



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

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THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. Nos. 22268 and 22271 of 2019

and

W.M.P. Nos. 21555, 21558, 21559 21562 of 2019

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Gandhi Rajamurthy ... Petitioner in W.P. No. 22268 of 2019

Abdul Majeed Hussain... Petitioner in W.P. No. 22271 of 2019

-vs-

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

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

... Respondents in both W.P.s

Prayer in W.P. No. 22268 of 2019:- 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 with (DIN) Director Identification Number: 02165512 under Section 164(2)(a) of the Companies Act, 2013, first list for the block years 2013-14, 2014-15, 2015-16 and quash the same as illegal, arbitrary, and devoid of merit and may direct the Respondents to activate the Director Identification Number and Digital Signature of the Petitioner or get appointed or re-appointed as Director of any Company without any hindrance.

Prayer in W.P. No. 22271 of 2019:- 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 with (DIN) Director Identification Number: 02171604 under



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Section 164(2) (a) of the Companies Act, 2013, first list for the block years 2013-14, 2014-15, 2015-16 and quash the same as illegal, arbitrary, and devoid of merit and may direct the Respondents to activate the Director Identification Number and Digital Signature of the Petitioner or get appointed or re-appointed as Director of any Company without any hindrance.

For Petitioner : Mr. M. Velu (in both W.P.s)

For Respondents: Mr. J. Madanagopal Rao,
Central Government Standing Counsel
(in both W.P.s)

C O M M O N O R D E R

Heard Mr. M. Velu, Learned Counsel for the Petitioners and Mr. J. Madanagopal Rao, Learned Central Government Standing Counsel appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. In these Writ Petitions, the list dated 01.11.2017 published by the Registrar of Companies, Tamil Nadu, Chennai uploaded the website of the Ministry of Corporate Affairs, New Delhi disqualifying the Petitioners to hold the Office of the Directorship of a Company under Section 164 (2) (a) of the Companies Act 2013, which came into effect from 01.04.2014, is challenged with the consequential direction to the Respondents to permit the Petitioners to get re-appointed or appointed as Directors in any other Company without any hindrance.

3. The lists dated 08.09.2017 and 01.11.2017 published by the Registrar of Companies, Tamil Nadu, Chennai were the subject matter of challenge before this Court in a batch of cases in W.P. No. 25455 of 2017 etc. batch [(2018) 6 MLJ 704] and came to be disposed by this Court by order dated 03.08.2018, the operative portion of which is extracted below:-

"29. In fine,

(a) When the New Act 2013 came into effect from 1.4.2014, the second respondent herein has wrongly given retrospective effect and erroneously disqualified the petitioner-directors from 1.11.2016 itself before the deadline commenced wrongly fixing the first financial year from 1.4.2013 to 31.3.2014.

(b) By virtue of the new Section 164(2) (a) of the 2013 Act using the expression "for any continuous period of three financial years" and in the light



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of Section 2(41) defining "financial year" as well as their own General Circular No.08/14 dated 4.4.2014, the first financial year would be from 1.4.2014 to 31.3.2015, the second financial year would be from 1.4.2015 to 31.3.2016 and the third financial year would be from 1.4.2016 to 31.3.2017, whereas the second respondent clearly admitted in paras 15 and 22 of the counter affidavit that the default of filing statutory returns for the financial years commenced from 2013-14, 2014-15 and 2015-16 i.e., one year before the Act 2013 came into force. This is the basic incurable legal infirmity that vitiates the entire impugned proceedings.

(c) By virtue of the first proviso to Section 96 (1) of the 2013 Act, Annual General Meeting for the year ending on 31.3.2017 can be held within six months from the closing of financial year i.e., 30.9.2017, additionally in the light of Section 164(2)(a) referring to "annual return" and "financial statement", the time limit to file annual return under Section 92(4) of 2013 Act is sixty days from Annual General Meeting or the last date on which Annual General Meeting ought to have been held, hence, the time limit to file balance sheet under Section 137(1) of the 2013 Act is again thirty days from Annual General Meeting. Therefore, in view of these legal position, the disqualification could get triggered off only on or after 30.10.2017 only, if any company fails to file annual forms for three financial years. Importantly, it is to be borne in mind that even beyond that time limit, additional time limit of 270 days was available by virtue of the then first proviso to Section 403.

(d) Although there is no statute or provision expressly spelling out the observance of the principles of natural justice against disqualification of directors, as the legal right of the petitioners to continue as director in other company or to be reappointed in any other company, which are scrupulously following the provisions of the Companies Act, have been deprived of, the principles of natural justice should have been adhered to by issuing proper notice to all the directors.

(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



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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).

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 Petitioners in these cases are similarly placed to the Petitioners in the aforesaid batch of cases relating to the same impugned list published in the website by the Respondents, they are entitled to identical relief that has been granted to them. Accordingly, the Writ Petitions stand allowed and the impugned orders are set aside on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant 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.



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

+4ccs to M/s.P.Stellamarry , Advocate SR.No. 64421,64420
W.P. Nos. 22268 and 22271 of 2019
A.SK(31/07/2019)