

(2026) 03 KL CK 0733

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 8095, 8198 & 10526 Of 2024

Prof.M.K.Sanoo

APPELLANT

Vs

State Of Kerala Represented By Its Secretary

RESPONDENT

Date of Decision : 12-03-2026

Acts Referred:

Companies Act, 1956 — Section 25(6), 172(2), 219, 274(1)(g), 399(4)
Companies Act, 2013 — Section 41, 92, 92(5), 96, 152(3), 164, 164(2), 166, 167,
167(1)(a), 167(2), 403, 403(2), 458, 460, 463

Citation : (2026) 03 KL CK 0733

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : Sabu George, K.P.Prasanth, P.B.Krishnan, P.B.Subramanyan, Manu Vyasani Peter, Udaya Holla, Meghana Ballal, A.N.Rajan Babu, C.E.Unnikrishnan, V.P.Brijesh, Aswathy Amby

Final Decision : Disposed Of

Judgement

T.R. Ravi, J

1. The prayers in the above three writ petitions are similar. The writ petitions are hence heard and disposed of together.

2. The petitioners in all these cases are members of the Aruvipuram Sree Narayana Dharma Paripalana Yogam (SNDP Yogam). The writ petitions are filed, mainly aggrieved by the Order No. IGR/4487/2020/L3 dated 17.02.2024 issued by the Inspector General of Registration, holding that the Directors were not disqualified for the financial years 2014-2015 and 2015-2016.

3. W.P.(C)No.8198 OF 2024 has been filed praying to quash Order No. IGR/4487/2020/L3 dated 17.02.2024 of IG of Registration; to declare that respondents 4 to 7 are disqualified under the provisions of the Companies Act, 2013 ('the 2013 Act' for short) and ineligible to continue as Directors of SNDP Yogam; to declare that all the Directors of SNDP

Yogam are disqualified under Section 164 of the Companies Act; to appoint an Administrator to run the affairs of the SNDP Yogam including preparation and publication of voters list in the SNDP Yogam, issuance of Identity cards to such voters, conduct a free and fair election and handover the administration to such elected body; and to declare that the SNDP Yogam has no control over the Unions and Sakhas.

4. W.P.(C)No.8095 OF 2024 has been filed with similar prayers and with additional prayers for a declaration that the respondents 4 to 7 are disqualified under the provisions of Section 167(1)(a) of the Companies Act, 2013; to restrain respondents 4 to 7 from functioning as the Directors of the Respondent No.3 Yogam; and to direct respondents 1 and 2 to convene AGM of the 3rd respondent Yogam and conduct election within a time frame to be fixed by this Court.

5. W.P.(C)No.10526 OF 2024 has been filed with similar prayers and with additional prayers to direct the 2nd respondent to identify those Directors of the Yogam who do not have a valid Director Identification Number (DIN) and remove them as Directors of the Yogam and if the 2nd respondent finds that the all the Directors of the Yogam are disqualified under Section 167(1)(a) of the 2013 Act or are found ineligible in the absence of possession of a valid DIN, then to direct the 2nd respondent to appoint the required number of Directors who shall hold office till the Directors are appointed by the Company in the general meeting within such period.

6. The parties are referred to in this judgment as per their status in W.P. (C)No.8198 of 2024. The case of the petitioners is as follows:- The SNDP Yogam was initially registered on 15.05.1903 under the Travancore Regulation No.1 of 1063 and was subsequently deemed to be registered under the Companies Act, 1956. Though the Kerala Non-Trading Companies Act, 1961 (hereinafter referred to as 'the Kerala Act') came into force later, the Yogam continued under the Companies Act, 1956 (the 1956 Act for short), until the Central Government issued an order on 23.08.2005 under Section 399(4) of the 1956 Act, directing that the Kerala Government had jurisdiction. Thereafter, the Yogam has been governed by the Kerala Act, with the provisions of the 2013 Act applying mutatis mutandis. The Yogam is deemed to be a Public Company under the applicable laws. As per Section 274(1) (g) of the Companies Act, 1956, a person becomes disqualified to be a Director of a Public Company if the Company has not filed annual accounts and returns for any continuous period of three financial years. The petitioners claim that the Yogam failed to file such returns from 2006-07 to 2016-17 until 24.09.2020 and that the Directors have thus incurred disqualification from 2009 onwards.

7. Though the Yogam later filed the pending returns under the Companies Fresh Start Scheme (CFSS), 2020, and was granted immunity from penalties or prosecution, the petitioners argue that this does not remove the incurred

disqualifications. Earlier, when the matter was raised before the Inspector General of Registration, it was dismissed on the ground that the parties should seek remedies before a civil court. The above order was set aside by this Court by its judgment dated 30.11.2023, holding that the Inspector General of Registration had failed to exercise jurisdiction.

8. Subsequently, W.P.(C) No.22201 of 2022 was filed before this Court seeking the appointment of an Administrator for the Yogam and the conduct of free and fair elections. The Court, by its judgment dated 15.01.2024, directed that if the petitioners could establish locus standi, the Inspector General of Registration must hear them. Acknowledging the petitioners' locus standi, the Inspector General of Registration heard them. The petitioners contend that, without adequately addressing the core issues raised and contrary to the directions of this Court, the Inspector General of Registration passed a fresh order dated 17.02.2024, stating that the Directors were not disqualified for 2014-2015 and 2015-2016, citing the immunity granted under the CFSS, 2020, and the requirements under the Companies (Appointment and Qualification of Directors) Rules, 2014.

9. A detailed counter affidavit has been filed on behalf of respondents 3 to 7. The contentions in the counter affidavit are;

(i) Writ petitions are not maintainable, since on the same set of facts, CP No. 42/KoB/2020 and CP No. 50/KoB/2020 have been preferred before the Company Law Tribunal, and OS No.328 of 2022 is pending before the Munsiff Court, Karunagappally.

(ii) The Yogam has 240 Sakhas and 7 Unions outside Kerala at present, and hence it is no longer governed by the Kerala Act, but is governed by the 2013 Act.

(iii) Since it is observed in Ext.P1 judgment (produced in W.P.(C)No.8198 of 2024) that the Yogam can obtain exemption from the appropriate authority/ Government restricting the voting rights of members of the Yogam, no appeal was filed against Ext.P1 judgment (after the filing of the counter-affidavit, Ext.P1 judgment was challenged before a Division Bench, and the Division Bench has already set aside Ext.P1 judgment).

(iv) DIN had been allotted to respondents 4 to 7 even before the commencement of the Act. They are not disqualified for non-compliance with Section 152(3) of the Act. The Munsiff Court, Kollam, has already held that respondents 4 to 7 are not disqualified for lack of DIN.

(v) The order dated 23.8.2005 issued by the Central Government, finding that the Kerala Act applies to the Yogam, has been set aside by the High Court of New Delhi by judgment dated 09.02.2009 in W.P.(C)Nos.22699, 22700 and 22701 of 2005, and the Central Government was directed to decide the issue afresh.

(vi) Since there are no Rules framed by the Kerala Government for the issuance of DIN, there cannot be a disqualification.

(vii) After the order dated 23.08.2005, returns were submitted to the IG of Registration, Kerala, but they were returned, as the original registers and records were not received, from the office of the Registrar of Companies, Kerala.

(viii) This Court, on 26.02.2009, issued orders in CP No.40 of 2008 directing the original registers and records of the Yogam to be kept in a sealed cover under the custody of the Registrar (Judicial) of this Court. In September 2019 the records of the Yogam were received back at the office of the IG of Registration, and thereafter representations were filed for acceptance of the annual returns.

