order or direction to the Petitioner to submit detail list of its members along with proofs regarding pending refund of 20% audit fess to the

Respondent No.5 as per the said letter dated 19/12/2017 of the Respondent No.5.

10. I say the Respondent No.5 has been refunded 20% audit fees of all auditors who has claimed to refund their 20% audit fees, as now there is no claim is pending with our department to refund 20% audit fees of any auditor, by refunding 20% audit fees of all auditors we have complied the order dated 13/7/2017 passed by the Hon'ble Supreme Court, New Delhi in Civil Appeal No. 82-83 of 2013, Civil Appeal No. 84 of 2013 & Civil Appeal No.85 of 2013 AND Implementation of Order dated 13/8/2004 passed by the Hon'ble High Court, Bombay, in WP No.2632/1996 & in WP 8812/2003.

11. *I further submit that, the Respondent No. 5 has published a notice in a state level Marathi News Paper* ***"Lokmat"*** *dated 5th April 2018 to call the claims from auditors who have deposited their 20% audit fees as per the Circular No. CC/ADT/A dated 4 June 1992 issued by Office of Commissioner for Co-operation & Registrar, Co-operative societies, Maharashtra State, Pune, and accordingly any claim if raised by any auditor to refund his/her 20% audit fees it will be settled after verifying documents and challans with records of respective department.* ***Hereto annexed and marked as Exhibit-D (Colly.) is the copy of the notice dated 5/4/2018 published in the marathi newspaper "Lokmat".***

4 An Affidavit dated 13.04.2018 has also been filed by the Deputy Secretary, Agriculture, Animal Husbandry, Dairy Development and Fisheries Department, wherein it is stated that so far an amount of Rs.14,19,532/- has been disbursed to the Chartered Accountants/Certified Auditors.

5 In the facts and circumstances of the case, we are satisfied that steps have been taken, though belatedly, by the Respondent Officers for refund of the audit fees in terms of the orders passed by this Court and the Supreme Court. We are informed by the Learned A.G.P. that appropriate orders for extension of time are being sought in the Miscellaneous Application pending before the Supreme Court. We record the statement of the learned Counsel for the Contempt Petitioner that it's members shall be individually informed that the Government is disbursing the refund of the 20% audit fees. The concerned members of the Contempt Petitioner shall be required to make necessary formal compliances to seek the refund.

6 In light of the above, the Contempt Petition is disposed of.

(RAVINDRA V. GHUGE, J.) **(A.A. SAYED, J.)**