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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.11.2021

DELIVERED ON : 14.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NOS.1003 AND 1324 OF 2021

AND

C.M.P.NOS.6296,7651 AND 18875 OF 2021

W.A.No.1003 of 2021

Church of South India Trust Association
Rep. By its Honorary Treasurer
Mr.C.Robert Bruce,
5, Whites Road,
Royapettah,
Chennai- 600 014.

...Appellant

vs

- 1.The Union of India
Rep. By the Secretary to Government,
Ministry of Corporate Affairs,
New Delhi - 110 001.
- 2.The Regional Director
Office of the Regional Director
Southern Region, Chennai.
Ministry of Corporate Affairs,
Government of India,
5th Floor, A Wing,
Shastri Bhavan,
26, Haddows Road,
Chennai - 600 006.
- 3.The Registrar
Office of the Registrar of Companies,
Tamil Nadu, Chennai
Shastri Bhavan, 2nd Floor,
26, Haddows Road,
Chennai - 600 006.

...Respondents



W.A.No.1324 of 2021

David Chellaraj

...Appellant / 8th Respondent

vs

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- 1.Church of South India Trust Association
Rep. By its Honorary Treasurer
Mr.C.Robert Bruce,
5, Whites Road, Royapettah,
Chennai- 600 014.
- 2.The Union of India
Rep. By the Secretary to Government,
Ministry of Corporate Affairs,
New Delhi - 110 001.
- 3.The Director,
Serious Fraud Investigation Officer,
2nd Floor, Pryavaran Bhavan,
C.G.O. Complex, Lodhi Road,
New Delhi - 110 003.
- 4.The Regional Director,
Office of the Regional Director,
Southern Region, Chennai,
Ministry of Corporate Affairs,
Government of India,
5th Floor, A Wing,
Shastri Bhavan, Chennai - 600 006.
- 5.The Registrar
Office of Registrar of Companies,
Tamilnadu, Chennai,
Shastri Bhavan, 2nd Floor,
26, Haddows Road,
Chennai - 600 006.
- 6.Assistant Registrar of Companies,
Office of Registrar of Companies,
Tamilnadu, Chennai.
Shastri Bhavan, 2nd Floor,
26, Haddows Road, Chennai - 600 006.
- 7.Joint Director,
Ministry of Corporate Affairs,
5th Floor, A Wing,
Shastri Bhavan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.
- 8.E.Premkumar

...Respondents



Prayer in W.A.No.1003 of 2021 : Appeal preferred under Clause 15 of Letters Patent against the common order dated 01.02.2021 in W.P.No.32587 of 2019.

Prayer in W.P.No.32587 of 2019 : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in the impugned report in F.NO. ROC-CHN/IPC/00346/NOTICE/ORDER U/S.206 (4) of the 3rd Respondent, dated 13.12.2017 and to quash the same.

Prayer in W.A.No.1324 of 2021: Appeal preferred under Clause 15 of Letters Patent against the order passed in W.P.No.25236 of 2018 dated 01.02.2021.

Prayer in W.P.No.25236 of 2018 : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in the order passed by the 1st respondent in File No.07/131/2011/CL-II (SR) dated 07.05.2018 and to quash the same.

For Appellant : Mr.V.Prakash, Sr. Counsel
for Mr.Adrian D.Rozario
in W.A.No.1003 of 2021

Mr.T.R.K.Kumara Singh
in W.A.No.1324 of 2021

For Respondents : Mr.R.Sankaranarayanan,
Additional Solicitor General of India
assisted by
Mr.Venkataswamy Babu
for R1 to R3 in W.A.No.1003 of 2021
for R2 to R7 in W.A.No.1324 of 2021

Mr.V.Prakash, Sr. Counsel
for Mr.Adrian D.Rozario
for R1 in W.A.No.1324 of 2021

Mr.R.Sreedhar
for R8 in W.A.No.1324 of 2021
and for proposed party
in W.A.No.1003 of 2021.

COMMON JUDGMENT

(Per: PARESH UPADHYAY, J.)

Both these appeals arise from the common order dated 01.02.2021 recorded on three writ petitions being W.P.Nos. 25236 and 25419 of 2018 and 32587 of 2019.