(ix) On 30.12.2019, the Government of Kerala appointed the Deputy Inspector General (Licensing) as the adjudicating officer regarding the fee to be paid for filing the returns. In exercise of powers under Section 460 of the 2013 Act, read with Section 3 of the Kerala Act, the Government of Kerala has condoned the delay in filing the annual reports by its order dated 24.09.2020, a copy of which has been produced as Ext.R4(j) in W.P.(C)No.8095 of 2024. Thereafter, the returns were accepted by the IG of Registration.

(x) A fine of ₹ 1,00,000/- imposed for accepting the returns after 2016-2017 was cancelled under the CFSS 2020 scheme, introduced by the Government thereafter. The contention is that all the requirements have been complied with, and returns have also been filed, and hence, there is no disqualification.

(xi) The respondents 4 to 7 were elected on 09.08.2015, and as per Article 18 of the Articles of Association, they are entitled to continue till new office bearers are elected.

(xii) The disqualification under Section 164 (2) is not automatic, and a prior enquiry is required before disqualifying the Directors. The direction of this Court in Ext.P7 judgment (produced in W.P. (C)No.8198 of 2024) was only to consider the disqualifications, if any, due to non-filing of DIN or non-intimation of DIN.

(xiii) There is no illegality in condoning the delay in filing the returns, since under Section 458 of the 2013 Act, the power of the Government can be delegated to a subordinate authority.

10. Heard Sri P.B.Krishnan, Senior Advocate, instructed by Sri Sabu George, for the petitioners in W.P.(C)No.8095 of 2024, Sri D.Anil Kumar for the petitioner in W.P.(C)No.8198 of 2024, Sri K.T. Shyamkumar for the petitioner in W.P. (C)No.10526 of 2024, Sri Uday Holla, Senior Advocate, instructed by Sri A.N.Rajan Babu for respondents 3 to 7 in W.P.(C)Nos.8095 of 2024 & 8198 of 2024 respectively and for respondents 4 to 8 in W.P.(C)No.10526 of 2024, Sri C.E.Unnikrishnan, Special Government Pleader to AG for the official

respondents/State.

RELEVANT FACTS :-

11. The Yogam was originally incorporated as a Company under Regulation 1 of 1063 of Travancore Regulations, which was the equivalent of the Indian Companies Act, 1882, with effect from 15.05.1903. As per the Byelaw, the Yogam was formed to promote and encourage religious and secular education and industrious habits among the 'Ezhava' community and to do all such other things as are incidental or conducive to the attainment of the said objects. After the 1956 Act came into force, the Yogam was governed by the provisions of the said Act. The Kerala Act came into force with effect from 01.03.1962. As per the preamble of the Kerala Act, its purpose is to provide for the incorporation, regulation and winding up of Companies, other than trading corporations (including banking, insurance and financial corporations), with objects confined to the State of Kerala.

12. The Articles of Association of the Yogam were amended in 1966, and Clause 47, which was introduced, provided that in the general meeting of the Yogam, the members of the Director Board, Union Presidents, Union Secretaries and 1% of the permanent members of the Unions who are selected in the manner prescribed, will be entitled to participate. That is, if there are 100 permanent members in a Union, one person will be entitled to represent the Union at the general meeting. Clause 47 was challenged before this Court and a Division Bench of this Court in the decision dated 28.11.1972 in P.C.Aravindhan v. M.A.Kesavan & Ors. reported in [1973 KLT 70] declared that Clause 47 of the Articles of Association of the Yogam is violative of the provisions of Table C of Schedule 1 of the 1956 Act, and hence void. The Division Bench proceeded on the basis that the 1956 Act governs the Yogam, and the effect of the Kerala Act was not considered. In paragraph 21 of the judgment, the Division Bench observed that it is open to the Yogam to take advantage of Section 25(6) of the 1956 Act.

13. Based on the observation in the judgment, the Yogam approached the Central Government under Section 25(6) of the 1956 Act, requesting to exempt the Yogam from the provisions of Section 172(2), 219 and Article 14 of Table C of the Act.

14. Though exemption was obtained under the 1956 Act, the Yogam held out that it was governed by the Kerala Act. On 02.10.2005, the Yogam filed an application before the Registrar of Companies, Ernakulam, requesting that all records relating to the Yogam be transferred to the Office of the IG of Registration, State of Kerala. The reason stated in the application is that the Kerala Act governs the Yogam. An application filed before the Company Law Board, Chennai, complaining of mismanagement was rejected on 21.04.2015, on a finding that the Yogam was governed by the Kerala Act and the Company Law Board lacks jurisdiction. In C.P.No.18 of 2008 and F.A.O.No.18 of

2020 before this Court, the Yogam took the stand that the Kerala Act applies to the Yogam. On 26.12.2019, the Kerala Government issued orders authorising the Registration Deputy Inspector General (Licensing) to serve as the Adjudicating Authority for the filing of the Yogam's annual returns. The order would show that the Yogam and the Government were of the view that the Kerala Act applies to the Yogam. It was in the above background that the writ petition, which led to Ext.P1 judgment, was filed before this Court.

15. In Ext.P1 judgment, this Court, after considering the admitted facts, held that the Kerala Act governs the Yogam, and that the exemption granted by the Central Government under the 1956 Act, was without jurisdiction. This Court followed the judgment of the Division Bench of this Court in P.C. Aravindhan (*supra*) and held that all members are entitled to vote.

16. The hearing of these writ petitions proceeded based on the above facts and the specific contention in the counter affidavit of the respondents 4 to 7 was that Ext.P1 judgment was not challenged in view of the observation that the Yogam can approach the appropriate authority for restriction of voting rights. Since one of the prayers in the writ petitions was for the conduct of the election to the SNDP Yogam, as agreed to by the Counsel for the petitioners and respondents, this Court issued certain directions, as preparatory to the conduct of elections to the SNDP Yogam. The 3rd respondent was directed to collect the members' list with details like address, identification documents, etc. from all its Sakhas and consolidate the same as a single list. Based on lists of persons who can be appointed to assist the Observer and Returning Officer, to be appointed to conduct the election, this Court ordered that Sri Sinil Mundappalli, Advocate, Sri A.Somarajan, Sri N.D.Premachandran, Advocate and Sri P.P.Madhusoodanan, can be included in the committee to be formed for assisting the election to the SNDP Yogam. The time granted to the Yogam to prepare the list was being extended from time to time. Finally, this Court appointed Mr.Justice K.Ramakrishnan, Former Judge of this Court, as Chairperson of the Committee to oversee the election, to function with the help of the persons mentioned above and directed the Yogam to place the lists prepared till then before the Committee. The Yogam was thereafter directed to provide sufficient office space for the functioning of the Committee. After several postings and orders, on 28.11.2024, the Chairman of the Committee reported that the preparation of the list of members is going at a snail's pace, and this Court issued specific directions to the Yogam to speed up the process. When the process initiated by this Court did not draw the desired results, it was finally decided to hear and dispose of the writ petitions on merits, instead of venturing to conduct the election.

ARGUMENTS ON BEHALF OF PETITIONERS:

17. Sri P.B.Krishnan, Senior Counsel, and Sri D.Anil Kumar, appearing for the petitioners, contended as follows:

(a) The respondents 4 to 7 who were Directors of the Yogam for several terms, were last re-elected for a 5-year term on 09.08.2015, and even after their 5-year term expired, they are continuing in office without conducting an Annual General Meeting.

(b) Section 92 of the Companies Act mandates the filing of returns. As per Section 96 of the Companies Act, an AGM should be conducted every year, and the period between two AGMs should not exceed 15 months.

