



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

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THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. Nos. 26107 & 26150 of 2021

and

W.M.P. Nos. 27558, 27559, 27602, 27604 & 27605 of 2021

WP No. 26107 of 2021

and

WMP Nos. 27558 & 27559 of 2021

Chittanai Amjed Ahmed

.. Petitioner

Versus

1. Union of India

Represented by the
Ministry of Corporate Affairs
A Wing, Shastri Bhawan
Rajendra Prasad Road
New Delhi - 110 001

2. Registrar of Companies, Chennai

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

.. Respondents

WP No. 26150 of 2021

and

WMP Nos. 27602, 27604 & 27605 of 2021

1. Sadasivam

2. Nirmala Sadasivam

.. Petitioners

Versus

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

1st Floor, Ashok Pingley Bhawan
Municipal Corporation
Nehru Chowk, Bilaspur
Chhattisgarh - 495 001

.. Respondents



WP No. 26107 of 2021:- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the impugned order dated 18.12.2018 uploaded and hosted of the website of the 1st respondent insofar as the petitioner herein is concerned, quash the status "Disqualified under Section 164(2)" against the Director identification Number (DIN No.00965200) as illegal, arbitrary and devoid of merit and consequentially direct the respondents herein to permit the petitioner to get reappointed as director of any company or appointed as Director in any other company without any hindrance.

WP No. 26150 of 2021:- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents, culminating in the undated impugned order published on 28.11.2019 by the second respondent in the official website of the 1st respondent wherein the petitioners were disqualified to function as Directors (DIN Nos.02415291 and 02456254) and quash the same and direct the second respondent to restore the writ petitioners as Directors within a time frame to be fixed by the Hon'ble Court.

WP No. 26107 of 2021

For Petitioner : M/s. Keerthikiran Murali

For Respondents : Mr. A. Prakash
Additional Central Government
Standing Counsel

WP No. 26150 of 2021

For Petitioner : Mr.K. Ashok Kumar

For Respondents : Mr. A. Prakash
Additional Central Government
Standing Counsel

COMMON ORDER

The prayer made in these writ petitions is to issue a Certiorarified Mandamus, calling for the records of the respective respondents in so far as it relates to the publication of the list of disqualified Directors in which the names of the respective petitioners are included and the consequential deactivation of their Director Identification Number (DIN).

2. According to the petitioners, the respondents herein released a list of disqualified directors under Section 164(2) (a) of the Companies Act, 2013, disqualifying them as directors



of the various companies, in which, names of the petitioners were also included. In other words, the respondents, disqualified the petitioners as Directors 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 (s) is/are serving as a Director. According to the petitioners, by virtue of such disqualification, they could not be appointed or reappointed as director in any other company for a period of 5 years. Therefore, assailing the orders of disqualification mainly on the ground that such orders have been passed in gross violation of principles of natural justice, the present writ petitions are filed.

3. Today, when the writ petitions are taken up for consideration, the learned counsel appearing for the petitioners 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 Registrar of Companies 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:

"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



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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 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. The aforesaid submissions of the learned counsel for the petitioners have been conceded on the side of the respondents. It is also submitted by Mr. K. Ramanamurthy, learned Central Government Standing Counsel appearing for some of the respondents in these writ petitions, on instructions, submitted that as directed by the Division Bench of this Court, the Registrar of Companies is in the process of conducting an enquiry to decide the extent of default committed by the individual Directors and subject to the outcome of such enquiry, appropriate orders will be passed. The said submission is recorded.

5. Having regard to the above, all the writ petitions stand allowed, in the terms as indicated in the judgment in Meethelaveetil Kaitheri Muralidharan's case. No costs. Consequently, connected miscellaneous petitions are closed. It is needless to mention that the Registrar of Companies shall conduct an enquiry taking note of the observations made by the Division Bench of this Court, mentioned supra.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1. Ministry of Corporate Affairs
Union of India
A Wing, Shastri Bhawan
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Block No. 6, B Wing 2nd Floor
Shastri Bhawan 26
Haddows Road, Chennai - 600 034
3. Registrar of Companies
1st Floor, Ashok Pingley Bhawan
Municipal Corporation
Nehru Chowk, Bilaspur, Chattisgarh - 495 001.
4. The Secretary
Union of India
Ministry of Corporate Affairs
Shastri Bhawan, Dr. Rajendra Prasad Road
New Delhi - 110 001.

+lcc to Mr.A. Prakash, Advocate SR.No.67692

+lcc to Mr.A.Veeramani, Advocate SR.No.67848

WP Nos. 26107 & 26150 of 2021

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GMV (24/01/2022)

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