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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No. 13385 of 2021
and W.M.P.Nos.14226 & 14227 of 2021

Phuah Poh Gek Penelope

... 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
Tamil Nadu, Chennai
Block No.6, B Wing 2nd floor
Shastri Bhawan
26, Haddows Road
Chennai-600 034.

... 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 second respondent relating to the impugned order dated 01.11.2017 uploaded in the website of the first 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 re-appointed as Director of any Company or appointed as Director in any Company without any bar or hindrance.

For Petitioner : Mr.D.Peruman Saranyan

For Respondents: Ms.N.Nithila Vani
Central Govt. Standing Counsel
for R1

Mr.G.Krishnaraja
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 01.11.2017 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 01.11.2016, in which, his name was also mentioned as item no.2808 (DIN No: 002259593). 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:



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"41. As is evident from the above, Rules 9 and 10 deals with the application for allotment of DIN. Rule 10(6) specifies that the DIN is valid for the life time of the applicant and shall not be allotted to any other person. Rule 11 provides for the cancellation or surrender or deactivation of the DIN. It is very clear upon examining Rule 11 that neither cancellation nor deactivation is provided for upon disqualification 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.



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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-VIII)

//True copy//

Sub Assistant Registrar

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To

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W.P.No. 13385 of 2021

EV (CO)
RLP (30/07/2021)