(c) Section 164 of the Companies Act says that the Directors of the Company who do not file annual returns and financial statements for 3 financial years are disqualified for 5 years. Section 167(1) (a) of the Act also contemplates disqualification. The relevant years for judging the applicability of Section 164(2) are 2014-15 to 2022-23.

(d) The Central Government had notified the CFSS 2020 scheme in exercise of power under Section 460 read with Section 403 of the Companies Act with effect from 1.4.2020. The scheme enabled the defaulting companies to file their returns/belated documents and secure immunity from prosecution and penalty.

(e) While W.P.(C) No.19266 of 2020 was pending, the 2nd respondent issued an adjudication order on 24.09.2020, exercising power under Section 460 read with Section 92(5) of the Act, condoning the delay in filing for the period from 2006-2007 to 2016-2017 on payment of ₹ 1lakh and specifying the regular filing fee as ₹ 6,600/-.

(f) The direction to pay Rs.1 lakh was waived by the IG of Registration, by order dated 05.11.2020, passed on an application dated 21.10.2020, filed by the Yogam under the CFSS 2020. On that day, after paying the filing fee of ₹ 6,600/-, the returns for the period from 2006-2007 to 2016-17 were filed. The immunity certificate issued on 05.11.2020 has been produced as Ext.P2 in W.P. (C)No.8095 of 2024.

(g) On 24.01.2022, this Court rendered Ext.P1 judgment. On 8.2.2022, by Ext.P8 (produced in W.P.(C)No.8095 of 2024), the Government condoned the delay in filing returns for 2017- 2018 to 2019-2020. This was in exercise of power under Section 460 of the 2013 Act, and not under the CFSS 2020. On 27.05.2022, by the judgment in Ext.P2, the Division Bench upheld the finding of the trial court that a scheme for the administration of the Yogam in accordance with the requirements of the relevant statute governing Companies is to be framed.

(h) The counsel submitted that the condonation of delay and CFSS 2020 only averts penalty and prosecution and does not remove any disqualification of the Directors. It is pointed out that the disqualified Directors of the Company were not applicants under the CFSS 2020. The CFSS 2020 was framed by the Government, under Section 460 of the 2013 Act, and it cannot

override the statutory consequences flowing from Section 164(2) of the 2013

Act. It is hence submitted that once a disqualification is incurred, there is no provision to reverse it.

(i) It is submitted that the last election of Directors was at the 110th AGM held on 09.08.2015. The 113th AGM was held on 07.02.2019, and the election of Directors was not conducted. Even after the 113th AGM, more than 6 years have elapsed. It is pointed out that as far as the returns for the period 2017-2018 to 2019-2020 are concerned, condonation of delay was not under the CFSS 2020, and the so-called benefits claimed under the scheme will not be available merely because the delay was condoned in exercise of the power under Section 460 of the 2013 Act.

(j) It is submitted that the stand of persons who were not properly elected in the first place, whose term has also expired in 2020, and who are disqualified under Section 164(2) and 167(1) (a) of the Companies Act, 2013, cannot be treated as the stand of the Yogam or its members. It is submitted that the Yogam is a public trust, and this Court should exercise its *parens patriae* jurisdiction.

(k) The Yogam has more than 32 lakhs members, and it administers multiple educational and other institutions, and micro finance credit and finance distribution of around ₹ 4,500/- Crores, and the public interest lies in ensuring that the Yogam is governed legally and properly, and not for satisfying private interests of the office bearers.

18. Regarding the order Ext.P15 (produced in in W.P. (C)No.8095 of 2024), it is submitted that the finding that the Directors are not disqualified for the period 2014-2015 to 2015- 2016 was not proper, particularly since this Court had directed consideration of disqualification for the period 2016-2017 to 2022-2023 also. It is submitted that the above aspect has not been considered in Ext.P15.

ARGUMENTS ON BEHALF OF RESPONDENTS 4 to 7:

19. Sri Udaya Holla, Senior Counsel and Sri Rajan Babu appearing for the respondents 4 to 7, raised the following contentions:

(a) The writ petitions are not maintainable since there is a statutory remedy available under the 2013 Act. Two Company Petitions before the National Company Law Tribunal, Kochi Bench, and OS No.328 of 2022 before the Munsiff Court, Ernakulam, are pending, for the very same relief. When Legislation provides a statutory remedy by way of an application before the National Company Law Tribunal, the writ remedy stands ousted.

(b) The Yogam did not fail to file the annual returns continuously for 3 years, and there was no conscious or wilful default. Reference is made to the documents produced along with the counter affidavit to show the filing of the returns. The returns were not accepted by the IG of Registration, since the original records had not been received from the Registrar of Companies. The original records were in this Court's custody from February 2009 till

September 2019. When there is an impossibility of performance, that would be a valid excuse for non-performance. Reliance is placed on the legal maxims 'lex non cogit ad impossibilia' and 'impotentia excusat legem'.

(c) The continuation of respondents 4 to 7 as Office Bearers is not unauthorised or illegal, since Sections 164(2) and 167(1) of the Companies Act permit the existing Directors to continue in office.

(d) The continuous period of 3 years can be counted only after Section 164(2) came into force with effect from 01.04.2014. In Ext.P5 judgment (produced in W.P.(C)No.8095 of 2024), the only direction was to consider disqualification with respect to the years 2013-14 to 2015-16, and no other enquiry was contemplated.

(e) There is no disqualification since the delay in filing the returns was condoned by the Government under Section 460 of the 2013 Act. Once the delay is condoned, the difference in status between returns filed within time and outside time stands obliterated.

(f) Section 167(1)(a) is clarificatory in nature and hence retrospective, and no disqualification can be attributed to respondents 4 to 7 under Sections 164 (2) and 167(1)(a). Moreover, the respondents 4 to 7 have been allotted DIN, and hence no disqualification can be attributed for not possessing a valid DIN.

(g) In view of the orders of the Hon'ble Supreme Court condoning the delay in all cases up to February 2022, considering the COVID pandemic, it cannot be said that there was any delay in filing the returns for the period 2017- 2018 to 2019-2020. Moreover, the annual returns for the years 2020-2021 to 2020-2023 have been filed on time.

(h) There are 170 Directors, of whom more than 60 Directors have a valid DIN and others have applied. The quorum for a meeting is either 8 members or 25% of its total strength, whichever is less, and hence the Directors will not have to vacate the office for non-possession of DIN.

(i) Since the Kerala Government has not issued any Rules for the allotment of DIN, the question of non-possession of DIN does not arise.

(j) The Articles of Association say that one-third of the Directors should retire every year, and the petitioners are bound to ascertain who the present Directors are, and implead all of them in the party array, failing which the writ petition should fail for non-joinder of parties.

(k) In the alternative, even if it is assumed that respondents 4 to 7 became disqualified in September 2016 for failure to file annual returns for 3 years continuously, the 5-year period of disqualification for re-appointment is already over by 2021 or 2022, and hence no declaration can be granted that respondents 4 to 7 are ineligible to seek re-election.

(l) Under Section 463 of the 2013 Act, this Court can excuse the Directors of

the Yogam, as they have acted honestly and reasonably and have taken all efforts to file the annual returns.

