

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G. ARUN

FRIDAY, THE 29TH DAY OF JULY 2022 / 7TH SRAVANA, 1944

WP(C) NO. 1162 OF 2022

PETITIONER/S:

EANOKARAN ANTHONY TONY
AGED 54 YEARS
EANOKARAN HOUSE, OLLUR P O, THRISSUR-680306.
BY ADVS.
SUKUMAR NAINAN OOMMEN
SHERRY SAMUEL OOMMEN
NIDHI JACOB
NITISH SATHESH SHENOY

RESPONDENT/S:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY, MINISTRY OF
CORPORATE AFFAIRS, "A" WING, SHASTRI BHAWAN,
RAJENDRA PRASAS ROAD, NEW DELHI-110001.
- 2 REGISTRAR OF COMPANIES
ERNAKULAM, COMPANY LAW BUILDING, KAKKANAD,
KOCHI-682021.
- 3 REGIONAL DIRECTOR
SOUTHERN REGION, MINISTRY OF CORPORATE AFFAIRS,
5TH FLOOR, SHASTRI BHAVAN, 26 HADDOWS ROAD,
CHENNAI-600006.
BY ADV SHRI.B.RAMACHANDRAN, CGC

OTHER PRESENT:

ASGI S. MANU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11.07.2022, THE COURT ON 29.07.2022 DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 29th day of July, 2022

Petitioner was the Director of a company named Margin Free Kuries Private Ltd, incorporated on 20.10.2011. The petitioner was also the Director of three other companies. As Margin Free Kuries Private Ltd had become defunct, the petitioner decided to strike off and dissolve the Company, as provided in Section 560 of the Companies Act, 1956. With the objective of easing the process of striking off, the Government of India, Ministry of Corporate Affairs, had issued General Circular No.36/2011, containing the guidelines for Fast Track Exit mode for defunct companies. In accordance with the procedure prescribed in the guidelines, the petitioner submitted Ext.P3, requesting to strike off Margin Free Kuries Private Ltd from

the Register of Companies. In response, the second respondent issued Ext.P5 notice intimating the petitioner that, the company's name will be struck off from the register and the Company will be dissolved, at the expiration of 30 days from the date of notice. Thereafter, Ext.P6 communication was issued informing that the name of the Company was struck off and the Company stood dissolved. Contrary to the information passed on through Exts.P5 and P6, in the website of the first respondent, the status of Margin Free Kuries Pvt.Ltd was shown as 'under process of striking off'. On noticing this anomaly, the petitioner sent Ext.P8 communication to the second respondent, requesting to correct the mistake by striking off the company's name. Later, on checking the status of his Director Identification Number (DIN), the petitioner was dismayed to find that the status was shown as 'disqualified by RoC under Section 164(2) of the

Companies Act, 2013'. The petitioner's DIN had also been deactivated for the period 01.08.2018 to 31.10.2023. Consequently, the petitioner became disqualified from the other companies in which he is the Director. As the petitioner had not incurred any disqualification under Section 164(2), he raised the issue with respondents 1 and 2, but without success. Hence, this writ petition seeking the following reliefs;

"i. Issue a writ of certiorarified mandamus calling for records leading to Exhibit P9 and quash and set aside Exhibit P9.

ii. Issue a direction to the respondents to activate the petitioner's Director Identification Number 01858905 in order to enable him to continue as and be re-appointed as Director in active companies that have complied with the statute."

2. Adv. Sukumar Nainan Oommen, learned Counsel for the petitioner, contended that the second respondent had committed gross illegality in disqualifying the petitioner and deactivating

his DIN under 164(2) of the Companies Act, 2013, on the specious reason that the annual returns of Margin Free Kuries Pvt Ltd, which had already been struck off from the register and stood dissolved, had not been submitted for a continuous period of three years. It is submitted that the technical glitch in the official website of the respondents had resulted in the status of the company being shown as 'under process of striking off, even after the company was dissolved. Going by the Guidelines issued under Section 560 of the Companies Act, 1956, the Registrar should issue the notice regarding striking off, only after examining the application and being satisfied that the application is in order. After the 30 days of issuance of notice and on being satisfied that the case is otherwise in order, the Registrar shall strike off the company's name from the Register and send notice under sub-section (5) of

Section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company shall stand dissolved. In the instant case the above procedure was followed, as evidenced by Exts. P5 and P6. Being so, the second respondent could not have disqualified the petitioner alleging that the returns of the dissolved company were not filed.

3. It is submitted that as a result of the illegal disqualification and deactivation of DIN, the petitioner got disqualified from other companies of which he is a Director. As such, the illegal act of the second respondent is liable to be deprecated and the petitioner compensated. Reliance is placed on the decision in **Noida Entrepreneurs Association and others v. Noida and others [(2011) 6 SCC 508]** to drive home the point that the State and public authorities should act fairly and reasonably and any action lacking

bonafides would stand vitiated as it would be a case of colourable exercise of power. The decision in **Rajkot Municipal Corporation v. Manjulben Jayantilal Nakum and others [(1997) 9 SCC 552]** is cited to contend that under certain circumstances, breach of statutory duty will give rise to tortious liability.

