

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.6810, 6816, 6820, 6822, 6825 and 6829 of 2019 and
W.M.P. Nos.7587, 7589, 7593, 7596, 7600 & 7602 of 2019

Cognizant Technology Solutions
India Private Ltd.,
5/535, Okkiyam,
Thoraipakkam,
Old Mahabalipuram Road,
Chennai-600 096.

.. Petitioner in W.P. No.6810, 6816,
6820, 6822, 6825 & 6829/2019

-vs-

1.Assistant Registrar of Companies,
Office of the Registrar of Companies,
Tamil Nadu, Shastri Bhavan,
II Floor, 26, Haddows Road,
Chennai - 600 006.

2.Registrar of Companies of Tamil Nadu,
Shastri Bhavan, 2nd Floor, B Wing,
26 Haddows Road, Chennai - 600 006.

..Respondents 1 & 2 in W.P.No.6810,
6816, 6820, 6822, 6825 & 6829/2019.

3. N.Lakshminarayanan
Director
Cognizant Technology Solutions India Pvt.Ltd
No.8, Royal Enclave
Besant Avenue Road
Adyar, Chennai 20.

4. Chandrasekaran Ramakrishnan
Director
Cognizant Technology Solutions India Pvt.Ltd
1C, 4th Street, DR.Radhakrishnan Salai
Mylapore, Chennai 4.

..R3 & R4 in W.P.No.6829/2019.

Common Prayer :Petition filed under Article 226 of the
Constitution of India, praying for the issue of a Writ of
Mandamus, directing the second respondent to consider the reply
of the petitioner dated 03.01.2019 pass orders in the

proceedings in Show Cause Notice bearing reference F.No.26590/TS-BS/S.203/-p.6/JTA(MS)/2018 dated 08.12.2018 and communicate the decision to the petitioner in an expeditious manner.

For Petitioner : Mr.Srinath Sridevan in all W.Ps
For respondents : Mr.Adithya Reddy,
for R1 and R2 in all W.Ps
R3 and R4 given up
in W.P. No.6829 of 2019

COMMON ORDER

As the issues involved in all these Writ Petitions are identical and the petitioner in all the petitions is one and the same, by consent, the Writ Petitions are taken up for final disposal and disposed of by a common order.

2.Since it is submitted by the learned counsel appearing for the petitioner that respondents 3 and 4 in W.P. No.6829 of 2019, namely, N.Lakshminarayanan and Chandrasekaran Ramakrishnan, who are directors of the Cognizant Technology Solutions India Private Ltd., are formal parties, they are given up.

3.The writ petitions have been filed by the petitioner seeking a direction to the respondents to consider their reply dated 03.01.2019 and pass necessary orders.

4.Learned counsel appearing for the petitioner would submit that the petitioner company is a part of the Cognizant group of companies and one of the leading IT consultancy service providers in India, having their presence across the country. However, the petitioner company was incorporated as a Private Limited Company under the erstwhile Companies Act, 1956 in the year 1994 with the Registrar of Companies, Tamil Nadu and the registered office of the petitioner is also in the State of Tamil Nadu. While so, it effected all requisite compliances under the said Act and upon the Companies Act 2013, the petitioner has transitioned to the said Act and effected all compliances required under the Act. According to the learned counsel appearing for the petitioner, the implementation of the requirements under the Act has been diligently undertaken by the petitioner company and has been reflected in the annual filings made by the petitioner with the Registrar of Companies. While so, the petitioner company received a show cause notice from the Deputy Registrar of Companies, Tamil Nadu in respect of certain discrepancies calling upon them to submit a detailed explanation within a period of two weeks. On receipt of the show cause notice, the petitioner's company have submitted a detailed reply within the specified time limit of two weeks. While so, the

petitioner herein received a Notice from the first respondent raising certain charges as levelled by the second respondent, for which the petitioner has issued a reply on 03.01.2019 providing clarifications to the first respondent.

5. Under this background, the petitioner have got an apprehension that the respondents 1 and 2 may proceed, without considering the detailed reply given by them. Therefore, learned counsel appearing for the petitioner prays for a direction to the respondents 1 and 2 to consider the reply given by them to the show cause notices.