CONSIDERATION:

20. As already observed, the Yogam had initially accepted Ext.P1 judgment. Some members of the Yogam had earlier filed O.S.No.45 of 1999 before the District Court, Ernakulam under Section 92 of the Code of Civil Procedure for the removal of certain persons from the administration of the Yogam and for framing a scheme for its administration. The suit was decreed on 08.04.2009. An appeal, RFA No.843 of 2009, was filed before this Court by the Yogam and the 4th respondent. The said appeal had been pending before this Court since 2009. It was during the pendency of O.S.No.45 of 1999 that the Ministry of Company Affairs, Government of India, had passed the order dated 23.08.2005 stating that the Kerala Act governs the Yogam. The Yogam thereafter started submitting the annual returns to the Inspector General of Registration, under the Kerala Act. The order dated 23.08.2005 was challenged in W.P.(C). No.22699 of 2005 before the High Court of Delhi. The High Court of Delhi, by judgment dated 07.2.2009, allowed the writ petition and directed the Central Government to reconsider whether the Kerala Act governs the Yogam. The stand of the Yogam before the Delhi High Court was that it is governed by the Kerala Act.

21. On 29.08.2013, the 2013 Act came into force. Section 164 of the 2013 Act, relating to disqualification of Directors, was brought into force with effect from 01.04.2014 as per notification dated 26.03.2014. Respondents 4 to 7 were elected as Directors at the 110th Annual General Meeting on 09.08.2015. Despite the judgment of the High Court of Delhi and the coming into force of the 2013 Act, the Yogam submitted the annual returns for the years 2013-14, 2014-15, 2015-16 and 2016-17 before the IG of Registration on 17.08.2015, 31.10.2016, 09.01.2018 and 16.01.2019, thus holding out that the Yogam was governed by the Kerala Act. It is also admitted that the original documents of the Yogam were returned to the IG of Registration (whose authority was only under the Kerala Act) in September 2019. It is thereafter that the writ petitions which led to Ext.P1 were filed before this Court.

22. Meanwhile, a representation had been filed before the IG of Registration praying to remove respondents 4 to 7 as Directors. A copy of the representation has been produced as Ext.P1 in W.P.(C) No.8095 of 2024. This was followed by W.P.(C) No.19266 of 2020 seeking directions to the IG of Registration to consider the representation. While so, on 24.09.2020, orders were passed under Section 460 of the 2013 Act, condoning the delay in filing the annual returns from 2006-07 to 2016-17 by fixing a fine of ₹ 1lakh. On 05.11.2020, the Yogam filed returns from 2006-07 to 2016-17 under the CFSS 2020 scheme and the IG of Registration granted immunity certificate, copy of which has been produced as Ext.P2 in W.P.(C) No.8095 of 2024. W.P.(C)

No.19266 of 2020 was disposed of by this Court, directing the IG of Registration to consider the representation submitted. Respondents 4 to 7 filed a review petition as R.P.No.113 of 2021 seeking review of the judgment in W.P.(C) No.19266 of 2020. The Review Petition was disposed of, directing the IG of Registration to consider the representation untrammelled by the observations made in the judgment, and the relevant years for deciding on the disqualification were from 2014-15 and not 2013-14.

23. The Yogam notified that the Annual General Meeting will be held on 14.04.2021 for the election of office bearers, but the same was stayed by this Court by order in W.P.(C)No.10796 of 2021 on 14.5.2021. The petitioners filed W.A.No.688 of 2021, challenging the order in W.P(C)No.19266 of 2020 and Review Petition No.113 of 2020. On 24.01.2022, this Court passed Ext.P1 judgment (produced in W.P.(C)No.8198 of 2024), holding that the Yogam was governed by the Kerala Act. On 30.01.2022, the IG of Registration passed an order relegating the parties to approach the Civil Court for an appropriate remedy. On 08.02.2022, the State Government passed an order under Section 460 of the 2013 Act, condoning the delay in submitting annual returns and financial statements for the years 2017-18 to 2019-20. The petitioners filed W.P. (C) No.6322 of 2022 challenging the order dated 30.01.2022 passed by the IG of Registration. On 13.04.2022, the Additional Chief Secretary wrote a letter to the IG of Registration stating that the rule prescribing the procedure for issuing DIN is yet to be framed, and in the interim, the applications allotting DIN may be kept pending until new rules are framed. On 30.11.2023, by a common order in W.P.(C) No.6322 of 2022 and connected cases, this Court set aside the order dated 30.01.2022 issued by the IG of Registration and remanded the matter to the IG of Registration to reconsider, after advertng specifically to the directions in Writ Appeal No.602 of 2021 and Writ Appeal No.688 of 2021, and to examine whether the disqualification under Section 167 (2) would apply against the Directors of the Company and whether they have valid DIN and if not would they face disqualification on that ground also. It is thereafter that on 17.02.2024, the IG of registration passed the impugned order.

24. As stated earlier, on 24.01.2022, by Ext.P1 judgment, this Court held that the Kerala Act governs the Yogam, set aside the order issued by the Central Government and declared that clause 44 of the Articles of Association of SNDP Yogam is ultra vires the statutory provisions contained in the 1956 Act, read with the provisions of the Kerala Act. This Court declared that all members of the Yogam have a right to vote in any election to be held by the Yogam. The Court had relied on the earlier declaration of law in Aravindan (supra).

25. A Division Bench of this Court later heard and disposed of RFA No.843 of 2009 by Ext.P2 judgment dated 27.05.2022 (produced in W.P.(C)No.8198 of 2024). The Division Bench dismissed the appeal filed by the Yogam. While doing so, the Division Bench considered Ext.P1 judgment and, in paragraphs 25 and 26, held as follows:

"25. It is seen that Ext.B5 order has been challenged before this court by some of the members of the Yogam in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 and it was found in the said case that in the light of the provisions contained in the Kerala Act, the registration of the Yogam as a Non Trading Company under the Companies Act, 1882 is deemed to be a registration in the State of Kerala under the Kerala Act and that the application under Section 25(6), in the circumstances, should have been preferred by the Yogam before the State Government. On the above findings, this Court set aside Ext.B5 order. The relevant findings contained in paragraphs 20 and 21 of the judgment in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 read thus:

"20. Ext.P5 purports to have been issued on an application submitted before the Central Government under Section 25(6) of The Companies Act, 1956. The application has been preferred admittedly after the Kerala Act came into force in 1962. The apparent reason for preferring the application before the Central Government is the observation contained in the judgment in Aravindhan (supra). In the said judgment, this Court had only observed that the Yogam is not without remedy and they can always approach the Central Government under Section 25. This Court had not considered whether such an application has to be preferred before the Central Government or the State Government in view of the Kerala Act. As a matter of fact it was not even brought to the notice of the Court that the Kerala Act applies to the Yogam. Thus Ext.P5 cannot be justified as an order issued on the basis of directions issued by this Court.

21. By operation of Sections 3 to 6 of the Kerala Act, the registration of Yogam as a non-trading company under the Companies Act, 1956 is deemed to be a registration in the State of Kerala. The Kerala Act is a statute falling under Entry 32 of List II of the Seventh Schedule of the Constitution and the State Legislature has exclusive power to make laws with respect to the matter. After coming into force of the Kerala Act, the Companies Act, 1956 can no longer govern the Yogam. Sections 3 to 6 of the Kerala Act in effect facilitates the transfer of governance from under the Companies Act, 1956 to the Kerala Act. Section 3 specifically says that the operation of the Companies Act, 1956 with regard to companies coming under the Kerala Act, will be subject to such modifications specified in the Schedule to the Kerala Act. One such modification made by the Schedule is that references to "the Central Government" and "Government" where it refers to the Central Government shall be construed as references to the Government of Kerala". Section 25 of the Companies Act, 1956 will thus have to be read with the above modification and the necessary result is that an application under Section 25(6) has to be preferred before the State Government and not the Central Government, in the case of the Yogam, after 1.3.1962. Admittedly, Ext.P5 was issued on the basis of an application preferred much after 1962. Ext.P5 is hence not issued by the competent authority and hence cannot stand the test of law."