4. Adv.B.Ramachandran, learned Counsel appearing for the respondents, submitted that the company, M/s.Margin Free Kuries Pvt.Ltd, defaulted the filing of statutory returns for three consecutive years and had thereby incurred disqualification under Section 164(2) of the Act. It is contended that, disqualification being the statutory fall out of failure to file returns, no question of issuing notice prior to the disqualification arises, and, for that reason, no violation of natural justice can be alleged or assumed. In support of the contention, reliance

is placed on the decision of the High Court of Calcutta in **Nabendu Dutta v. Arindam Mukherjee [(2004) 55 SCL 146 (Cal)]**. It is pointed out that the second respondent had only identified the disqualified Directors by flagging in the system as there was failure on their part to comply with the requirement of Section 164(2) and Rule 14(3) of the Companies (Appointment of Directors) Rules, 2014.

5. The following facts are not in dispute;

The FTE application seeking to strike off Margin Free Kuries Pvt. Ltd from the register of Companies was submitted by the petitioner on 05.02.2016. Notice under Section 560(3) of the Companies Act, 1956, intimating that the Company will be struck off from the register and dissolved at the expiration of 30 days, was issued on 05.02.2016. By communication dated 02.05.2016, the petitioner was informed that the

company had been struck off from the register and dissolved with effect from the date of intimation. Surprisingly, even as on 03.03.2020, the status of Margin Free Kuries Pvt Ltd was shown as 'under process of striking off', in the website of the respondents. This anomaly was intimated to the second respondent on 15.10.2020. Later it turned out that the petitioner was disqualified under Section 164(2) and his DIN deactivated for a period of 5 years from 1.11.2018 to 31.10.2023. The respondents accept that the disqualification is for failure to file annual returns of Margin Free Kuries Pvt Ltd. The period of three years for which the company failed to file its returns is not forthcoming from the counter affidavit of the respondents.

6. As rightly contended by the Counsel for the petitioner, the guidelines require the Registrar to examine the application for striking off before issuing notice to the company under

Section 560(3) of the Companies Act, 1956. The further requirement under Section 560(3) is that, on expiration of 30 days and on being satisfied that the application is otherwise in order, the Registrar shall strike the company's name off the Register and send a notice for publication in the Official Gazette. The applicant company will stand dissolved from the date of publication of the notification. Ext.P6 reveals that the notice regarding striking off and dissolution of Margin Free Kuries Pvt Ltd was forwarded to the Government of India Press. As such, the entire procedure contemplated under Section 560, and the guidelines stood complied with, the company's name stood struck off from the register and the company itself got dissolved. It is preposterous for the respondents to contend that the petitioner was disqualified for failure to submit returns with respect to a dissolved company. It is disheartening to note that even when the

anomaly with respect to the status of the company was informed to the second respondent, absolutely nothing was done by the respondents. On the other hand, the petitioner was penalised for their folly. In such circumstances, I find substantial merit in the contention that the action of the second respondent is liable to be deprecated and I do so. I refrain from imposing cost and ordering compensation, hoping that the mistake was inadvertent and will be corrected immediately.

In the result, the writ petition is allowed.

Ext.P9 is quashed and the respondents are directed to forthwith activate the petitioner's DIN bearing No.01858905, enabling him to continue as Director in the active companies.

Sd/-

V. G. ARUN
JUDGE

Scl/

APPENDIX OF WP(C) 1162/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE CERTIFICATE OF INCORPORATION OF MARGIN FREE KURIES PRIVATE LIMITED.
- Exhibit P2 TRUE COPY OF THE CERTIFICATE OF INCORPORATION OF WOODPACK MILL STORES LIMITED.
- Exhibit P3 TRUE COPY OF THE FORM FTE FILED ON 16.12.2015 WITH RESPECT TO MARGIN FREE KURIES PRIVATE LIMITED ALONG WITH ITS ATTACHMENTS.
- Exhibit P4 TRUE COPY OF THE NOTICE OF THE 2ND RESPONDENT DATED 26.04.2017 STRIKING OFF WOODPACK MILL STORES LIMITED.
- Exhibit P5 TRUE COPY OF THE NOTICE DATED 05.02.2016 FROM THE 2ND RESPONDENT.
- Exhibit P6 TRUE COPY OF THE NOTICE DATED 02.05.2016 STRIKING OFF MARGIN FREE KURIES PRIVATE LIMITED.
- Exhibit P7 TRUE COPY OF THE EXTRACT FROM 1ST RESPONDENT'S WEBSITE.
- Exhibit P8 TRUE COPY OF THE PETITIONER'S LETTER DATED 15.10.2020.
- Exhibit P9 TRUE COPY OF THE EXTRACT FROM THE 1ST RESPONDENT'S WEBSITE IN RELATION TO PETITIONER'S DISQUALIFICATION AND DEACTIVATION OF HIS DIRECTOR IDENTIFICATION NUMBER (DIN).
- Exhibit P10 TRUE COPY OF THE PETITIONER'S REQUEST LETTER DATED 26.05.2021 ALONG WITH TICKET NO.SRI915844 DATED 18.05.2021 AND SOLUTION PROVIDED.

RESPONDENT EXHIBITS

- Exhibit R2 (A) TRUE COPY OF THE COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTOR) RULES, 2014
- Exhibit R2 (B) TRUE COPY OF THE COMPANY LAW SETTLEMENT SCHEME, 2014 (CLSS,2014)

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Exhibit R2 (C)

VIDE GENERAL CIRCULAR NO. 34/2014
TRUE COPY OF THE INTERIM ORDER DATED
06/08/2018 OF SUPREME COURT OF INDIA,
NEW DELHI