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W.P.No.27264 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM: JUSTICE N.SESHASAYEE

W.P.No.27264 of 2023
and W.M.P.No. 26694 of 2023

1.Deepak M.S
2.Baburaj Thoonoly
3.Antony Thomas
4.Sanjeev Krishnan Krishnan

...Petitioners

-Vs-

1.Union of India,
Rep. by its Secretary to Government,
Ministry of Corporate Affairs,
5th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001.

2.The Registrar of Companies,
Sashtri Bhawan, II Floor, 26,
Haddows Road, Chennai - 600006.

3.Florentius Healthcare Private Limited,
CIN No.U24230TN2010PTC07439,
A Private Limited Company,
Having its Registered Office at
No.21/1, Angamuthu Street, Virugambakkam,
Near Padma Sarangapani School,
Chennai-600092.

4.Vinod Venkitachalam Pillai
5.Sebi Kattappilly Pius

...Respondents



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Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to restore the names of the petitioners herein as the Directors of Florentius Healthcare Private Limited, the third respondent herein, having CIN No.U24230TN2010PTC07439, in the 'Company/LLP Master Data' on the website of the first respondent www.mca.gov.in.

For Petitioners : Mr.Sharath Chandran

For Respondents : Mr.B.Rabu Manohar
Central Government Standing Counsel
for R1

Mr.Subhang P.Nair &
Ms.Pavitra Venkateswaran
for R4 and R5

ORDER

By consent, this writ petition is taken up for final disposal at the admission stage itself.

2.The petitioners herein claim that they are the directors of the third respondent company. Their grievance is that, upon an intimation given by the other two directors of the company, namely respondents 4 and 5,



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the Registrar of Companies, the second respondent herein had, removed the petitioners from its register. The petitioners now require the second respondent to revisit the matter and restore their names back in its register.

3.Right at the outset, this Court has certain doubts regarding the entertainability of the Writ since this Court felt that the petitioners' right to challenge lies elsewhere; and they are: (a) if the petitioners intend to treat their position as the directors of the company as a civil right, then possibly they may have to go before the Civil Court; or (b) if the petitioners consider it as a corporate right, which in all probability it will be, then they may have to approach the NCLT. However, the petitioners have now sought a direction to the Registrar of Companies, the second respondent herein.

4.Respondents 4 and 5 have filed their counter and also their typed set of papers.



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5. Before stating the submissions of the learned counsel for the petitioners, it is necessary to advert to yet another fact:

- Respondents 4 and 5 herein have laid a suit in O.S.No.649 of 2023 before the I Additional District Munsif Court, Ernakulam, seeking an injunction to restrain the petitioners from entering their Regional office. To support their cause of action, these respondents relied on the Resolution of the Board dated 17.06.2023. In this resolution, it was recorded that in view of certain F.I.R registered in Cr.No.1251 of 2023 by the Palarivattom Police on 14.06.2023, against the petitioners and for an alleged contraventions of Section 188 of the Companies Act by the petitioner, the petitioners as directors, have invited disqualification upon themselves under Sections 167 (1) (a) of the Companies Act, 2013, and the rules made thereunder. Along with the suit, respondents 4 and 5 have also taken out an application for interim injunction, and this was allowed by the learned Munsif vide order dated 21.08.2023, on the ground that, inasmuch as the Board Resolution dated 17.06.2023, was not challenged or declared void,



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the petitioners herein cannot enter the premises. This Court is informed that this order of the learned Munsif is under challenge in C.M.A.No.93 of 2023 before the District Court, Ernakulam.

6.1 Arguing for the petitioners, Mr.Sharath Chandran, the learned counsel submitted that under Section 164 (1) (a) of the Companies Act, 2013, any Director will invite upon himself a disqualification if he becomes mentally unsound. However, in their Form No.DIR-12, (which respondents 4 and 5 have filed before the Registrar of Companies, the second respondent herein), they have indicated the ground for the cessation of the petitioners as the directors of the company was owing to their resignation under Sec. 168 of the Companies Act, 2013.

6.2 Developing the argument further, the learned counsel submitted that admittedly, it is not a case involving 164(1) (a) of the Companies Act, 2013. The other situation where a director can cease to hold an office is under Section 167, where he invites disqualification under Sub Section (1) (a). The second situation is where a director can cease to be one is if



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he absents himself from all the meetings of the Board during a period of twelve months, with or without seeking leave of absence of the Board. This is not stated to be a reason by respondents 4 and 5 in Form No.DIR-12. Even if this ground were to be invoked, there are conditions stipulated before the cessation of directorship becomes operational.

