

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.6604 of 2022 &
W.M.P.Nos.6700 & 6701 of 2022

Thara Sushilkumar

... 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,
Tamil Nadu, Chennai ,
Block NO.6, B Wing 2nd floor,
Shastri Bhawan 26, Haddows Road,
Chennai - 600 006.

... Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India for writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to the impugned order dated 17.12.2018 uploaded in the website of the 1st respondent in so far as the petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merit and consequentially direct the respondents herein to permit petitioner to get reappointed as Director of any Company or appointed as Director in any company without any hindrance.

For Petitioner : Mr.Naveen Kumar Murthi

For Respondents: Mr.R.Subramanian,
Assistant Central Government
Standing Counsel

ORDER

This Writ petition has been filed challenging the disqualification of the petitioner as a Director under Section 164(2) of the Companies Act. The impugned order is dated

17.12.2018. The petitioner has challenged the impugned order on the ground that no notice was issued to her prior to her disqualification as a Director. The Director Identification No.06716369 has also been deactivated/suspended under the impugned order without affording any opportunity of hearing to the petitioner.

2. Heard Mr.Naveen Kumar Murthi, learned counsel for the petitioner and Mr.R.Subramanian, Assistant Central Government Standing Counsel appearing for the respondents.

3. The issue raised in this writ petition is covered by the decision of the Division Bench of this Court in Meetgelaveetil Kaitheri Mudalidharan vs Union of India & another dated 09.10.2020 in W.A.Nos.569, 718, 720, 721, 841 and 842 of 2020. In the said Division Bench judgement, the same issue was involved where notice was not issued to the Director prior to his/her disqualification. The Hon'ble Division Bench set aside the disqualification order and passed the following order.

"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."

4. The petitioner in the instant case is similarly placed. Therefore, the order of the Division Bench referred to supra applies to this case also and similar direction needs to be issued in favour of the petitioner also by this Court. Accordingly, the impugned order dated 17.12.2018 passed by the 1st respondent, uploaded and hosted on the website of the 1st respondent insofar as the petitioner herein is concerned, is quashed. The status of disqualification under Section 164(2) against the Director Identification DIN No.06716369 is declared to be arbitrary, illegal and devoid on merits and this Writ Petition is allowed as prayed for. However it is made clear that it is open to the respondents to initiate fresh action with regard to the petitioner's disqualification, subject to holding

an enquiry and to decide the question of attribution of default committed by her. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, Union of India,
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi - 110 001.
2. Registrar of companies,
Tamil Nadu, Chennai ,
Block NO.6, B Wing 2nd floor,
Shastri Bhawan 26, Haddows Road,
Chennai - 600 006.

+lcc to Mr.Naveen Kumar Murthi, Advocate, S.R.No.37090

W.P.No.6604 of 2022

RLD(CO)
CT/11/07/2022