



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.26750 of 2021

R.Jayakumar

...Petitioner

Vs

1. Union of India
Represented by its Secretary
Ministry of Corporate Affairs,
Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi.

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

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records of the 2nd Respondent relating to the impugned order dated 18.12.2018, which is uploaded in the website of the 1st Respondent insofar as the Petitioner (DIN: 05349107) herein and quash the same and direct the 2nd Respondent to activate the Petitioner's DIN: 05349107.

For Petitioner : Mr.T.V.Suresh Kumar

For 1st Respondent : Mr.A.Ashwathaman

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned order dated 18.12.2018 passed by the 2nd Respondent herein, which is uploaded in the website of the 1st Respondent, insofar as he is concerned and for a consequential direction to the 2nd Respondent to activate Director Identification Number 05349107.



2. According to the Petitioner, on 18.12.2018, the second Respondent published a list of disqualified Directors, who have been disqualified under Section 164(2)(a) of the Companies Act, 2013, as Directors with effect from 01.11.2017, in which, his name was also mentioned vide Director Identification Number 05349107. In other words, the 2nd 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 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 five years. Stating that the action so taken by the 2nd Respondent is arbitrary and unreasonable, the Petitioner has filed the present Writ Petition for the aforesaid relief.

3. Today, when the matter was taken up for consideration, learned counsel appearing for the parties jointly submitted that, the issue involved herein is no longer res integra.

4. Learned counsel for the Petitioner drew the attention of this Court to the order dated 03.08.2018 passed by this Court in W.P.No.25455 of 2017 etc. batch, in the case of Bhagavan Das Dhananjaya Das reported in (2018) 6 MLJ 704, whereby, those Writ Petitions were allowed setting aside the impugned orders 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 W.P.No.13616 of 2018 etc. batch (Khushru Dorab Madan v. Union of India), which were dismissed by an order dated 27.01.2020. Some of the aggrieved Petitioners challenged the said order of the learned Single Judge before the Division Bench of this Court in W.A.No.569 of 2020, etc. batch (Meethelaveetil Kaitheri Muralidharan v. Union of India, reported in (2020) 6 CTC 113. The Division Bench elaborately dealt with the issue as to whether the Registrar of Companies is entitled to deactivate the Director Identification Number (DIN) and allowed those Writ Appeals on 09.10.2020. Relevant portion of the said judgment is extracted hereunder:

"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



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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.



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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."

5. Therefore, following the aforesaid decision, this Writ Petition is allowed in the terms as indicated in the judgment rendered in the case of Meethelaveetil Kaitheri Muralidharan (supra). No costs. Consequently, connected W.M.P.Nos.29189 and 28190 of 2021 are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary,
Union of India
Ministry of Corporate Affairs,
Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi.
2. The Registrar of Companies
Tamilnadu, Chennai,
Block No.6, B-Wing, 2nd Floor,
Shastri Bhawan,26, Haddows Road,
Chennai 600 006.

W.P.No.26750 of 2021

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