6.3 Turning to the specific grounds stated in Form No.DIR-12, which apparently vary from the grounds stated in the Board Resolution dated 17.06.2023, is that these petitioners have resigned. The learned counsel submitted that now if a Director resigns from the Board, then under Sec.168 of the Act, he has to intimate the Registrar of Companies. This implies, while the company may present the Form No.DIR-12 to the Registrar of Companies for making necessary amendment to its register, the latter too will have an independent mode of ascertaining the correctness of it through the communication from the outgoing director. In other words, Section 168 of the Act provides a means for cross-checking the correctness of what is stated in Form No.DIR-12.



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6.4 Taking his argument further, the learned counsel brought to the notice of the Court, Rule 11 of the Companies (Registration Offices and Fees) Rules, 2014 notified by the Ministry of Corporate Affairs on 31.03.2014. This provision reads as below:

"11.Vacation or removal of directors:-

*(1) In the event of vacation or removal of directors before approving or invalidating **Form No DIR-12**, the Registrar shall verify the documents as to correctness of contents and whether adequate supporting documents namely, copy of board resolution, copy of notices sent for calling board meeting or copy of minutes of board of directors reflecting voted for or against.*

(2) If the Registrar on verification of documents further finds that the company has violated any of the provisions of the Act or rules, he shall refer the matter to the Regional Director concerned, who shall enquire the matter by giving an opportunity to the person who has been removed or vacated as director and convey the decision of the matter to the Registrar within ninety days from the date of reference to him by the Registrar."

6.5 The learned counsel submitted that it is the duty of the Registrar of



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Companies to ascertain the correctness of the facts stated. However, in the present case, the Registrar of Companies, the second respondent herein appears to have acted too mechanically, and simply believed the statements made in Form No.DIR-12.

7.Mr.Subhang P.Nair and Ms.Paitra Venkateswaran, the learned counsel for respondents 4 and 5, submitted that, inasmuch as this issue is sub judice before the Civil Court in Kerala, it may not be appropriate for this Court to direct the Registrar of Companies to visit the issue. The learned counsel also added that the resolution also mentions violation of other provisions and rules of the Companies Act.

8.At the outset, this Court is amazed by the last part of the submissions of the learned counsel for the respondents. When the Companies Act specifically stipulates the circumstances under which the Director can lose his office and lists those circumstances under Section 164, 167 and 168 of the Act, and has also prescribed the procedure to be followed in each of those circumstances, it is difficult for this Court to accept that



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somebody has lost his office as a director on some undisclosed grounds for cessation of office. It may have to be stated that each of the grounds stipulated in Sections 164, 167 and 168 of the Act is distinct. This apart, this Court also finds that there is a great degree of incongruency between the grounds stated in the Board resolution dated 17.06.2023, and the grounds stated in Form No.DIR-12 submitted by the company to the Registrar of Companies, vis-a-vis cessation of petitioners' directorship.

9. Prima facie, this Court may have to make a statement that, if only the Registrar of Companies has bestowed some care and appreciated the Board resolution and the grounds stated therein along with the ground stated in Form No.DIR-12, he would have helped himself with an opportunity to play his role in terms of Rule 11 as extracted above. This apparently has not been done. Given the conflict which this Court has now witnesses, it is only essential that Registrar of Companies revisits the whole issue, and provide an opportunity of hearing both sides and also an opportunity to produce whatever material they have, and then make necessary corrections or suitable modifications in its registers.



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10. In view of the above, this Court, sets aside and remands the matter back to the Registrar of Companies, the second respondent herein, and direct him to hold an enquiry. As already indicated, he is required to give both sides necessary opportunity of hearing, and ascertain the correctness of the grounds stated in Form No.DIR-12 and take appropriate decision. It is further directed that the second respondent should complete the entire exercise within a period of four (4) weeks from the date of receipt of a copy of this order.

11. This Writ Petition stands disposed of with the above directions. No Costs. Consequently, the connected miscellaneous petition is closed.

21.09.2023
(2/2)

Index : Yes/No

Internet : Yes/No

Anu

Note to office: Issue order copy on 25.09.2023

To



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1 The Secretary to Government,
Ministry of Corporate Affairs,
5th Floor, A-Wing, Shastri Bhawan,
New Delhi - 110 001.

2. The Registrar of Companies,
Sashtri Bhawan, II Floor, 26,
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N.SESHASAYEE, J.
Anu

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25.08.2023
(2/2)