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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.11.2019
CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 22423 of 2018

and

W.M.P. Nos. 26278 and 26279 of 2018

Murugesan Sumitha

... Petitioner

-vs-

1. Union of India,
Represented by its Ministry of Corporate Affairs,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi - 110 001.

2. The Registrar of Companies,
Tamil Nadu, Chennai,
Block No. 6, B Wing, 2nd Floor,
Shastri Bhawan,
No. 26, Haddows Road,
Chennai - 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent relating to the impugned order dated 01.11.2017 uploaded in the website of the First Respondent in so far as the Petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merit and consequentially direct the Respondents herein to permit the Petitioner to get reappointed as Director of any Company or appointed as Director in any Company without any hindrance.

For Petitioner : Mr. R. Inbaraju

For Respondents : Mr. V. Venkatesan,
Senior Central Government Standing Counsel





(e) When the disqualification clause was not attracted to the directors of private companies under the old Act of 1956, the same cannot be allowed to take a retrospective effect under the new Act, when the provision of Section 164(2)(a) came into force only from 1.4.2014. This is also for one more reason that the failure to file the annual returns has been adequately taken care of by the penal provision under Section 92, making it clear that every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. Again under Section 137, the failure to file the financial statement visits punishment with imprisonment for a term which may extend to six months or with fine which shall not be



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less than one lakh rupees but which may extend to five lakh rupees, or with both. Further, under Section 441 (4), the default in filing returns or accounts compoundable by Tribunal or Regional Director or by any officer authorized by the Central Government.

(f) In view of the above legal position, when the default in filing the accounts or returns are made as compoundable offence, Section 164(2)(a) providing the disqualification of director of private company not only in the defaulting company, but also from other company in which the petitioner is a director, diligently and meticulously following every provision of law, is certainly disproportionate to the lapse, as it is only regulatory in nature, because, notice to be sent under Section 248(1) of the Companies Act, 2013 by the Registrar of Companies for striking off the name of the company from the Registrar of Companies on the premise that the company has not been carrying on any business for a period of two financial years, is different from the disqualification under Section 164 (2)(a), inasmuch as a company can be struck off, if the company has not been carrying on any business for a period of two financial years, whereas for disqualification, the criteria is three financial years. Therefore, in my considered opinion, although the petitioners have not challenged the provision of Section 164(2)(a), as the respondents have not followed the principles of natural justice, extinguishing the corporate life of the directors to the extent of disqualifying them to hold the directorship in the other companies, the said provision is liable to be read down, hence, Section 164(2)(a) is read down to the extent it disqualifies the directors in other companies which are scrupulously following the requirements of law, making it clear that no directors in other companies can be disqualified without prior notice.

(g) However, it is made clear beyond any pale of doubt that the mischief of removal of the names of the companies by the Registrar of Companies and the disqualification of the directors in the defaulting company will go together, as it is inseparable, and the Registrar of Companies need not give fresh notice to the directors for their disqualification from the dormant company, if there is a failure to file the financial statement or annual return for any continuous period of three financial years as per Section 164(2)(a).



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30. For all the aforementioned reasons, the impugned orders are set aside and the writ petitions shall stand allowed. Consequently, all the connected writ miscellaneous petitions are closed. However, there shall be no order as to costs.''

4. As the Petitioner in this case is similarly placed to the Petitioners in the aforesaid batch of cases relating to the same impugned lists published in the website by the Respondents, she is entitled to identical relief that has been granted to them. Accordingly, the Writ Petition stands allowed and the impugned order is set aside on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vjt

To

1. The Secretary to the Government of India,
Ministry of Corporate Affairs,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi - 110 001.
2. The Registrar of Companies,
Tamil Nadu, Chennai,
Block No. 6, B Wing, 2nd Floor,
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