

Afaq Hussain Shah vs Union Of India And Anr on 11 January, 2019

Author: V. Kameswar Rao

Bench: Chief Justice, V. Kameswar Rao

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 228/2019 & CM APPL.1063/2019

AFAQ HUSSAIN SHAH

..... Petitioner

Through:

Mr. Simranjeet Singh, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Vivekanand Mishra, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% 11.01.2019

1. This writ petition has been filed by person who is the director in a company incorporated under the provisions of the Indian Companies Act, 1956.

2. Apart from this company, this petitioner has stated in the writ petition that he was director in other companies as well.

3. This writ petition has been instituted in view of the notice dated 6 th September, 2017 and 12th September, 2017 issued under Section 164(2)(a) of the Companies Act, 2013 by the respondents disqualifying the petitioner as Directors in the Companies wheresoever he may be Director. This disqualification has resulted for the reason that there was default in submitting returns which were statutorily required to be filed with the Registrar of Companies with regard to the affairs of the Company in question, for a continuous period of three financial years.

4. The writ petition inter alia seeks quashing of the said notices dated 6th September, 2017 and 12th September, 2017.

5. The matter however does not rest here. Apart from the disqualification under Section 164(2)(a), the writ petitioner has stated that in purported exercise of power under Section 248(1) of the Companies Act, 2013, the Registrar of Companies has additionally struck off the name of the said company from the Register of Companies.

6. The writ petitioner has raised several questions of fact and law challenging these acts and orders of the Registrar of Companies.

Inter alia, it has been contended that the action of the Registrar of Companies in disqualifying the petitioner under Section 164(2)(a) as well as the striking off the name of the company under Section 248 of the Companies Act, 2013 are both in gross violation of the principles of natural justice.

7. A challenge has also been laid to the retrospective application of provisions of the Companies Act, 2013 especially given the fact that the consequences of the respondents' action are in the nature of a penalty upon the petitioner as well as the companies concerned. In this regard, reliance has been placed on behalf of the petitioner on the pronouncements of the Constitution Bench of the Supreme Court reported at (2015) 1 SCC 1 Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Pvt. Ltd. and another pronouncement reported at (2018) SCC OnLine SC 59 Commissioner of Income Tax 5 Mumbai v. M/s Essar Teleholdings Ltd. through its Manager which relies on Vatika (supra).

8. Drawing our attention to the mandatory requirement under Section 248(1), upon the Registrar of Companies to send a notice to the company and all directors of the company, it has been contended by the petitioner that such notice had to be issued and served in the manner prescribed by law i.e. in compliance with Rule 3(2) of the Companies (Removal of Names of Companies from the Registrar of Companies) Rules, 2016. The petitioner contend that this has not been done and that the action of the respondents in disqualifying the petitioner in striking off the name of the company from the register of companies cannot be sustained for this reason as well.

9. On behalf of the respondents, Mr. Vivekanand Mishra, Advocate disputes all these submissions made on behalf of the petitioner. It is submitted, upon instructions from the Registrar of Companies, that notices under Section 248(1) have been sent to the Companies and the directors.

10. It cannot be denied that the issues raised in this writ petition require adjudication and are of grave importance so far as the working of the spirit, intendment and object of the Companies Act, 2013, more specifically the manner in which the respondents would operate Sections 164 and 248 of the enactment.

11. Issue notice to the respondents. Mr. Vivekanand Mishra, Advocate accepts notice on behalf of the respondents.

12. Till the next date of hearing, there shall be a stay of the notices dated 6th September, 2017 and 12th September, 2017 whereby the petitioner was declared disqualified as Director under Section 164(2)(a) of the Companies Act, 2013.

13. The DIN numbers as well as digital signatures of the petitioner shall be forthwith revived.

14. It also cannot be denied that so far as the legal submissions are concerned, several other writ petitions have raised identical questions of law and for this reason, are required to be heard

together.

15. We, therefore, direct that an individual counter affidavit dealing with the factual averments in this writ petition shall be filed separately within a period of two weeks from today. The full details of the issuance and service of the notice(s) shall be placed on record with copies of the supporting documents. Rejoinder thereto, if any, shall be filed before the next date of hearing.

16. The respondents shall produce the original records relating to this company with regard to the impugned notices before this court on the next date of hearing.

17. List on 4th February, 2019.

CHIEF JUSTICE V. KAMESWAR RAO, J JANUARY 11, 2019 ns