A perusal of the judgment in the said case also reveals that the Yogam has not disputed in the case the fact that it is governed by the Kerala Act, with effect from its promulgation namely, 01.03.1962. It is also revealed from the judgment that in the light of the provisions contained in the Kerala Act, the Yogam has even preferred applications before the competent authority under the central statute to transfer the records relating to it to the State Government. Another issue considered in the said case was whether the passage of time and continued acceptance of Ext.B5 order for several years would legitimise the order, and the said issue was answered by the court in the negative. It is however seen that even though the order of exemption granted by the Central Government was set at naught by this court in terms of the judgment in W.P. (C)Nos.8382 of 2020 and 1385 of 2021, having regard to the ramification of that decision, this court did not set aside all actions that had been carried out on the basis of the order that was set aside by clarifying that the judgment will not in any way nullify the meetings held by the Yogam or elections conducted earlier. Nevertheless, it is reiterated in the Judgment that the decision taken in the meetings to restrict the voting right will not gain sanctity of law. The operative portion of the judgment reads thus:

"... In the result, Ext.P5 order is set aside. It is declared that clause 44 of the Articles of Association of the SNDP Yogam is ultra vires the statutory provisions contained in the Companies Act, 1956 read with the provisions of the Kerala Non-Trading Companies Act,1961. It is declared that all the members of the Yogam have a right to vote in any election to be held by the Yogam".

It is admitted by the parties that the judgment in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 has become final. We have perused the judgment in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 and we are in agreement with the findings and conclusion therein. In other words, the case set out by the plaintiffs that the exemption granted by the Central Government to the Yogam from the provisions of the Companies Act, 1956, on the strength of which the members of the Yogam are deprived of their right to participate in its annual general meeting and elect the office bearers of the Yogam is bad in law is to be accepted as correct. Needless to say, the finding to the contrary rendered by the court below and challenged by plaintiffs 5 and 6 in the cross objection is unsustainable in law.

26. The only inference possible from the finding that denial of opportunity to the members of the Yogam to participate in its annual general meeting and elect the office bearers of the Yogam is bad in law, is that the Yogam was not managed and administered by duly elected office bearers right from 19.03.1966. The judgment in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 was rendered on 24.01.2022. The contesting defendants have no case that they have obtained exemption from the State Government from the requirements of the company law in terms of the Kerala Act so as to justify convening of a representative annual general meeting of the members of the Yogam. On the

other hand, it has come out that the office bearers of the Yogam who have assumed office as early as on 9.8.2015 are continuing even now on the strength of the invalid provisions in the Articles of Association. Of course, it is open to the contesting defendants to argue that since the elections of office bearers of the Yogam held prior to the judgment in W.P.(C) Nos.8382 of 2020 and 1385 of 2021 have not been set at naught by this court, though held to be invalid, the Yogam could obtain exemption from the relevant provisions of the Company Law from the State Government in terms of the Kerala Act. But, what would be the situation if the State Government does not exempt the Yogam from the provisions of the said statute? Even if the State Government grants exemption as done by the Central Government, the questions viz, whether the members of the Yogam could be deprived of their right to participate in the annual general meeting to elect its office bearers and whether the election of the office bearers of the Yogam by the representatives of the members of the Yogam would be sufficient for the due administration of the Yogam so as to achieve its objects etc. would remain unanswered. True, the inability of the Yogam to convene the annual general meeting of all its members running to several lakhs is a genuine difficulty to be addressed. Whether a representative annual general meeting would be a solution for the said difficulty, is another question which needs to be addressed. That apart, the fact that the Articles of Association of the Yogam have been subsequently amended and large number of persons other than the representatives of the Yogam have been permitted to participate in the annual general meeting which elects the office bearers of the Yogam is not disputed by the contesting defendants. The specific case pleaded by the plaintiffs in this regard is that Article 44 of the Articles of Association which permits such participation is against the provisions of the Companies Act and not conducive for a proper administration of the Yogam. The court below has accepted the said case of the plaintiffs. Paragraph 51 of the impugned judgment dealing with the said aspect reads thus:

"Section 41 of the Companies Act defines member of the company. There is no dispute to the fact that the annual general body meeting of the company means the meeting of the members of the company. Therefore reading of Section 41 along with section 166 of the Companies Act show that only members of the company can participate the general body meeting. Clause 44 of Ext.A4 authorises some other persons like Ex-President, Vice President, Devaswom Secretary, Yogam Directors, Union President, Union Secretary, Union Council etc. to participate the annual general body meeting even if they are not elected by the members from their respective unions, sakhas etc. It seems that these provisions in the Clause 44 of Ext.A4 bye law is against the spirit of the Companies Act. Therefore that provision also require reconsideration and modification".

We do not find any infirmity in the said finding of the court below. Are these issues that could be tackled by the Yogam is the next question. As

indicated, if these are issues that could be tackled by the Yogam, an interference by the Court under Section 92 of the Code may not be justified. But, as far as the Yogam is concerned, according to us, the affairs as regards persons who are entitled to participate in its annual general meeting to elect its office bearers, appear to be in an untidy state which cannot be tackled by the Yogam. We are, therefore, of the view that the plaintiffs are justified in seeking direction of the court under Section 92 of the Code for administration of the Yogam on that ground. We take this view also for the reason that having regard to the large number of members of the Yogam, it is imperative for the Yogam to have a legal framework for a proper democratic representation of the members in its annual general meeting in the interests of the Yogam.”

26. It can be seen from the above passages that the Division Bench had not only approved Ext.P1 judgment, but also rendered a positive finding that the Kerala Act governs the Yogam, that every member has a right to vote, and that the office bearers of the Yogam who have assumed office as early as on 9.8.2015 are continuing even now on the strength of the invalid provisions in the Articles of Association.

27. While the hearing of these writ petitions was progressing and this Court had issued interim directions regarding the conduct of elections of the Yogam, two persons who were not party to the Ext.P1 decision, filed a writ appeal, challenging Ext.P1 judgment, in December 2024. It was contended that the admissions made by the Counsel for the Yogam, before this Court during the hearing which culminated in the Ext.P1 judgment, were not authorised. The writ appeal was admitted after condoning the delay of 989 days. The appeal was finally heard and disposed of by judgment dated 19.12.2025, setting aside Ext.P1 judgment and directing the competent authority of the Government of India to act in terms of the judgment of the High Court of Delhi dated 09.02.2009 in W.P.(C) Nos.22699 of 2005 and 22701 of 2005 after affording necessary opportunities to both sides, without any avoidable delay. The Court recorded the undertaking of the ASGI that the said exercise will be completed not later than 3 months from the date of receipt of a copy of the judgment. It was also clarified that all aspects noticed in the judgment and not solely the one referred in the judgment of the High Court of Delhi, including whether the impugned order of the Government of India dated 20.08.1974 will stand operative even after the Companies Act 2013 has come into force, shall be adverted to and answered specifically. A reading of the judgment suggests that the Division Bench was not apprised of the earlier Division Bench judgment Ext.P2 (produced in W.P.(C)No.8198 of 2024), whereby the conclusions in Ext.P1 judgment had already been approved by a co-equal bench. The question as to whether the Kerala Act governs the Yogam assumes importance since this is a case in which the authority under the Kerala Act has exercised jurisdiction as directed by this Court, to decide whether the respondents 4 to 7 are disqualified. If the Kerala Act does not apply, the entire exercise was without jurisdiction. Another consequence will be that the 2013 Act

will apply; in which case respondents 4 to 7 will have no defence at all since there is no case that any of the financial statements were filed before the Registrar of Companies as required under the provisions of the 2013 Act or the Companies Act, 1956.

