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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.06.2022

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.NO.12893 OF 2022

AND

W.M.P.NOS.12398 & 12399 OF 2022

Albert John

.. Petitioner

Vs.

1. Union of India
Rep. 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

Writ Petition filed under Article 226 of the Constitution of India seeking a 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 insofar as the petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merit and consequently direct the respondents herein to reactivate DIN No.06513098 of the petitioner so that the petitioner could be continued/appointed/reappointed as Director of any company without any hindrance.

For Petitioner : Ms.B.Aparna

For Respondents : Mr.M.Sathyan
Addl. Central Govt.Standing Counsel



O R D E R

The petitioner has challenged the impugned order dated 17.12.2018 passed by the 2nd respondent, under which, the petitioner has been disqualified to be a director of a company w.e.f. 01.11.2017, on the ground that it violates the provisions of Section 164(2)(a) of the Companies Act, which came into effect from 01.04.2014. The petitioner has also challenged the impugned order on the ground that without giving any opportunity of hearing, the petitioner has been disqualified to be a director.

2. Heard Ms.B.Aparna, learned counsel for the petitioner and Mr.M.Sathyan, learned Additional Central Government Standing Counsel, who accepts notice on behalf of the respondents.

3. It is the case of the petitioner that the disqualification has caused serious hardship to him, as he cannot be appointed as a director in any company in India.

4. The issue raised by the petitioner in this writ petition is covered by a Division Bench judgment of this Court passed in W.A.No.569 of 2020, etc. batch in Meethelaveetil Katiheri Muralidharan Vs. Union of India reported in (2020) 6 CTC 113. The relevant paragraphs from the said Division Bench judgment is extracted hereunder :

"36. 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



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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.

37. 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. 38. 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. The case on hand is identical to the one which was considered by the Division Bench of this Court. Here also, no notice has been given to the petitioner, prior to disqualifying him as a director. Therefore, the decision of the Division Bench of this Court referred to supra squarely applies to the facts of this case also. Therefore, this writ petition will have to be allowed.



Accordingly, this writ petition is allowed and the impugned order dated 17.12.2018 is hereby quashed. Consequently, the DIN of the petitioner shall be reactivated within a period of 30 days from the date of receipt of a copy of this order. However, this Court makes it clear that it is open to the respondents to initiate action with regard to the disqualification of the petitioner, subject to holding an enquiry to decide the question of attribution of default, after affording a fair hearing to the petitioner including granting him the right of personal hearing. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gya

To

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

+1cc to Mr.M.Sathyan, Advocate, S.R.No.32401
+2ccs to Ms.B.Aparna, Advocate, S.R.No.32966

W.P.No.12893 of 2022

PMK(CO)
PM/20/06/2022