2. The appellant in W.A.No.1003 of 2021 is the original writ petitioner of W.P.Nos. 25236 of 2018 and 32587 of 2019 and the appellant in W.A.No.1324 of 2021 is the 8th respondent in W.P.No.25236 of 2018 (who was joined as party respondent, on his impleadment application vide order dated 20.12.2018).

3. While issuing notice on W.A.No.1003 of 2021, this Court had, on 29.03.2021 passed an order, the relevant part of which reads as under:-

"

3. The short grievance of the appellant is that though the order and the action taken by the Registrar and the Central Government were quashed by the judgment and order impugned dated February 2, 2021 (read February 1, 2021) on the grounds of breach of the principles of natural justice, the final order passed by the Registrar of Companies has been directed to be treated as a notice under Section 206 (4) of the Companies Act, 2013 for the appellant-company to respond thereto. The appellant says that a final order, which reveals the conclusions apparently arrived at, cannot be treated as a show-cause notice. The appellant also says that the nature of the order is such that it indicates findings and a closed mind and the same cannot be appropriately responded to on behalf of the appellant.

x x x

6. Subject to hearing all parties to the three writ petitions who were before the Writ Court, the order impugned may be modified by requiring a fresh show-cause notice to be issued, whether under Section 206 (1) or under Section 206 (4) of the Act of 2013, within a specified time for the appellant to respond thereto within a time-frame that may be fixed and for the Registrar and the Union being left free to deal with the matter in accordance with law thereupon."

4. Heard learned advocates for the respective parties.

5. Learned senior advocate for the appellant (original writ petitioner Company) has submitted that though the writ court accepted the grievance of the petitioner Company that the action of the authorities was illegal, while moulding relief error has crept up and that needs to be corrected in this appeal. Specific reference is made to the interim order of this Court dated 29.03.2021. It is noted that learned senior advocate for the appellant - the original writ petitioner Company has addressed



the Court at length, the substance of which is as noted in order dated 29.03.2021, the relevant of which is quoted in para 3 above. Reliance is placed on the decision of the Supreme Court of India in the case of Oryx Fisheries Private Limited v Union of India and others reported in (2010) 13 SCC 427, to point out what parameters need to be met with while treating some document to be as show-cause notice. It is submitted by him that the impugned order of learned Single Judge be quashed and set aside and full relief be granted by allowing the writ petition intoto.

6. Learned advocate for the appellant in W.A.No.1324 of 2021, in substance in the cross-appeal has submitted that not only no interference is required in the impugned order as desired by the original writ petitioner Company but interference therein is required to the extent that no relief could have been granted to the writ petitioner. It is submitted that W.A.No.1324 of 2021 be allowed by setting aside the order of learned Single Judge by dismissing the writ petition filed by the Company.

7. Learned Additional Solicitor General for the respondent authorities (of the Central Government) has extensively taken this Court through the provisions of law with specific reference to each sub-section of Sections 206 and also other sections of the Act. It is submitted that the action(s) of the authorities, were in accordance with law and in any case, the powers under Section 206(4) are independent of powers / duties contemplated / flowing from Section 206(1) (2) and (3) of the Act. It is noted that learned Additional Solicitor General has grouped sub-sections of each section particularly Section 206 of the Act to contend that no interference is required in the impugned order. It is submitted that these appeals be dismissed.

8. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds that the point at issue in these appeals (as noted in order dated 29.03.2021 relevant of which is quoted in para 3 above) is whether, the inquiry should start from Section 206(4) of the Act as directed by learned Single Judge or it should start from Section 206(1) of the Act, as desired by the original petitioner Company and further whether any fresh notice is required to be issued to the petitioner Company. For this purpose, it may also be required to examine whether the investigation / inquiry / scrutiny by the Government / Registrar, into the affairs of the petitioner Company, on the basis of the information / material available with it, in the facts of the case, is sustainable, and if yes, whether the petitioner Company can have any say, as to its affairs can be inquired into by the authorities under which Section(s) of the Act.



