

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.NO.7591 OF 2019

AND

W.M.P.NOS.8230 & 8232 OF 2019

Venkataramanan Iyer Sriram

... Petitioner

vs.

1. The UNION OF INDIA

Represented by its MINISTRY OF CORPORATE AFFAIRS,
Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.

2. THE REGISTRAR OF COMPANIES

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

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent, relating to the impugned order dated 01.11.2017 published in the Website (MCA21) of the 1st respondent as so far as the petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merits and consequently direct the respondents herein to permit petitioner to get reappointed as Director of any Company, continue or appointed as Director in any Company without any hindrance.

For Petitioner : Mr.R.T.S.Kannan
for M/s.Annal. P

For Respondents : No appearance

O R D E R

The challenge in the writ petition is to the order disqualifying the petitioner from being a Director of the Company under Section 164(2) of the Companies Act and consequently deactivating his DIN number.

2. The disqualification had occurred under Section 164(2) because of the failure on the part of the Company to file returns for a continuous period of 3 years. The challenge to the proceedings for disqualification is solely on the ground that there was no notice to the petitioner before disqualification occurred. The issue as to whether disqualification is automatic or that it should be preceded by enquiry after issuing notice thereby satisfying the principles of natural justice is no longer res integra.

3. A Division Bench of this Court in Meethelaveetil Kaitheri Muralidharan Vs. Union of India, Rep. by its Secretary, Ministry of Corporation Affiars and another reported in 2020 (6) CTC 113 has dealt with similar orders of disqualification and has held that an enquiry is mandatory and disqualification made without an enquiry is not valid. The batch of writ appeals were allowed by the Division Bench directing restoration of the DIN number also. It will be useful to refer to paragraphs 41 to 43 of the said judgment, which read as follows:-

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 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. In view of the above this writ petition is allowed. The impugned order of disqualification dated 01.11.2017 is quashed and as a corollary the DIN number of the petitioner shall be reactivated within a period of 30 days from the date of receipt

of a copy of the order. Needless to point out that it is open to the Registrar of Companies concerned to initiate appropriate action for disqualification in accordance with law. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

dsa

To

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RR(CO)
RLP(13/07/2022)