



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2019

CORAM

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

W.P. No. 32334 of 2019

and

W.M.P. Nos. 32632 and 32634 of 2019

Soman Vijayakumar

... Petitioner

-vs-

1. Union of India,
Represented by its Secretary,
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 - 600 034. ... 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 notification dated 01.11.2016 list published in the Second Respondent site on 01.11.2017 in respect of Petitioner DIN No. 3518005 and quash the same as void, illegal and unconstitutional and direct the Respondents to permit the Petitioner to get re-appointed without any hindrance.

For Petitioner : Mr. K. Thiruvengadam

For Respondents : Mr. Poornam Chopra,
Central Government Standing Counsel



O R D E R

Heard Mr. K. Thiruvengadam, Learned Counsel appearing for the Petitioner and Mr. Poornam Chopra, 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 this Writ Petition, the list dated 01.11.2017 published by the Registrar of Companies, Tamil Nadu, Chennai uploaded in the website of the Ministry of Corporate Affairs, New Delhi disqualifying the Petitioner 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 Petitioner 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 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



WEB COPY

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 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 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



same impugned lists published in the website by the Respondents, he 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/-
Assistant Registrar(CS VII)

//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.
2. The Registrar of Companies,
Tamil Nadu, Chennai,
Block No. 6, B Wing, 2nd Floor,
Shastri Bhawan,
No. 26, Haddows Road,
Chennai - 600 034.

+lcc to Mr.K.Thiruvengadam , Advocate SR.No. 95830

W.P. No. 32334 of 2019

A.SK(29/11/2019)