28. Based on the arguments advanced by the counsel on either side, the questions that need to be answered are formulated and answered in the following paragraphs.

Questions to be considered:

- (1) Is the Yogam covered by the Kerala Act or the Companies Act, 2013?
- (2) Are respondents 4 to 7 disqualified under Section 164(2) of the 2013 Act?
- (3) Are the respondents 4 to 7 liable to vacate office under Section 167 of the 2013 Act? (4) Are the writ petitions maintainable?

29. Question No.(4)–Maintainability of Writ petitions: The contention of the respondents 4 to 7 is that the writ petition is not maintainable since for the same relief, two company petitions filed in 2020 and a suit in 2022 are pending. The order impugned in these writ petitions is one that was issued based on the directions issued by this Court in Ext.P13 judgment (produced in W.P. (C)No.8198 of 2024). The direction issued by this Court was to the Inspector General of Registration to assess whether party respondents are disqualified under the provisions of Section 164 (2) of the Companies Act, 2013, after the fiscal year 2014- 2015. The said judgment was passed when the company petitions and the suit were pending, and this Court was fully aware of the pendency of the said litigations when this Court directed the authority under the Kerala Act to decide. It is settled law that there is no bar to the exercise of jurisdiction under Article 226 of the Constitution of India in all cases where there is an alternate remedy is available. It is only a self-imposed restriction by the Constitutional Court. In *Manu S. v. State of Kerala and others* [2020 KHC 454], relied on by the respondents, this Court, after reiterating the above legal position, held on facts that the remedy of the petitioners therein was to approach the revisional authority. In the case at hand, since orders were issued in accordance with directions of this Court on several occasions, it is a fit case for the exercise of jurisdiction under Article 226.

30. Question (1): The above question is vexed. The 1956 Act, and its predecessor applied to the Yogam until the coming into force of the Kerala Act in 1961. In 1974, when the Division Bench passed its judgment in *P.C. Aravindan (supra)*, there was no contention that the Kerala Act applied, although it had by then come into force. The Yogam had applied to the Central Government to restrict members' voting rights, following the judgment in *P.C. Aravindan (supra)*, on the assumption that the Central Act applies. The Central Government issued the order dated 20.08.1974 on the premise that the 1956 Act applies. On 31.7.1992, by judgment in *C.M.A.No.113 of*

1992, the institutions and properties of the SN Trust were brought under the administration of the Joint Receiver appointed by this Court. One of the Joint Receivers, Sri M. K. Raghavan, expired on 20.12.1994, and this Court, by order dated 05.01.1995, appointed Sri N. D. Premachandran in the place of Sri M. K. Raghavan as one of the Joint Receivers. OS. No. 45 of 1999 was filed to frame a scheme for the administration of the Yogam in the above circumstances. While the above suit was pending, the Ministry of Company Affairs, Government of India, issued an order on 23.08.2005 stating that the Kerala Act governs the Yogam. Even though the Yogam had earlier applied to the Central Government for restriction of the voting rights and obtained favourable orders in 1974, for reasons best known to the office bearers, the order of the Central Government issued in 2005 was accepted, and the Yogam started filing the returns to the Inspector General of Registration under the Kerala Act.

31. The next stage of the litigation came on 07.02.2009, when a challenge to the order dated 23.8.2005 was upheld by the High Court of Delhi and the Central Government was directed to reconsider whether the Kerala Act governs the Yogam. Even though there was such a judgment on 07.02.2009, the Yogam continued to file returns to the Inspector General of Registration. The returns were not accepted since the original records were not made available from the office of the Registrar of Companies. The records were transmitted only in 2019. In the meantime, the 2013 Act came into force. Respondents 4 to 7 were elected as Directors after the 2013 Act came into force. However, the Yogam continued to file the returns to the IG of Registration even thereafter, without pursuing with the Central Government for any orders, as was directed by the High Court of Delhi. It also needs to be noted that an order of the Company Law Tribunal in 2015, finding that the Kerala Act applies to the Yogam was not challenged in any proceedings. In the above circumstances, the writ petitions that led to the Ext.P1 judgment were filed before this Court seeking to set aside the order issued by the Central Government in 1974 granting permission to restrict voting rights.

32. As already stated, this Court in Ext.P1, set aside the order dated 20.08.1974. The judgment was approved by a Division Bench in Ext.P2 judgment. Later, another Division Bench set aside the judgment Ext.P1. That leads to a situation where one Division Bench of this Court held that the Yogam is governed by the Kerala Act and that the order of the Central Government granting permission to restrict the voting rights of members was bad in law, and another Division Bench has, without noticing the earlier Division Bench and without going into the merits of the decision, set aside Ext.P1 and directed the Central Government to pass orders as directed by the Delhi High Court. The subsequent Division Bench has not considered the correctness or otherwise of the first Division Bench. In Bindu K.B. v. The State of Kerala and others [2014 SCC OnLine Ker. 18497], a learned Single Judge of this Court had considered a similar issue and held as follows:

"47. A learned Division Bench of the High Court of Andhra Pradesh S.K. Mahaboob Ali, Ex-CRPF Constable, Nandyal v. Director General of Police, Central Reserve Police Force, New Delhi, 2005 (1) ALT 412 (D.B.), has held that the judicial propriety and judicial discipline require that binding precedent shall be necessarily followed. However, while adopting cautious approach in case of conflicting Judgments of the Apex Court of co-ordinate Benches cited before the Courts, Courts may have to carefully scrutinize whether reasons had been recorded while laying down the ratio and whether the concerned statutory provisions had been considered and whether the other prior decisions or the binding decisions also had been referred to, if any available on the point by the Court while rendering such Judgments.

48. A Special Bench of Five Judges of the Madhya Pradesh High Court in Jabalpur Bus Operators Association v. State of Madhya Pradesh, AIR 2003 MP 81, examined in depth the issue of precedential value of conflicting judgments of coordinate Benches. It has eventually held that in case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed, except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding. Their Lordships have also observed that no decision of Apex Court has been brought to their notice which holds that in case of conflict between the two decisions by equal number of Judges, the later decision is binding in all circumstances, or the High Courts and subordinate Courts can follow any decision which is found correct and accurate to the case under consideration.

49. Indeed, the Special Bench has observed that High Courts and Subordinate Courts should lack competence to interpret decisions of Apex Court since that would not only defeat what is envisaged under Article 141 of the Constitution of India but also militate hierarchical supremacy of Courts. The common thread which runs through various decisions of Apex Court seems to be that great value has to be attached to precedent which has taken the shape of rule being followed by it for the purpose of consistency and exactness in decisions of Court, unless the Court can clearly distinguish the decision put up as a precedent or is per incuriam, having been rendered without noticing some earlier precedents with which the Court agrees.

50. In my considered opinion, the position would be this: When the subsequent co-equal bench renders the judgment in ignorance of the earlier pronouncement of co-equal bench, the judgment of the previous bench will have binding effect. On the other hand, if the latter bench refers to the earlier one and distinguishes it, to that extent of distinction, the latter one binds."

33. I am in respectful agreement with the above judgment and find support to the said view in the judgment of the Hon'ble Supreme Court in Sundeep Kumar Bafna v. State of Maharashtra [(2014) 16 SCC 623]. The Hon'ble Supreme Court, while considering what constitutes per incuriam judgments, held as follows:

"19. It cannot be over emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."

The first question posed is hence answered, holding that the Yogam is governed by the Kerala Act.

