

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No. 35737 of 2019

And

W.M.P.Nos. 36645 & 36646 of 2019

Hastimal Surana

... 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. Registrar of Companies
Tamil Nadu, Chennai
Block No. 6, B Wing, 2nd Floor,
Haddows Road, Nungambakkam,
Chennai - 600 034.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the second respondent relating to the impugned order dated 18.12.2018 uploaded in the website of the first respondent in so far as the petitioner is concerned, quash the same as illegal, arbitrary and devoid of merit and consequentially direct the respondents herein to permit petitioner to get reappointed as Director of any Company or appointed as Director in any company without any hindrance.

For Petitioner :: M/s. P.J.Rishikesh

For Respondents :: Mr. V.Athikesavan

ORDER

The issues raised in the Writ Petition and the grievance of the writ petitioner is similar. By consent of all the counsels, a common order is passed in the Writ Petition.

2. In a similar issue, this Court has passed a common order dated 13.01.2020 made in W.P.No. 13616 of 2018 batch and the relevant portion of the said order is as follows:-

"21. Even before entering into any discussion, it must be mentioned that the vires of the proviso under Section 167(2)(a) of the Act which was inserted to the Companies (Amendment Act 2017) had been challenged and a Division Bench of this Court in W.P.No. 32763 of 2019 G.Vasudevan Vs. Union of India had upheld the vires of the said provision.

22. The Companies Act 2013 had come into effect from 12.09.2013. It had brought about sweeping changes with respect to the filing of Annual Returns and Financial Status, bringing strict compliance thereof. The equivalent provision to Section 164 of the 2013 Act was Section 274 of the Companies Act 1956. One important change which had been brought about was that under Section 274 of the Company Act 1956, it was provided that there would be disqualification with respect to Directorship of 'Public' companies and it would be attracted when annual returns and financial statements were not filed. In the Act of 2013, disqualification was attracted even for Directors of all Companies, not just public companies, and disqualification was attracted for non filing of financial statements or annual returns.

23. The provisions are clear. There is no scope for ambiguity for the same. This Court had not been called to give a ruling on the vires of Section 164(2)(a). According to this provision, if a person, who is a Director of a Company which had not filed financial statements or annual returns for a continuous period of three financial years, then he/she was not eligible to be reappointed as a Director on that Company or can be appointed in other Company for a period of five years.

24. A proviso was inserted in Section 167(1)(a) with effect from 07.05.2018, which stated that if disqualification is incurred then the office of Director shall become vacant in all other companies where the individual was a Director. As stated above,

the vires of this proviso was questioned and challenged before a Division Bench of this Court.

25. In a Judgment dated 02.12.2019, the First Bench of this Court (A.P.Sahi, CJ and Subramonium Prasad, J) in W.P.No. 32763 of 2019 [G.Vasudevan Vs. Union of India and others had after examining the scope, object and sweep of the proviso, had finally stated as follows:-

"28. A perusal of the above extract from the judgment of the Hon'ble Karnataka High Court in Yashodhara Shroff Vs. Union of India (supra), reveals that the Court has found that the proviso to Section 167(1)(a) must be interpreted in ordinary terms and would apply to the entirety of Section 164 including subsection 2. The Court has further held that this proviso can be justified on two grounds. Firstly, it has been reiterated that the exclusion of Directors from vacating their posts in the defaulting company while doing so in all other companies where they hold Directorship has been done in order to prevent the anomalous situation wherein the post of Director in a company remains vacant in perpetuity owing to automatic application of Section 167(1)(a) to all newly appointed Directors. Secondly, the underlying object behind the proviso to Section 167(1)(a) is seen to be the same as that of Section 164(2) both of which exist in the interest of transparency and probity in governance. Owing to these justifications, the Court thus holds that the proviso to Section 167(1)(a) is neither manifestly arbitrary nor does it offend any of them in W.P.No.32763 of 2019 fundamental rights guaranteed under Part III of the Constitution of India.

29. We are persuaded to agree with the views of the Hon'ble Single Judge of the Karnataka High Court that present an accurate interpretation of the impugned law. The impugned provisions are intravires for all the reasons herein above. The writ petition is accordingly dismissed. No Costs."

