



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
06.12.2021	04.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.10235 OF 2019

AND

W.M.P.NOS.10800 OF 2019

W.M.P.NOS.23294 & 24212 OF 2021

India Awake For Transparency
Shrishti Crescendo
24, Desika Road Unit I
Mezzanine Floor, Mylapore
Chennai 600 004.

...Petitioner

-Vs-

- 1.The Secretary
Ministry of Corporate Affairs
Union of India, New Delhi.
- 2.The Regional Director (Southern Region)
Ministry of Corporate Affairs
Government of India
Shastri Bhavan Block I V Floor
26, Haddows Road, Chennai 600 006.
- 3.M/s.Hasham Investment &
Trading Company Pvt. Ltd
No.134, Next to WIPRO Corporate Office
Doddakannelli, Sarajapur Road
Bengalure 560 035.
- 4.Mr.M.R.Bhat
Office of the Regional Director
Ministry of Corporate Affairs
Government of India
Shastri Bhavan Block I, V Floor
26, Haddows Road, Chennai 600 006.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of order F. No.3/RD/India Awake/Sec 8 (6)/2018-19 dated 17.08.2018 of the 2nd respondent and quash the same.



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For Petitioner : Mr.R.Subramanian
For Respondent : Mr. S.S.Pajani Radja, CGSC
for RR-1 & 2
Mr.A.Ganesh, SC,
for Mr. K.Ravi for R-3
Dr.R.Prakash for Mr.A.Mohan for R-4

ORDER

The present petition at the instance of the petitioner assails the impugned order passed by the 2nd respondent in and by which the license issued to the petitioner was revoked/cancelled by the 2nd respondent by virtue of powers provided u/s 8 (6) of the Companies Act.

2. The case of the petitioner, as could be culled out from the affidavit filed in support of the petition is that the petitioner was formed on 6.8.2012 as a not for profit company for charitable purposes as contained u/s 25 of the Companies Act, 1956, presently Section 8 of the Companies Act, 2013. It is the case of the petitioner that it is barred from paying any dividend and that the company is operating mainly for public interest and in satisfaction of its purpose, the petitioner has been diligently working through its volunteers and escalating matters of significant public interest, more especially violations relating to Coastal Regulation Zone Regulation and Development Control Regulation of Chennai Metropolitan Development Agency in the Acquiifer Recharge Zone. In this regard, the petitioner had filed six public interest litigations before the Delhi High Court, of which petitions are pending adjudication.

3. It is the further case of the petitioner that having come to its knowledge relating to a large scale fraud involving defalcation of about Rs.50,000 Crores by the 3rd respondent by way of income tax evasion, the petitioner has been pursuing the said issue for retrieving the said amount. It is the averment of the petitioner that the said defalcation had arisen in view of the merger approval obtained by the 3rd respondent from the High Court of Karnataka, on the basis of misrepresentation and collusion with the 4th respondent, then functioning as Registrar of Companies, Karnataka. It is the further averment of the petitioner that unable to bear the pressure mounted on the 3rd respondent by the petitioner, the 3rd respondent, with a view to prevent the petitioner from proceeding any further with its endeavour to unearth fraudulent acts, with the connivance of the 4th respondent, who is functioning as the 2nd respondent, sought to cancel the permission granted to the petitioner u/s 8 of the Companies Act.



4. It is the further case of the petitioner that though the 3rd respondent had prepared all the necessary material to achieve its objective as far back as on 13.11.2017, however, refrained from moving the petition till 2.7.2018, when the 4th respondent took charge of the office of the 2nd respondent and with the help of the 4th respondent occupying the post of the 2nd respondent, in stark violations of principles of natural justice and without affording a reasonable opportunity of hearing and without in any manner advertent to the petitioner's application in the Karnataka High Court relating to the merger issue of the 3rd respondent, passed the impugned order. It is the further averment of the petitioner that the impugned order has been passed without any material whatsoever supporting the said stand of the 3rd respondent and the allegations made by the 3rd respondent does not come within the scope of Section 8 (6) of the Companies Act and the act of the 3rd respondent is a sheer abuse of process of law and that the impugned order is neither in consonance with law nor in consonance with the principle of audi alteram partem and, therefore, the said order deserves to be set aside.

