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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM:

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.NOS.34406 AND 34407 OF 2017

AND

W.M.P.NOS.38239, 38240 & 38241, 38242 OF 2017

Jasmin Nikhil Shah

...Petitioner in W.P.No.34406 of 2017

Kannai Ahnaidu Anandh

...Petitioner in W.P.No.34407 of 2017

Vs

1. Union of India
Represented by its
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi - 110 001.

2. Registrar of Companies
Tamilnadu, Chennai
Block No.6, B Wing 2nd Floor
Shastri Bhawan 26,
Haddows Road,
Chennai - 600 006.

...Respondents in both W.P's

Prayer in both W.P's:

Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the impugned order dated 08.09.2017, read with the updated list dated 01.11.2017 uploaded and hosted on 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.



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For Petitioner : Mr.C.V.Shailandhran
(in Both W.Ps)
For Respondents : Mr.K.Ramanamoorthy,
(in Both W.Ps) Central Government Standing Counsel

COMMON ORDER

This Writ Petition has been filed, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd Respondent relating to the impugned order dated 08.09.2017, read with the updated list dated 01.11.2017 uploaded and hosted on 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 consequently 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.

2. When the matter is taken up for hearing, the learned counsel for the petitioner submits that the issue involved in the present writ petition is with regard to the disqualification of Directors for the year 2017 and the said issue is squarely covered by the judgment of this Court, in the case of "Bhagavan Das Dhananjaya Das Vs. Union of India and another" reported in (2018) 6 MLJ 704. The operative portion of the judgment in paragraph 29, is extracted as hereunder :-

"29. In fine,

(a) When the New Act 2013 came into effect from 1.4.2014, the second respondent herein has wrongly given retrospective effect and erroneously disqualified the petitioner-directors from 1.11.2016 itself before the deadline commenced wrongly fixing the first financial year from 1.4.2013 to 31.3.2014.

(b) By virtue of the new Section 164(2)(a) of the 2013 Act using the expression for any continuous period of three financial years and in the light of Section 2(41) defining financial year as well as their own General Circular No.08/14 dated 4.4.2014, the first financial year would be from 1.4.2014 to 31.3.2015, the second financial year would be from 1.4.2015 to 31.3.2016 and the third financial year would be from 1.4.2016 to 31.3.2017, whereas the second respondent clearly admitted in paras 15 and 22 of the counter affidavit that the default of filing statutory returns for the financial years commenced from 2013-14, 2014-15 and 2015-16 i.e., one year



(f) In view of the above legal position, when the default in filing the accounts or returns are made as compoundable offence, Section 164(2)(a) providing the disqualification of director of private company not only in the defaulting company, but also from other company in which the petitioner is a director, diligently and meticulously following every provision of law, is certainly disproportionate to the lapse, as it is only regulatory in nature, because, notice to be sent under Section 248(1) of the Companies Act, 2013 by the Registrar of Companies for striking off the name of the company from the Registrar of Companies on the premise that the company has not been carrying on any business for a period of two financial years, is different from the disqualification under Section 164(2)(a), inasmuch as a company can be struck off, if the company has not been carrying on any business for a period of two financial years, whereas for disqualification, the criteria is three financial years. Therefore, in my considered opinion, although the petitioners have not challenged the provision of Section 164(2)(a), as the respondents have not followed the principles of natural justice, extinguishing the corporate life of the directors to the extent of disqualifying them to hold the directorship in the other companies, the said provision is liable to be read down, hence, Section 164(2)(a) is read down to the extent it disqualifies the directors in other companies which are scrupulously following the requirements of law, making it clear that no directors in other companies can be disqualified without prior notice.

(g) However, it is made clear beyond any pale of doubt that the mischief of removal of the names of the companies by the Registrar of Companies and the disqualification of the directors in the defaulting company will go together, as it is inseparable, and the Registrar of Companies need not give fresh notice to the directors for their disqualification from the dormant company, if there is a failure to file the financial statement or annual return for any



continuous period of three financial years as per Section 164(2) (a)."

3. In view of the law laid down by this Court in the above judgment, the above order will hold good in respect of the present Writ Petitions also. Accordingly, these Writ Petitions are allowed on the same terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jd/sma

To

1. The Ministry of Corporate Affairs,
Union of India
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi - 110 001.
2. The Registrar of Companies
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GPL (CO)
PM/25/02/2022