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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.NO.29325 OF 2018

AND

W.M.P.NOS.34270 & 34271 OF 2018

R.Sivakumar

... Petitioner

Vs.

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

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

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the impugned order of disqualification dated 01.11.2017 uploaded in the website of the 1st respondent in so far as the petitioner herein is concerned and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the respondents herein to remove the name of the petitioner from the list of disqualified directors and permit the petitioner to get reappointed as Director of any company or appointed as Director in any company.

For Petitioner : Mr.M.Vijay Mehanath
for M/s.AAV Partners

For Respondents : No appearance



O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the impugned order of disqualification dated 01.11.2017 uploaded in the website of the 1st respondent in so far as the petitioner herein is concerned and quash the same as illegal, arbitrary and devoid of merit and consequentially direct the respondents herein to remove the name of the petitioner from the list of disqualified directors and permit the petitioner to get reappointed as Director of any company or appointed as Director in any company.

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 before the Act 2013 came into force. This is the basic incurable legal infirmity that vitiates the entire impugned proceedings.

(c) By virtue of the first proviso to Section 96(1) of the 2013 Act, Annual General Meeting for the year ending on 31.3.2017 can be held within six months from



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the closing of financial year i.e., 30.9.2017, additionally in the light of Section 164(2)(a) referring to annual return and financial statement, the time limit to file annual return under Section 92(4) of 2013 Act is sixty days from Annual General Meeting or the last date on which Annual General Meeting ought to have been held, hence, the time limit to file balance sheet under Section 137(1) of the 2013 Act is again thirty days from Annual General Meeting. Therefore, in view of these legal position, the disqualification could get triggered off only on or after 30.10.2017 only, if any company fails to file annual forms for three financial years. Importantly, it is to be borne in mind that even beyond that time limit, additional time limit of 270 days was available by virtue of the then first proviso to Section 403.

(d) Although there is no statute or provision expressly spelling out the observance of the principles of natural justice against disqualification of directors, as the legal right of the petitioners to continue as director in other company or to be reappointed in any other company, which are scrupulously following the provisions of the Companies Act, have been deprived of, the principles of natural justice should have been adhered to by issuing proper notice to all the directors.

(e) When the disqualification clause was not attracted to the directors of private companies under the old Act of 1956, the same cannot be allowed to take a retrospective effect under the new Act, when the provision of Section 164(2)(a) came into force only from 1.4.2014. This is also for one more reason that the failure to file the annual returns has been adequately taken care of by the penal provision under Section 92, making it clear that every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. Again under Section 137, the failure to file the financial statement visits punishment with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both. Further, under Section 441(4), the default in filing returns or accounts compoundable by Tribunal or Regional Director or by any



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officer authorized by the Central Government.

(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 Petition also. Accordingly, this Writ Petition is



allowed on the same terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Pns

To

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

+1cc to M/s.AAV Partners, Advocate, S.R.No.5071

W.P.No.29325 of 2018
and

W.M.P.Nos.34270 & 34271 of 2018

EV(CO)
RLP(10/03/2022)