9.1 The cause of action for the writ petitioner Company was the action initiated by the Central Government vide its order dated 07.05.2018 under Section 212(1)(a) of the Act. It was based on the report of the Registrar dated 13.12.2017. Learned Single Judge, while setting aside the order dated 07.05.2018, has directed that let the report dated 13.12.2017 be treated as notice and let the proceedings start from the stage of Section 206(4) of the Act. The insistence on behalf of the writ petitioner Company is that, that inquiry should start from the stage of Section 206(1) of the Act. The Company can not have any say that, that inquiry should start in exercise of which power of the concerned authority. Any action that may be taken by the Government needs to be in accordance with law, on that point, there can not be any dispute, however the insistence of the petitioner Company that, that inquiry needs to start from the stage of Section 206(1) of the Act needs to be examined vis-a-vis the impugned judgment i.e., whether the proceedings, if instituted under Section 206(4) of the Act, as ordered by learned Single Judge, can be said to be illegal or unjustified in any manner.

9.2 A question may also crop up whether the order of the Central Government dated 07.05.2018 could be termed to be illegal in any manner, however, while recording this, it is also noted that the said order dated 07.05.2018 is already set aside by learned Single Judge on the ground that it was based on the report of the Registrar of the Companies dated 13.12.2017, which was in violation of principles of natural justice. That part of the judgment of learned Single Judge (of setting aside order dated 07.05.2018) is not challenged by the Government / Registrar and to that extent, the controversy can be said to have been put at rest, at least by the Government. While recording this, we also note that in W.A.No.1324 of 2021 even that part of the impugned order is challenged, contending that even that interference should not have been made by learned Single Judge. That is examined in the latter part of the judgment, since the Government is not in appeal to that extent.

9.3 In view of the above, it needs to be examined (i) whether the direction of learned Single Judge to start proceedings against the petitioner Company from the stage of Section 206(4) of the Act can be said to be illegal or unsustainable in any manner and (ii) whether the report of the Registrar dated 17.12.2017 could be permitted to be treated as notice under Section 206(4) of the Act by directing the petitioner Company to respond to it. These aspects being interconnected, they need to be and are considered together.

10.1 For the above purpose, reference needs to be made to Section 206 of the Companies Act, which reads as under:-



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"(1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—

(a) to furnish in writing such information or explanation; or

(b) to produce such documents, within such reasonable time, as may be specified in the notice.

(2) On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar: Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

(3) If no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:

Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.



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(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in Section 447.

(5) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose. -
(Notification dated on 29th April, 2014.)

(6) The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies.

(7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five



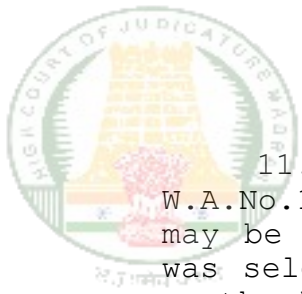
hundred rupees for every day after the first during which the failure continues.”

10.2 On reading the above, with specific reference to the grouping of sub-sections (1) (2) and (3) on one hand and sub-section (4) of Section 206 on the other hand, we find substantial force in the submission of learned Additional Solicitor General of India that, the power of the Registrar to carry out inquiry under sub-section (4) of Section 206 of the Act on the basis of the information available with him is independent of his powers to call for information from the Company under sub-section (1) of Section 206 of the Act. The starting point of sub-section (1) which leads to sub-section (2) and (3) of Section 206, is one part of the procedure and what is contemplated under sub-section (4) does not necessarily follow what is done from sub-section (1) - up to sub-section (3) of Section 206 of the Act.

10.3 We also find that the material referred to in the report dated 13.12.2017 satisfies the test of Section 206(4) of the Act. The finding recorded by the Registrar in the said report which is held to be in violation of principles of natural justice, and since the sustainability thereof is not being examined in absence of any challenge thereto by the Government, we find that independent of the conclusion arrived at by the Registrar in the report dated 13.12.2017, the material referred therein can not be said to be alien to the requirement under Section 206(4) of the Act. Though sub-section (4) of Section 206 necessarily comes after sub-section (1), it would be erroneous to read that, exercise of powers under sub-section (4) can be only after the stage of completing procedure / exercise under Section 206(1) (2) and (3) of the Act.