26. After the arguments had concluded, the learned Senior counsel for the petitioners drew attention of this Court to the Division Bench Judgement of the Allahabad High Court dated 16.01.2020 in Jaishankar Agrahari Vs. Union of India and other, Writ-C.No. 12498 of 2019 (batch); wherein also the very same issue had been agitated. The Allahabad High Court by order dated 16.01.2020 had struck down disqualification as Directors of the petitioners. A careful reading of the Judgement of the Allahabad High Court shows that as in the previous Judgement Bhagavan Das Dhananjaya Das (supra) of this Court with relation to the similar notification issued in the year 2017, they were concerned with the fact that three consecutive years had not been completed from and after 01.04.2014. The three financial consecutive years after which the Companies Act 2013 came into force would be 2014-2015, 2015-2016 and 2016-2017. It is under these circumstances since the provisions can only be prospective in nature that the Allahabad High Court had expressed its views that disqualification can be attracted only if those three financial years are completed and annual return/financial statements had not been filed. When the three financial years had not been completed, the Division Bench of the Allahabad High Court had stated that notice is essential. A similar view had also been taken by the learned Single Judge of this Court in (2018) 6 MLJ 704 Bhagavan Das Dhananjaya Das Vs. Union of India and another, and the Judgement of the Gujarat High Court in Gaurang Balvatlal Shah Vs. Union of India dated 18.12.2018, and the Judgment of the Delhi High Court in Mukut Pathak and others Vs. Union of India and Another dated 04.11.2019 and of Karnataka High Court in Yashodara Shroff Vs. Union of India, order dated 12.06.2019. In all those cases, notifications issued in the year 2017 were struck down both on the ground that the provision was prospective in nature and three financial years had not been completed and notice had not been given prior to disqualification. When due respects the facts in the Writ Petitions on hand is different.

27. In the present batch of writ petitions, the three financial years, 2014-15, 2015-16 and 2016-17 have been completed. The Companies have not filed the annual returns / financial statements. They have defaulted in such filing of annual returns / financial statements. The Act very clearly states that if there is such a default then the Directors would be disqualified. This Court cannot extend the time for filing of annual returns or financial statements. When a period of time is stipulated in a statute, it has to be strictly interpreted. In the earlier batch, leverage was granted because the annual general meeting should be called within a period of six months namely on or before 30th September of each succeeding year and thereafter a further period of 30 days / 60 days is given to file the annual returns. Here the three financial years had come to an end. The said period of six months had also been completed. The further period of 30 days/60days had also been completed and when annual returns or financial statements have not been filed, a plain reading of the provision of law would indicate that disqualification automatically follows. There cannot be any alternate interpretation of the said provision. It is clear - crystal clear. Issuance of notice would be of no avail since only one conclusion is possible.

28. The principle of natural justice cannot be stretched to extreme limits when issue of notice would be an empty formality. The law is clear. The three financial years are 2014-2015; 2015-2016 and 2016-2017. If annual returns are not filed for the said three consecutive years, then disqualification is the only option available. The other provisions relating to penalty /punishment relied on by the petitioners would be attracted when for a single year annual returns/financial statements are not filed. But when they are not filed for three consecutive years then the Directors are automatically disqualified.

29. In (2000) 7 SCC 529 { Aligarh Muslim University and Others Vs. Mansoor Ali Khan}, the Hon'ble Supreme Court had an occasion to consider the effect of a "useless formalities" - a theory which is an exemption to the principles of natural justice.

"21.As pointed recently in M.C. Mehta Vs. Union of India (1999 (6) SCC 237), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao vs. Government of Andhra Pradesh [1966 (2) SCR 172 = AIR 1966 SC 828], it is not necessary to quash the order merely because of violation of principles of natural justice.

22. In M.C.Mehta {1999} 6 SCC 237 it was pointed out that at one time, it was held in Ridge vs. Baldwin (1964 AC 40) that breach of principles of natural justice was in itself treated as prejudice and that no other 'defacto' prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In S.L. Kapoor Vs. Jagmohan (1980 (4) SCC 379), Chinnappa Reddy, J. followed Ridge vs. Baldwin and set aside the order of supercession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

23. Chinnappa Reddy, J. in S.L.Kapoor's case [(1980) 4 SCC 379], laid two exceptions (at p.395) namely, " if upon admitted or

indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi Vs. State Bank of India (1984(1) SCC 43), Sabyasachi Mukherji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed: quoting Wade Administrative Law, (5th Ed.PP.472-475) as follows: (para 31)

"....it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extentThere must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth".

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala Vs. S.K. Sharma (1996(3) SCC 364). In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in Rajendra Singh Vs. State of M.P. (1996(5) SCC 460).

25. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above,- there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

30. The same position had been reiterated in 2006 (8) SCC 647 [Punjab National Bank and Others]:

"In an industrial dispute referred to by the Central Government which has an all-India implication, individual workman cannot be made parties to a reference. All of them are not expected to be heard. The Unions representing them were impleaded as parties. They were heard. Not only the said Unions were heard before the High Court, as noticed hereinbefore from a part of the judgment of the High Court, they had preferred appeals before this Court, Their contentions had been noticed by this Court. As the award was made in presence of the Unions, in our opinion, the contention of Respondents that the award was not binding on them cannot be accepted. The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance of the principles of natural

justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice."

31. A Division Bench of this Court in a Judgement reported in 2006 4 LLN 358 [Dr.C.Chendroyaperumal Vs. National Institute of Port Management] had also expressed their views on this aspect.

"9. Coming to the legal aspects canvassed by the learned counsel for the appellant, it is seen that they revolve around violation of the principles of natural justice. Even at the outset, we are not impressed with the said argument, since in our opinion, "Principles of natural justice is for thoroughbred horses and not wild horses." Wild horses understand only the language of the whip and hence there is no use trying to tame them with persuasion. The principles of natural justice themselves have traversed a long way from the stage at which they were treated as a "tharaka manthra" or panacea for all diseases, to the present stage where the Courts have started looking at the credentials of the person using them as a shield or sword and accepting the fact that they are not indispensable."

32. The march of law expanding the interpretation of the principles of natural justice and examining exceptions to the same shows that where the issuance of notice is a futile exercise since only one conclusion can be reached, then the petitioners cannot turn around and seek a relief on the ground that notice was not issued prior to disqualification. The petitioners cannot plead ignorance of law or innocence of fact and seek indulgence of the Court.

33. In the Judgment relied on by the petitioners Gaurang Balvatlal Shah Vs. Union of India (supra), a learned Single Judge of the Gujarat High Court by Judgment dated 18.12.2018 had questioned the authority of the Registrar to deactivate the DIN number. This was based on a reading of Rule 11 of the Companies (Appointment and Qualification of Directors) Rules 2014. There can be no quarrel with the rule.

34. However, whenever law holds that if for three consecutive years, the annual returns or financial statements has not been filed, then disqualification of the Directors would be automatically attracted, then, as a corollary it naturally follows that the Director Identification Number has to be deactivated. The said Director Identification Number co-exists with the office of Directorship. Reliance was placed on the term that it shall be for 'life'. Interpretation of this term 'life' can only mean that the life of the DIN can exist only for till the life of the office of Directorship survives and not for the entire life of the individual Director. Holding that an individual who was a Director in a company and had been allotted DIN and would be able to hold on to it till his life, even though he relinquishes the office of Directorship, defines logic. The Director Identification Number can be exist only during the period when an individual holds office of Directorship. It may be reactivated when the individual resumes the office of Directorship. During his/her lifetime only on Director Identification Number can be allotted.

35. An irrational interpretation cannot be given that the Director Identification Number can still attach itself to the individual even after he resigns, or is disqualified from the post of Directorship or vacates the office. Consequently, when a Director is disqualified, it follows that the DIN should be deactivated.

36. I am conscious of the fact that I have followed the ratio laid down in Bhagavan Das Dhananjaya Das (supra) struck down the notification issued in the year 2017. On facts, the impugned notifications in the instant Writ Petition stand on a totally different footing in the sense that in the instant writ petitions three financial years have been completed and annual returns/financial statements from the financial year 2014-2015 have not been filed by the defaulting companies. Therefore, the claim of the petitioners that prior notice should have been given is rejected as notice would have been an empty formality.

37. To reiterate, the conclusion, the Judgments relied on by the petitioners pertain to a fact situation where the three financial years commenced prior to 2014-2015 and since the Act is prospective in nature, the Courts have held that the notification has to be struck down and prior notice has to be given.

38. In the present writ petition, the three financial years 2014-2015, 2015-16 and 2016-17 have been completed and since annual returns / financial statements have not been filed, disqualification automatically follows and when disqualification is incurred, deactivation of Director Identification Number also automatically follows. The DIN number can exist only during the life time of post of Directorship and not for the entire life of the individual. Issuing a prior notice would be of no avail and would only be an empty formality since the provision of law is clear on this aspect.

39. Consequently, I am of the considered view that there are no merits in the Writ Petitions. The Writ Petitions will have to be dismissed.

40. Accordingly, all the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.
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3. In view of same, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Secretary,
Union of India
Ministry of Corporate Affairs
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