34. Question (2):

The next question that needs to be considered is whether respondents 4 to 7 are disqualified under Section 164 to hold office. In Ext.P13 judgment, this Court after setting aside the order passed by the Inspector General of Registration, directed a reconsideration of the issue after advertting specifically to the directions of the Division Bench in Writ Appeal Nos.602 of 2021 and 688 of 2021, but bringing within the ambit of the exercise of evaluation, the further question whether the disqualification under Section 167 (2) of the Companies Act would apply against the Directors of the Company. Ext.P10 produced in W.P.(C)No.8198 of 2024 is the judgment of the Division Bench in the Writ Appeal. The Division Bench took note of the submission made by the counsel appearing for respondents 4 to 7 that an Adjudicating Officer to adjudicate in respect of returns of the Yogam for the period 2006-07 to 2016-2017 has condoned the delay in submission of returns for the period 2006-07 to 2016-17 on payment of a fee of ₹ 6,600/-. The order dated 05.11.2020, which is titled as an immunity certificate under CFSS 2020, whereby immunity was granted from prosecution under the Companies Act, 2013, has been reproduced in Ext.P10 judgment. The operative portion of the Immunity Certificate reads as follows:

"Now, therefore, in exercise of the powers conferred under CFSS, 2020 the undersigned hereby issues this certificate to the said company granting immunity from prosecution or imposition of penalty under the Act subject to the provisions contained in the scheme in respect of aforesaid document(s) converted in the application."

35. The Court thereafter directed the Inspector General of Registration to

consider as to whether disqualification of respondents 4 to 7 as Directors of the Company under Sections 164(2) of the Companies Act, 2013 would arise after the financial year 2014-2015 when the delay in submission of returns has been condoned, when the returns were filed in bulk for the years in question. In the light of the judgments Ext.P10 and Ext.P13, the issues are two-fold. (i) Whether there was any disqualification under Section 164 of the Companies Act, 2013, for the financial year 2014-15 onwards, and (ii) whether respondents 4 to 7 were disqualified to hold the office of Director in view of disqualification under Section 167(2) of the Companies Act, 2013.

DISQUALIFICATION UNDER SECTION 164(2):

36. I shall first consider whether there is any disqualification under Section 164(2) of the 2013 Act. Section 164 reads as follows:

"164. Disqualifications for appointment of director.-

(1) A person shall not be eligible for appointment as a director of a company, if—

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of Section 152.

(i) he has not complied with the provisions of sub-section (1) of Section 165.

(2) No person who is or has been a director of a company which—(a) has not filed financial statements or annual returns for any continuous period of three

financial years;

or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be reappointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so:

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."

A reading of the Section would show that if there is failure to file financial statements or annual returns for any continuous period of 3 financial years, no person who is or has been a Director of the Company which had committed such default, shall be eligible to be reappointed as a Director of that Company or appointed in any other Company for a period of 5 years from the date on which the Company failed to do so. Admittedly, the financial statements of the Yogam were accepted after condoning the delay and upon payment of ₹ 6,600/- on 05.11.2020. That is to say, the financial statements for the financial years 2014-2015 to 2016-2017, which ought to have been filed by 2017-18 to 2019-20, respectively, to escape the rigour of the statutory provision, were filed only on 05.11.2020, after the period of 3 years had elapsed. In the case of the returns for the year 2014-15, the delay exceeds 5 years.

37. The CFSS 2020 is a scheme introduced under Section 460 read with Section 403 of the 2013 Act. A copy of the scheme has been produced as Ext.P18 along with W.P.(C) No. 8198 of 2024. Clause 6 of Ext.P18, which gives details of the scheme in clause 6(iv), states as follows:

"(iv) Manner of payment of normal fees for filing of belated documents and seeking immunity under the Scheme - Every defaulting company shall be required to pay normal fees as prescribed under the Companies (Registration Offices and Fee) Rules, 2014 on the date of filing of each belated document and no additional fee shall be payable. Immunity from the launch of prosecution or proceedings for imposing penalty shall be provided only to the extent such prosecution or the proceedings for imposing penalty under the Act pertain to any

delay associated with the filings of belated documents. Any other consequential proceedings, including any proceedings involving interests of any shareholder or any other person qua the company or its directors or key managerial personnel would not be covered by such immunity.” (emphasis supplied)

38. It can thus be seen that the immunity certificate only grants protection against prosecution or proceedings for imposing a penalty under the Act, for the non-filing of the documents within the prescribed time. No other consequential proceedings are covered by such an immunity certificate.

39. Section 403 of the 2013 Act says that any document required to be submitted must be submitted within the time specified in the relevant provision on payment of the prescribed fee. The proviso to Section 403 says that such documents can be submitted after the expiry of the period so provided, on payment of such additional fee as may be prescribed, which will be without prejudice to any other legal action or liability under the Act. Section 403(2) says that where a company fails to submit any document under sub-section (1) before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under the Act for such failure or default. Thus, the liability for penalty or punishment is again emphasised, while permitting the delayed submission of the documents.

40. Section 460 of the 2013 Act deals with the power to condone delays. It says that where any document required to be filed with the Registrar is not filed within the time specified, the Central Government may, for reasons to be recorded in writing, condone the delay. The power can hence be exercised only by the Central Government. In the case at hand, in view of my finding that the Kerala Act applies, the word “Central Government” will have to be read as “State Government”. No provision permits the exercise of power under Section 460 by a delegate. A reading of Ext.P18 Scheme along with Sections 403 and 460 leads one to the conclusion that the scheme only provides for delayed submission on payment of the fee prescribed therein and does not in any manner save the legal consequences spelt out in the statute, except the imposition of penalty or punishment. It is pertinent to note that neither Section 403 nor Section 460 refers to Section 164 of the Act. The language of the above Sections is not ambiguous in any manner. Nothing in those provisions has the effect of undoing a disqualification which is incurred by the operation of Section 164(2). In view of the statutory provisions, the respondents cannot be heard to contend that the condonation of the delay in filing the annual returns will have the effect of undoing the statutory consequence. There is yet another reason for coming to the above conclusion. The Company, its shareholders and its directors are distinct individuals, each being a legal entity. The Company is a body corporate having perpetual

succession, and it cannot cease to exist for not filing the annual returns in time. Hence, there is justification for having a provision for condoning the delay in filing the returns. Directors who are distinct from the Company and who are in control of the affairs of the Company are dealt with differently by the Act, by prescribing certain consequences if they fail to file the annual returns continuously for three financial years. They are not entitled to the benefit of the condonation of delay available to the Company. That is also the reason why Section 403(2) says that for the default of the company, the company as well as the officers who are in default will be liable for the penalty or punishment provided under the Act. The very purpose of having such provisions and the CFSS 2020 can only be seen as a protection granted to the Company from default committed by human agencies like the Directors. They cannot be seen as provisions which have the effect of removing the accountability and instead should be seen as provisions for fixing responsibility.

Do the maxims 'lex non cogit ad impossibilia' and 'impotentia excusat legem', apply to the case at hand?

