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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2021

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No. 13235 of 2021
and W.M.P.Nos.14036 & 14038 of 2021

Shanmugaraj Muralisundaram

... 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
Chennai, Tamil Nadu
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 for a writ of certiorarified mandamus calling for the records of the 2nd respondent relating to the impugned order dated 17.12.2018 uploaded in the website of the 1st respondent insofar 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 appoint as Director in any other Company.

For Petitioner : Mr.A.M.Ilango

For R1 : Mr.Udayakumar
Central Govt. Standing Counsel

For R2 : Mr.G.Krishnaraja
Government Advocate

O R D E R

The prayer made in this writ petition is to issue a Certiorarified Mandamus, calling for the records of the 2nd



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under Section 164(2) of CA 2013. In this connection, it is also pertinent to refer to Section 167(1) of CA 2013 which provides for vacating the office of director by a director of a Defaulting Company. As a corollary, it follows that if a person is a director of five companies, which may be referred to as companies A to E, if the default is committed by company A by not filing financial statements or annual returns, the said director of company A would incur disqualification and would vacate office as director of companies B to E. However, the said person would not vacate office as director of company A. If such person does not vacate office and continues to be a director of company A, it is necessary that such person continues to retain the DIN. In this connection, it is also pertinent to point out that it is not possible to file either the financial statements or the annual returns without a DIN. Consequently, the director of Defaulting Company A, in the above example, would be required to retain the DIN so as to make good the deficiency by filing the respective documents. Thus, apart from the fact that the AQD Rules do not empower the ROC to deactivate the DIN, we find that such deactivation would also be contrary to Section 164(2) read with 167(1) of CA 2013 inasmuch as the person concerned would continue to be a director of the Defaulting Company.

42. In light of the above analysis, we concur with the views of the Delhi High Court in Mukut Pathak, the Allahabad High Court in Jai Shankar Agrahari and the Gujarat High Court in Gaurang Balvantlal Shah to the effect that the ROC is not empowered to deactivate the DIN under the relevant rules. In Yashodhara Shroff, the Karnataka High Court upheld the constitutionality of Section 164(2) and proceeded to hold that a prior or post decisional hearing is not necessary. For reasons detailed in preceding paragraphs, we disagree with the view of the Karnataka High Court that prior notice is not required under Section 164(2) of CA 2013.

43. In the result, these appeals are allowed by setting aside the impugned order dated 27.01.2020. Consequently, the publication of the list of disqualified directors by the ROC and the deactivation of the DIN of the Appellants is hereby quashed. As a corollary to our conclusion on the deactivation of DIN, the DIN of the respective directors shall be reactivated within 30 days of the date of receipt of a copy of this order. Nonetheless, we make it clear that it is open to the ROC concerned to initiate action



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with regard to disqualification subject to an enquiry to decide the question of attribution of default to specific directors by taking into account the observations and conclusions herein. No costs. Consequently, connected miscellaneous petitions are closed."

4. Therefore, following the aforesaid decision, the writ petition stands allowed, in the terms as indicated in the judgment in Meethelaveetil Kaitheri Muralidharan's case. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Registrar of Companies
Chennai, Tamil Nadu
Block No. 6, B Wing 2nd floor
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srg 26/07/2021