5. Learned counsel appearing for the petitioner, advertent to the sequence of events, submitted that the act of the petitioner in adhering to its mandate on its formation as a company u/s 8 of the Companies Act and unearthing the fraud sought to be perpetrated by the 3rd respondent under the guise of merger of companies, which got the approval of the Karnataka High Court in the year 2014-2015, moved the petition before the Karnataka High Court by way of a third party public interest litigation in which notice has been ordered in the year 2016 and, thereafter, the order of NCLT, Bengaluru in ordering notice to the 3rd respondent in C.P. No.16/2017 had earned the wrath of the 3rd respondent against the petitioner, which necessitated the 3rd respondent to move the 2nd respondent, which post was occupied by the 4th respondent. It is the further submission of the learned counsel for the petitioner that the petition was filed on 4.7.2018 on which hearing was conducted by the 2nd respondent on 10.8.2018 in exclusion of the petitioner and inspite of the petitioner seeking opportunity to present its case, however, the 2nd respondent allowed the petition filed by the 3rd respondent, thereby, revoking/cancelling the registration granted to the petitioner by invocation of power u/s 8 (6) of the Companies Act. It is the further submission of the learned counsel for the petitioner that inspite of representation to the 1st respondent as to the void nature of the impugned order, no order has been passed on the same and in March, 2019, the status of the petitioner company as a company formed u/s 8 stood changed to that of a Private Limited Company.



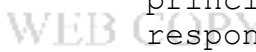
6. Learned counsel appearing for the petitioner heavily relies upon Section 8 of the Act, more especially sub-section (6) to Section 8 and submits that without fulfilment of the requirement stated in sub-section (6), the status of the company and the licence granted to a company cannot be cancelled/revoked.

7. It is the further submission of the learned counsel for the petitioner that even in the event of the 2nd respondent intending to revoke the licence granted to the petitioner, legal necessity warrants providing of an opportunity of being heard before any adverse order is passed. However, it is the stand of the petitioner that no opportunity of hearing was granted to the petitioner before the impugned order came to be passed, which is in violation of principles of natural justice.

8. It is the further submission of the learned counsel for the petitioner that materials, which were relied upon by the 2nd respondent to render a finding, such of those materials were not provided to the petitioner, which prevented the petitioner from defending itself effectively and such lacunae strikes at the root of the impugned order.

9. It is the further submission of the learned counsel for the petitioner that the finding rendered by the 2nd respondent that the Board Resolution authorising the petitioner was invalid, as the Board of Directors of the petitioner was reconstituted after that date, is wholly erroneous as the impugned order itself reveals that two persons were on the Board as Directors as on 14.3.2015 and, therefore, the Board resolution authorising the petitioner is wholly permissible and sustainable. Accordingly, for the aforesaid infractions of the legal necessities, the learned counsel for the petitioner prays for setting aside the impugned order.

10. Per contra, learned standing counsel appearing for respondents 1 and 2 submitted that the contention of the petitioner that initially the petition was filed at Hyderabad, where the 4th respondent was functioning as Regional Director and, thereafter, it was transferred to the file of the Regional Director (Southern Region) at Chennai, only due to the fact that the 4th respondent, who is in collusion with the 3rd respondent, had taken charge as Regional Director of the Southern Region. It is the submission of the learned standing counsel for the respondents 1 and 2 that since the office of the 3rd respondent was at Bangalore, the computerized system would accept only a filing at the South Eastern Region, inspite of the fact that the petitioner has office in Chennai and the petition ought to have been filed at Chennai. The filing at South Eastern Region was, on account of jurisdictional aspect, transferred to the file of Southern Region and, therefore, the contention of the petitioner

