

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.20414 of 2020 &
W.M.P.Nos.25191 & 25192 of 2020

Sajith Kannanunninair

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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,
Tamilnadu, Chennai
Block No.6, B Wing 2nd Floor, Shastri Bhawan,
26, Haddows Road,
Chennai - 600 006.

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Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of 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 in so far as the petitioner herein concerned, quash the same as illegal, arbitrary and devoid of merits and consequently, direct the respondents herein to permit the petitioner to get reappointed as Director of any company or appointed as Director in any company without any hindrance.

For Petitioner :Mr.S.Satish

For Respondents :Mr.Madana Gopal Rao,
Central Government Standing Counsel

O R D E R

Mr.Madana Gopal Rao, learned Central Government Standing Counsel accepts notice for the respondents.

2. This writ petition has been filed challenging the disqualification of the petitioner as a Director of the following companies namely Manohara Developers & Construction Private Limited and Thuriya Properties Private Limited under section 164(2) of the Companies Act, 2013 on the ground that the respective companies have not filed their financial statements for three consecutive years.

3. Heard Mr.S.Satish, learned counsel for the petitioner and Mr.Madana Gopal Rao, learned Central Government Standing Counsel for the respondents.

4. The contention of the petitioner in this writ petition is that arbitrarily and without adhering to the principles of natural justice, the petitioner has been disqualified as a Director. It is also his contention that the impugned order is in violation of Section 164(2) of the Companies Act, 2013.

5. The issue raised in this writ petition has already been considered by the Hon'ble Division Bench of this Court by its order dated 09.10.2020 in W.A. No.569 & Ors. of 2020 in the case of Meetgelaveetil Kaitheri Muralidharan Versus Union of India & Another and in paragraphs 36 and 38, it has been held as follows :

36. 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.

38. 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.

6. The case on hand is also similar to the issue which was involved in the case before the Hon'ble Division Bench of this Court referred to supra. Therefore, the decision rendered by the Division Bench of this Court referred to supra squarely applies to the facts of this case.

7. In the result, the impugned order dated 01.11.2017 uploaded in the first respondent website insofar as the petitioner is concerned, is illegal, arbitrary and devoid of merits. Accordingly, the impugned order dated 01.11.2017 issued by the first respondent is hereby quashed and the petitioner is permitted to get reappointment as Director in any company without any interruption.

8. However, it is made clear that the respondent will not be barred from initiating any action against the petitioner in the near future, if there is any violation committed by him while acting as a Director for any of the companies.

9. With the above observation, this Writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.Registrar of Companies,
Tamilnadu, Chennai
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26, Haddows Road, Chennai - 600 006.

W.P.No.20414 of 2020

KV(CO)
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