22nd July, 2022
(D/L No.14)
(SKB)

**W.P.A. 7718 of 2020**

Sarbeswar Parida
-Versus-
Union of India and others

Mr. Avijit Ghosal
... for the petitioner.

Mr. Avinash Kankani
... for the U.O.I.

The affidavit of service is taken on record.

The petitioner complains of a notice of disqualification and cancellation of the petitioner's DIN from 1st November, 2018 to 31st October, 2023.

After hearing learned counsel, this court is not inclined to give any relief to the petitioner for the following reasons:-

First, the writ petition does not mention any date when the impugned disqualification was communicated to the petitioner. The disqualification is started from 1st November, 2018 till 31st October, 2023. The writ petition has been filed in September, 2020.

Under the provision of Section 164(2) of The Companies Act, 2013, a person shall not be eligible for reappointment as a director of a company, where the person is a director, which has not filed financial statements or only returns for any continuous period of three financial years. Section 167(1) of the said Act states that the office of a director shall become vacant in case he incurs any of the disqualifications specified in Section 164. An amendment brought in with effect from 7th May, 2018 to Section 167(1) which states that the office of the director shall become vacant in all the companies, other than the company which is in default under 164(2).

In the present case, the default of the company-in-question where the petitioner was a Director was from 2014 – 2015 onwards which would be evident from the company master data which has been annexed to the writ petition. Hence, the petitioner cannot claim the benefit of the amendment to Section 167(1) which was brought into effect from 7th May, 2018.

Although the writ petition contains a statement in paragraph 7 that the impugned action of disqualification was given retrospective effect, this Court cannot come to any finding with regard to that since the writ petition does not mention the date on which the petitioner got to know of the impugned disqualification. The filing of the writ petition in September, 2020 cannot by itself lead to a conclusion that the disqualification was with retrospective effect particularly since the relevant sections of the 2013 Act do not require notice or communication of the disqualification.

Second, the Company Master Data also shows that the concerned company was also struck off from the register of companies on 1st November, 2018. Hence, the petitioner cannot get relief on any count as prayed for in the writ petition. Although learned counsel for the petitioner places a paragraph which states that the petitioner was not served any notice by the concerned respondents. This fact cannot entail any relief since the relevant provisions of The Companies Act do not envisage any notice or relief before the disqualification under the said provisions.

W.P.A. 7718 of 2020 is accordingly dismissed without any order as to costs.

**(Moushumi Bhattacharya, J.)**