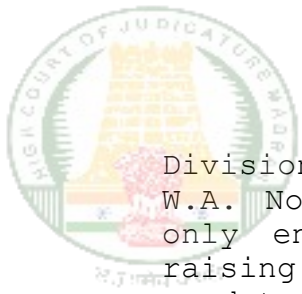


11. Insofar as the contention relating to non-compliance of principles of natural justice, learned standing counsel for respondents 1 and 2 submitted that notice was caused to the petitioner as well as the 3rd respondent and on the request of the counsel for the petitioner herein, adjournment was initially granted to 10.8.2018 and on that date, there was representation for both the petitioner herein and the 3rd respondent. However, the vakalat filed by the advocate for the petitioner herein on the strength of the Board Resolution dated 1.6.2015 could not be accepted for the reason that the Board had since stood reconstituted and there was no fresh resolution from the Board, which fact, though brought to the notice of the petitioner herein, however, the counsel for the petitioner was neither aware of the reconstitution of the Board nor aware of the facts of the case and only sought further adjournment. The 3rd respondent was heard and the matter stood reserved for orders. However, in the absence of any material placed by the petitioner through his counsel on the basis of a fresh Board resolution, the impugned order was passed. Therefore, the contention of the petitioner that no opportunity of personal hearing was granted is purely fictional and only to defeat the impugned order.

12. Learned standing counsel for respondents 1 and 2 also submitted that though the Board resolution pertains to 1.6.2015, the counter has been filed by a consultant of the respondent, who had been authorised vide the aforesaid Board resolution and the counter has been filed in April, 2019. However, by that time, the Board had undergone reconstitution and it is not clear whether the Board Resolution of 1.6.2015 was permitted to be continued by the newly reconstituted Board. It is the further submission of the learned standing counsel for respondents 1 and 2 that in the absence of any particulars as to the continuance of the Board Resolution, the filing of the petition by the petitioner, as consultant, is not in consonance with Section 21 and 21 (51) of the Companies Act, 2013, as consultant and volunteer is not competent to file writ petition.

13. Learned senior counsel appearing for the 3rd respondent, while reiterated similar submissions advanced by the learned standing counsel appearing for respondents 1 and 2, further submitted that application of principles of natural justice should not be in a straight-jacket manner and will have to be applied on the basis of the facts and circumstances of each case.

14. It is the further submission of the learned senior counsel for the 3rd respondent that the findings rendered by the



Division Bench of Karnata High Court in O.S.A. No.1 of 2021 and W.A. No.307/2021 clearly reveals that the petitioner herein is only engaged in filing multiplicity of legal proceedings by raising substantially the same contentions without following the mandatory requirements of the provisions of the Companies Act and the act of the petitioner constitutes criminal contempt. Further, criminal contempt action has also been initiated against the petitioner, which is not disputed and the Supreme Court has also given certain directions for immediate disposal of the proceedings by the High Court. In view of the serious admitted violations of Section 8 of the Companies Act, the 2nd respondent, invoking power available u/s 8 (6) of the Companies Act, 2013, has rightly cancelled the licence granted to the petitioner and, therefore, no interference is called for with the said order.

15. Learned counsel appearing for the 4th respondent, while reiterating the submissions as advanced by the learned standing counsel for respondents 1 and 2, further submitted that opportunity was given to the petitioner to put forth his case, and in the absence of proper authorisation, as required to canvass the plea and inspite of grant of sufficient time, the petitioner having not come forward to put forth his plea properly and also submit the necessary document showing that he has been authorised to represent the petitioner, the contention of the petitioner that there is violation of principles of natural justice is wholly unsustainable.

16. It is the further submission of the learned counsel for the 4th respondent that the 4th respondent, holding the post of 2nd respondent, being a quasi-judicial authority and administrative head of the Southern Region, has access to all the documents connected with the company, which were relied on while passing the impugned order and reliance being placed on documents, which are in the public domain cannot be said to be documents, which have not been shared with the petitioner and also cannot be branded as if the 4th respondent has relied on certain documents, which have not been shared with the petitioner. When reliance has been placed on certain documents which are in the public domain, there is no necessity for the 4th respondent to share the same with the petitioner.

17. It is the further submission of the learned counsel for the 4th respondent that in the preliminary counter regarding hearing of the complaint by the 4th respondent, no objection has been raised by the petitioner and that being the case, the petitioner cannot, at the farthest point of time come before this Court and allege that the 4th respondent, in collusion with the 3rd respondent, had cancelled the licence of the petitioner.



