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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2021

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No. 13177 of 2021
and W.M.P.Nos.13986 & 13987 of 2021

Ashok Balasubramanian

...Petitioner

Vs

1. Union of India
Represented by its
Ministry of Corporate Affairs,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.
2. The Registrar of Companies
Chennai, Tamilnadu,
Block No.6, B Wing 2nd Floor,
Shastri Bhawan, 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 13.12.2019 captioned 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 get appointed as Director of any other company.

For Petitioner : Mr.A.M. Ilango

For Respondents : Mr.R.Sidharth,
Central Govt. Standing Counsel
for R1

Mr.Stalin Abhimanyu
Govt. Advocate for R2



O R D E R

The prayer made in this writ petition is to issue a Certiorarified Mandamus, calling for the records of the second respondent relating to the order dated 13.12.2019 which was uploaded in the website of the first respondent, insofar as the petitioner is concerned and quash the same and for consequential relief.

2. According to the petitioner, the second respondent released a list of disqualified directors, who have been disqualified under Section 164(2)(a) of the Companies Act, 2013, as directors with effect from 01.11.2018 in which, his name was also mentioned. (DIN No: 00425641). In other words, the second respondent, by including the name of the petitioner, has disqualified him as Director under Section 164(2)(a) of the Companies Act, 2013 for non-filing of financial statements or annual returns for continuous period of three financial years by the defaulting companies on whose board, the petitioner is also a Director, due to which, he is prohibited from being appointed or reappointed as director in any other company for a period of 5 years. Stating that the action so taken by the second respondent is arbitrary and unreasonable, the petitioner has filed the present writ petition with the aforesaid prayer.

3. Today, when the matter was taken up for consideration, the learned counsel appearing for the parties jointly submitted that the issue involved herein is no longer res integra. Earlier, this Court by order dated 03.08.2018 in WP.No.25455 of 2017 etc. batch, in Bhagavan Das Dhananjaya Das case reported in (2018) 6 MLJ 704, allowed those writ petitions and set aside the orders dated 08.09.2017, 01.11.2017, 17.12.2018, etc. passed by the Registrar of Companies, disqualifying the petitioners therein to hold the office of directorship of the companies under Section 164(2)(a) of the Companies Act, which came into effect from 01.04.2014. Thereafter, yet another set of disqualified directors approached this court by filing WP.No.13616 of 2018 etc. batch (Khushru Dorab Madan v. Union of India) which were dismissed by order dated 27.01.2020. The said order of the learned single judge was challenged by some of the petitioners therein before the Division Bench of this Court in W.A.No.569 of 2020, etc. batch (Meethelaveetil Kaitheri Muralidharan v. Union of India, 2020 SCC OnLine Mad 2958 : (2020) 6 CTC 113), which after elaborately dealt with the issue as to whether the RoC is entitled to deactivate the Director Identification Number (DIN), allowed those writ appeals on 09.10.2020, the relevant passage of which, are profitably, extracted below:



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.



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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 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(CS VII)

//True Copy//

Sub Assistant Registrar

msr

To

1. Union of India
Ministry of Corporate Affairs,
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PL(CO)
PM(28/07/2021)