6. Taking support from the order dated 27.02.2018 passed by this Court in Company Petition Nos. 405 to 409 of 2014, learned counsel appearing for the petitioner would submit that this Court in similar circumstances emphasised that once the show cause notice is issued, it would amount to initiation of the proceedings qua negligence, default, breach of duty etc. however, the same would not be applicable to a criminal action. The decision to initiate a criminal proceeding would naturally come on a factual finding resulting in the final order to be passed by the first respondent, on a consideration of the reply given to the show cause notice. Therefore, the first respondent has to pass a reasoned order on two aspects. One is on merit with respect to the negligence, default etc, attributable on the part of the officer and the second is with respect to the decision made to proceed under the criminal law. These two factors are mandatory as the Court under Section 463(2) of the Companies Act, 2013 is only required to say as to whether the officer has acted honestly and reasonably after finding the negligence on his part by the first respondent.

7. Therefore, when the issue has already been ruled by this Court, the respondents 1 and 2 are bound to pass a reasoned order, meeting out the reply given by the petitioner.

8. On reply, learned Standing Counsel appearing for the respondents 1 and 2 submitted that since the petitioner has given a detailed reply dated 03.01.2019 as per the dictum laid down by this Court in the aforementioned order, a direction be issued to respondents 1 and 2 to pass a detailed order.

9. In this context, it is useful to extract the aforementioned order as under:

'14. This Court is of the considered view that when once the show cause notice is issued, then it would amount to initiation of the proceedings qua negligence, default, breach of duty etc., However, the same would not be applicable to a criminal action. The decision to initiate a criminal proceeding would naturally come on a factual finding

resulting in the final order to be passed by the first respondent, on a consideration of the reply given to the show cause notice. Therefore, the first respondent has to pass a reasoned order on two aspects. One is on merit with respect to the negligence, default etc, attributable on the part of the officer and the second is with respect to the decision made to proceed under the criminal law. These two factors are mandatory as the Court under Section 463(2) of the Companies Act, 2013 is only required to say as to whether the officer has acted honestly and reasonably after finding the negligence on his part by the first respondent. The power under Section 463(2) of the Companies Act, 2013 cannot be compared with the one in 463(1) of the Companies Act, 2013. Under Section 463(1) of the Companies Act, 2013, the Court itself undertakes two different roles. The first role is with respect to the decision on negligence which may be prima facie or final. The second is with respect to the officer acting honestly and reasonably. This Court is of the view that the power to go into the question of negligence, default, breach of duty etc., does not lie with this Court as it is the role which is to be played by the first respondent. However, the issue pertaining to an officer having acted honestly and reasonably solely lies with this Court to be decided as against the petitioner concerned. To put it differently, such an issue can never be gone into by the first respondent as against this Court.

15. Thus, the first respondent cannot decide the issue of taking criminal action without a factual finding resulting in a final order to be communicated to the petitioner. After all, a show cause notice issued should result in an adjudication process, for which, a person, whose rights are liable to be affected has to be informed by a decision supported by reasons, on a consideration of the reply given. Therefore, it is mandatory on the part of the first respondent to see to it that such an order is passed and served on the officer against whom a criminal proceedings is likely to be initiated by giving a private complaint. Even otherwise, the decision is necessarily to be communicated by the first respondent. Therefore, any action to be taken shall be only after service of the final decision on the show cause notice to the officer concerned. In the event of the first respondent coming to the conclusion that criminal proceedings will have to be launched by way of complaint, the same has to be done only after the officer concerned is served. In such

view of the matter, this Court is of the view that challenge to show cause notice is premature.'

10. In the light of the above, when the petitioner has given reply dated 03.01.2019 giving detailed reasons, the same has to be considered on merits by passing a reasoned order, therefore, recording the submission made by the learned Standing Counsel appearing for respondents 1 and 2 that the reply will be considered in the light of paragraphs 14 and 15 stated supra, the writ petitions are allowed and the respondents 1 and 2 are directed to consider the reply given by the petitioner, on merits and pass a detailed order within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected W.M.Ps. are closed. No costs.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

vga

To

1. Assistant Registrar of Companies,
Office of the Registrar of Companies,
Tamil Nadu, Shastri Bhavan,
II Floor, 26, Haddows Road,
Chennai - 600 006.

2. Registrar of Companies of Tamil Nadu,
Shastri Bhavan, 2nd Floor, B Wing,
26 Haddows Road, Chennai - 600 006.

+6 Ccs to Mr. Srinath Sridevan, Advocate sr 27572, 27571, 27573, 27574, 27575, 27576.

+1 CC to Mr. Adithya Reddy, Advocate sr 26076.

सत्यमेव जयते

W.P. Nos. 6810, 6816, 6820, 6822, 6825 and 6829 of 2019 and
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SP (05/04/2019)

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