18. Further contentions have also been raised by the 4th respondent on the ground of delay and laches in filing the writ petition and also the maintainability of the writ petition as the order impugned having cancelled the licence, the said order still subsisting, filing of the petition without adding the words "Private Limited" would make the petition not maintainable, as the petitioner company has lost the status of Section 8 company. The 4th respondent has also, in its submission, drawn the attention of this Court to the very many orders passed by the Karnataka High Court and the Delhi High Court against the petitioner and also the orders of the Hon'ble Supreme Court and submitted that the present petition is wholly devoid of merits and is liable to be dismissed.

19. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing for the respective parties and also perused the materials to which this Court's attention was drawn and the various orders passed by the Delhi High Court, the Karnataka High Court and also the Hon'ble Supreme Court.

20. The issue that is the subject of lis before this Court revolves around the issue of compliance of principles of natural justice before passing the impugned order and the sustainability of the impugned order.

21. To address the above issue, it is but necessary to advert to the impugned order. Notice not having been issued to the petitioner is said to be the major flaw in the whole process, which renders the process liable for quashment. In this regard, a perusal of the impugned order reveals that notice has been issued to the petitioner herein, who was respondent before the Regional Director (Southern Region) and better appreciation, the relevant portion of the said order is extracted hereunder :-

"3. That a copy of application along with annexure was forwarded by Speed Post to the respondent company and its Directors on 04.07.2018 with a request to offer their comments within 7 days. While the letter addressed to Adisesshen Srimathi, Director has been returned undelivered with remarks "Left", Mr. Prakash Goklaney, Advocate representing Goklaney & Goklaney vide letter dated 16.07.2018 has informed that the respondent company and its Directors are his clients and they have placed the matter in his hands and instructed him to seek 6 weeks time from 11.07.2018 being date of receipt of the letter to file their reply.



22. From the above, it is clearly evident that not only notice was served on the petitioner, but even at the request of the petitioner, time was granted by six weeks to the petitioner to make his representation. Further, during the hearing on 10.08.2018, the petitioner and the 3rd respondent were represented by their respective counsel. However, the documents pertaining to the authorization granted to the representative of the respondent therein to plead the cause of the respondent therein/petitioner herein was well short of the requirement. Though the aforesaid findings have been recorded in the impugned, but for the attempt by the petitioner to plead that no opportunity of hearing was offered, which is in violation of principles of natural justice, there is no whisper from the petitioner about the opportunity granted to the petitioner to plead his case. When the requisite documents have not been filed to establish that the volunteer/consultant is authorized to plead on behalf of the petitioner, inspite of time having been granted by six weeks to the petitioner herein to file their reply, the stand of the petitioner that no opportunity has been given to the petitioner is totally devoid of merits and does not merit acceptance.

23. Now coming to the impugned order cancelling the licence granted to the petitioner, it is the contention of the petitioner that the same is not in consonance with Section 8 of the Companies Act, 2013 and that the materials relied on by the 2nd respondent were not placed by the 3rd respondent and they were also not provided to the petitioner, which renders the impugned order unsustainable.

24. In this regard, a perusal of the impugned order reveals that the shell companies that were forming part of the cartel were dealt with in detail in the anticipatory bail petition filed by one of the Directors of the concern and taking note of the shell companies, this Court had detailed the said companies which were functioning and the holding pattern in the said companies, while dealing with Crl. O.P. No.21449/2015.

25. Thereafter series of litigations were filed by the petitioner in the Karnataka High Court against the 3rd respondent claiming defalcation of accounts and after detailed hearing, learned single Judge of the Karnataka High Court dismissed the said petition in W.P. No.172/2021 (GM-Res) holding that the petition at the instance of the petitioner is a sheer abuse of process of law and also imposed cost.

26. The petitioner herein, thereafter filed appeal in O.S.A. No.1/2021 before the Division Bench of the Karnataka High Court assailing the correctness of the order passed in Company Application No.185/2016 and the Division Bench, while dismissing



the said appeal, observed that the petitioner is indulging in speculative litigation not only by filing this appeal, but repeatedly over the years has been filing litigation before one Court or the other for the same cause of action. Further, the Division Bench has also refrained the petitioner herein from proceeding with filing any proceeding with regard to the amalgamation of three companies before any Court or authority or forum in view of the loss of precious court time under the guise of public interest, which is nothing but an instance of gross abuse of process of law. The Special Leave Petition in SLP (Crl.) Diary No.12031/2020 filed against the said order stood withdrawn by the petitioner.