10.4 On conjoint consideration of the complaints and other material against the petitioner Company, which are taken note of by the Registrar while preparing the report dated 13.12.2017 can not be said to be irrelevant for initiating proceedings under Section 206(4) of the Act. The decision relied by the learned Senior Advocate for the appellant in the case of Oryx Fisheries (supra) would not help the petitioner Company under these circumstances.

10.5 The challenge by the original writ petitioner Company to the impugned judgment, that the report of the Registrar dated 13.12.2017 and the material referred therein could not have been directed to be treated as notice to the petitioner Company under Section 206(4) of the Act is unsustainable. Challenge by the writ petitioner to the impugned judgment, therefore needs to be rejected.



11. So far the appeal filed by the third party - being W.A.No.1324 of 2021 is concerned, we find that the said litigant may be justified to an extent that the writ petitioner Company was selecting forum for its convenience (from one High Court to another) with specific reference to the earlier proceedings before the Andhra Pradesh High Court in W.P.No. 38841 of 2016, and therefore was not entitled to any relief from this Court. This may have its own force. It may also lead to a situation where it may be necessary to examine whether the order of learned Single Judge interfering in the order of the Government dated 07.05.2018, which was under Section 212 of the Act, was justified or not, however since the dispute principally is between the petitioner Company and the authorities of the Government and since that part of the judgment is not challenged by the Government, we do not consider it proper to examine it at the hands of the third party, whose status is of an informant / complainant. Had the grievance voiced by the said complainant, being voiced by the Union of India, it would have assumed different dimension. As the petitioner Company can not have any say that the authorities should exercise which power to initiate inquiry / proceedings against it, the same way, the complainant can also not be permitted to dictate that the petitioner Company needs to be prosecuted by the authorities under particular Section(s) of the Act. For these reasons W.A.No. 1324 of 2021 needs to be dismissed.

12. For the above reasons, we arrive at the conclusion that no interference is required in the impugned order. At this juncture, reference needs to be made to the order dated 29.03.2021 on this appeal, which is already noted above. At the first instance, taking note of the grievance of the original writ petitioner Company, this Court had, while staying the order of learned Single Judge noted that the point at issue is whether the inquiry should start from Section 206(4) of the Act as directed by learned Single Judge or it should start from Section 206(1) of the Act, as desired by the original petitioner Company. After hearing the contesting parties, we have arrived at the conclusion that, no interference is required in the impugned order. The point formulated by this Court vide order dated 29.03.2021 having been answered as above, the interim protection granted also needs to be vacated.

13. For the above reasons, the following order is passed.

13.1 Both these appeals are dismissed.

13.2 No costs. Consequently, connected C.M.P.s are closed.

13.3 Interim stay granted earlier needs to be vacated, however with a view to see that, challenge if any to this order



remains meaningful to the appellant Company, it is ordered that the said interim protection shall continue for a period of eight weeks from today.

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Sd/-
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

ssm/1

To

1. The Secretary to Government
Union of India,
Ministry of Corporate Affairs,
New Delhi - 110 001.
2. The Director,
Serious Fraud Investigation Officer,
2nd Floor, Pryavaran Bhavan,
C.G.O. Complex, Lodhi Road,
New Delhi - 110 003.
3. The Regional Director,
Office of the Regional Director,
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Chennai - 600 006.
5. The Assistant Registrar of Companies,
Office of Registrar of Companies,
Tamilnadu, Chennai.
Shastri Bhavan, 2nd Floor,
26, Haddows Road,
Chennai - 600 006.



6.The Joint Director,
Ministry of Corporate Affairs,
5th Floor, A Wing,
Shastri Bhavan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.

7.The Registrar,
Office of Registrar of Companies,
Tamilnadu, Chennai.
2nd Floor, Shastri Bhavan,
26, Haddows Road,
Chennai - 600 006.

+2ccs to Mr.R.Sreedhar, Advocate SR.No.66737, 66738

+2ccs to Mr.Adrian D. Rozario, Advocate SR.No.66475

+2ccs to Mr.T.R.K.Kumarasingh, Advocate SR.No.67348

W.A.Nos.1003 & 1324 of 2021

GSM(CO)
RVM(03/01/2022)