27. It is further borne out by record, which is also not in dispute that action for criminal contempt has been initiated, suo motu, against the petitioner by the Karnataka High Court, which is yet to see the light of the day and stepping into stopping the adjournment spree, the Hon'ble Supreme Court in Criminal Appeal No.1177 to 1179/2021 (Azim Hasham Premji & Anr. - Vs - India Awake for Transparency & Ors. - Dated 02.12.2021), has deprecated the act of the petitioner in trying to obfuscate the proceedings before the Karnataka High Court by seeking adjournment one way or the other and had framed a time schedule within which the proceedings are to complete.

28. The above facts are narrated to highlight the fact about the modus of the petitioner in initiating litigative process, which are sheer abuse of process of law. In this regard, all the litigations have been raised against the 3rd respondent herein before the Karnataka High Court, which is an admitted fact. Merely because notice has been issued in one of the matters by the Karnataka High Court would not be a bar for this Court to consider the sustainability of the impugned order passed by the 2nd respondent as there are many orders, which stare on the face of the petitioner.

29. In the backdrop of the above facts, a careful perusal of the order passed by the 2nd respondent reveals that the 2nd respondent has taken into consideration all the materials, including information collected by the SFIO, the Enforcement Directorate, Banks, Income Tax Department, Statutory Auditors, CBI, Commissioner of Service Tax, Regional Provident Fund Commissioner and having analysed the said documents, has come to an irrefutable conclusion that the that the motive behind the formation of the respondent was not fulfilled even after six years of incorporation and its objects are not achieved till date. Moreover, the regulatory compliances by the respondent company as well as its owner companies were not fulfilled and the companies were not regular in filing their financial statements and statutory annual returns and that the petitioner



company or prejudicial to public interest, and without prejudice to any other action against the company under this Act.

33. Therefore, power is invested with the Central Government to cancel the licence if the affairs of the company registered u/s 8 are in any manner violative of the objects of the company or prejudicial to public interest. In this backdrop, the 2nd respondent, being the Regional Director (Southern Region), Ministry of Corporate Affairs, Government of India, would be oblivious of the happenings around the company and would be very much in the thick of things as to the manner in which the company is conducted and the company and its actions having been ridiculed by the Karnataka High Court and very many litigations have been taken against the Directors of the company relating to siphoning off of the funds of the companies, which are under the scanner of SFIO, which investigation is initiated by the Central Government u/s 212 of the Companies Act, the 2nd respondent, being the competent authority u/s 8 (6) of the Companies Act, 2013, is definitely competent and would be very well aware of the happenings around the company and its Directors and, therefore, materials, which are against the petitioner, which are within the ambit of the 2nd respondent and in the light of the various orders passed by the High Court and the Hon'ble Supreme Court relating to the affairs of the company, the 2nd respondent, applying his judicious mind, being a quash judicial authority, has thought it fit to cancel the licence granted to the petitioner and merely because mala fide in the nature of collusion is attributed between the 3rd and 4th respondent in the functioning of the office of the 2nd respondent by the petitioner, in the absence of any material in support of the said collusion, mere allegation cannot partake the character of proof to hold that the impugned order has been passed against the petitioner only to satisfy the 3rd respondent and to safeguard the 3rd respondent from the litigations initiated by the petitioner.

34. For the reasons aforesaid, this Court is of the considered view that no interference is warranted with the well considered order passed by the 2nd respondent and the impugned order, in no manner, suffers from the vice of any illegality and, accordingly, the impugned order deserves to be sustained. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

GLN



To

1. The Secretary
Ministry of Corporate Affairs
Union of India, New Delhi.

2. The Regional Director (Southern Region)
Ministry of Corporate Affairs
Government of India
Shastri Bhavan Block I V Floor
26, Haddows Road, Chennai 600 006.

+1cc to M/s.D.Murugan, Advocate SR.No.503

+2ccs to M/s.A.Mohan, Advocate SR.No.380

+2ccs to M/s.K.Ravi, Advocate SR.No.187

W.P.NO.10235 OF 2019

KSM(CO)
RVM(25/01/2022)