41. The counsel for the respondents 4 to 7 contended that there was no wilful default in filing the annual returns. It is contended that though the returns were filed, they were not accepted by the Registrar since the original records relating to the Company were not available. The argument is that since there was an impossibility to comply with the statutory requirement, the Company cannot be said to have defaulted. Reliance is placed on the maxims 'lex non cogit ad impossibilia' and 'impotentia excusat legem', to support the contention. The counsel placed reliance on the judgment in Engineering Analysis Centre of Excellence Private Limited v. Commissioner of Income Tax & Anr. [(2022) 3 SCC 321] to submit that a person is excused from doing an act which is not possible of performance. The judgment was rendered with reference to the two legal maxims referred to above. The Hon'ble Supreme Court considered the question whether a person can be held liable for not deducting TDS, when the concerned provisions were not even in the statute book, and applying the above two legal maxims, held that it was a case where there was an impossibility to obey the law. The law laid down in the said judgment cannot be applied to the facts of this case. The judgment in Huda and another v. Dr. Babeswar Kanhar and another [(2005) 1 SCC 191], also only lays down the general principle that a party prevented from doing an act by circumstances beyond his control can do so at the first subsequent opportunity, and the law does not compel performance of an impossibility. The Apex Court in the above judgment was considering the correctness of forfeiting the earnest money paid for allotment of a plot, on the ground that the communication of non-acceptance of allotment was received after the last date fixed for the purpose. It was a case where the last day fell on a holiday, making the performance impossible. The scope of the above maxims was recently stated by the Hon'ble Supreme Court in the decision in Additional Director General

Adjudication, Directorate of Revenue Intelligence v. Suresh Kumar & Co. Impex (P) Ltd. [(2026) 1 SCC 756] thus:

"39. We quote para 15 of the judgment [Presidential Poll, In re, (1974) 2 SCC 33] referred to above which reads thus : SCC pp. 49-50)

"15. The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit ad impossibilia*. *Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that *impotentia* excuses. The law does not compel one to do that which one cannot possibly perform. 'Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him'. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims, 10th Edn. at pp. 162-63 and Craies on Statute Law, 6th Edn. at p. 268.)"

42. To attract the doctrine, there should be an impossibility of performance, and no remedy being available over it. In the case at hand, the circumstance stated is that the Registrar refused to accept the returns. The above contention must be appreciated in the light of certain related facts. In 1974, the Yogam had approached the Central Government and got an exemption regarding the voting rights. This was at a time after the Kerala Act had come into force, and the exemption had to be sought from the State Government and not the Central Government. In 2005, the Central Government issued orders stating that the Kerala Act applies to the Yogam. The Yogam accepted the said order. Later in 2009, the order issued by the Central Government in 2005 was set aside by the Delhi High Court, and the Central Government was asked to reconsider whether the Kerala Act applies. It can be seen from the judgment of the Delhi High Court that the Yogam had taken a stand that the Kerala Act applies. However, neither the petitioners before the Delhi High Court nor the Yogam pursued the matter with the Central Government and the Yogam wanted to proceed on the basis that the Kerala Act applies. However, when the writ petitions that led to Ext.P1 judgment were filed, the Yogam shifted their stand and contended that the Kerala Act would not apply. This Court held that the Kerala Act will apply. The Yogam challenged the judgment in writ appeal, and Ext.P1 judgment was reversed. It is not, hence, a case of impossibility of complying with the statutory requirement. The persons in control of the affairs of the Yogam

were changing stands to suit their purposes at different stages. If the stand of the Yogam was that the Kerala Act applies, they should have submitted the annual returns before the Registrar of Companies. The Yogam has no case that this has been done. It is hence a case where the Yogam wanted to contend before this Court that the Kerala Act does not apply, and at the same time, they submitted the returns to the authority under the Kerala Act. Such actions cannot hence be considered as bona fide. After creating an obstacle themselves, the Yogam cannot be heard to take shelter under the above-mentioned maxims. This is not a case where the maxims can be applied.

Does the condonation of delay remove the disqualification incurred?

43. Another argument advanced by the respondents 4 to 7 is that once the delay is condoned, the difference in status between the returns filed within the time and those filed after the expiry of the limitation would be obliterated. The above contention cannot be legally sustained. True, such a principle applies where an application under Section 5 of the Limitation Act is allowed, and a proceeding is taken on file. The same yardstick cannot be applied to a case in which the delay in filing the returns creates different consequences for the Company and its Officers. Reliance is placed on the decisions of the High Court of Allahabad in *Fateh Singh v. Deputy Director of Consolidation, Mathura & Ors.* [2004 SCC OnLine All. 1967], *Paras Nath v. Deputy Director of Consolidation* [2008 SCC OnLine All. 164] and the decision of the High Court of Uttaranchal in *Balram v. Deputy Director of Consolidation & Ors.* [2009 SCC OnLine Utt. 956] to submit that once the delay is condoned, the difference in status between the returns filed within time and the returns filed after the expiry of limitation would be obliterated. The judgments in *Fateh Singh* (supra) and *Parasnath Supra* (supra) relate to the filing of appeals along with a petition for condonation of delay, and the Court held that once the delay is condoned, the appeal must be treated as one filed within time. The same is the effect of the judgment in *Balram* (supra). The law laid down in those judgments cannot be applied to cases where a statutory consequence is spelt out if there is a delay in filing the annual returns. Reliance was also placed on the judgment of the Hon'ble Supreme Court in *Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd.* [AIR 1962 SC 361]. There again, the Hon'ble Supreme Court was dealing with an application under Section 5 of the Limitation Act, and the Court held that where it was shown to the satisfaction of the court that an appeal was presented after the expiration of the period of limitation owing to the appellant being misled by an order, practice or judgment of the High Court, the said appeal shall for all purposes be deemed to have been presented within the period of limitation. The above judgment also does not lay down a proposition that the statutory consequences of the delay in filing the annual returns will be undone on the condonation of delay. As far as the Company is concerned, once the delay is condoned under Section 460 of the 2013 Act, the consequences prescribed in Sections 403 and 460 alone will follow. However, in the case of Directors, a different consequence is prescribed under Section 164, which cannot

be undone by the condonation of delay under Section 460. The above contention is hence rejected.

Does the Non obstante clause in Section 460 have the effect of nullifying the consequences spelt out in Section 164(2)?

44. The counsel for the respondents 4 to 7 contended that Section 460 begins with a non obstante clause and hence there can be no disqualification under Section 164, once the delay is condoned under Section 460. Non obstante does not override all provisions. Section 460 only says about the condonation of delay. It does not speak about the disqualifications that have already occurred. The way a non obstante clause should be understood has been explained by the Hon'ble Supreme Court in *State of Bihar & Ors. v. Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.* [(2005) 9 SCC 129] in paragraph 45, which is extracted below:

"45. A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions of the Act mentioned in the non obstante clause, the provision following it will have its full operation or the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment or the provision in which the non obstante clause occurs. (See Principles of Statutory Interpretation, 9th Edn., by Justice G.P. Singh—Chapter V, Synopsis IV at pp. 318 and 319)."

45. The decisions in *Union of India v. G.M.Kokil* [1984 Supp. SCC 196] and *Om Prakash v. Union of India* [2011 (14) SCC 1], which were cited during the hearing do not take any different view from the judgment in *State of Bihar* (supra). Applying the above principle, the enacting part of Section 460 empowers the Central Government to condone, for reasons recorded in writing, the delay in filing a document with the Registrar under any provision of the Act. The consequences of the delay stated in Section 164(2) do not impede the operation of the enacting part of Section 460. The addition of the words "Notwithstanding anything contained in the Act" can only refer to such provisions in the Act which will be an obstacle to the condoning of delay and nothing more. Hence, the non obstante clause does not in any manner affect the consequences spelt out in Section 164(2). In the light of the above discussions, I hold that the consequences spelt out in Section 164(2), which are statutory, will not be affected by the condonation of delay in filing the returns, whether under CFSS 2020 or under Section 460 of the 2013 Act.

The maxim *Nullus commodum capere potest de injuria sua propria* and its application :

46. The next argument advanced by the Counsel for the respondents is that Section 164(2) only makes the respondents 4 to 7 ineligible to be reappointed as a Director of that company or appointed in other company for a period of five years from the date on which the said company failed to file the returns, and,

since the period of 5 years is already over, the ineligibility no longer continues. Such an argument cannot be countenanced. It is a well-established legal principle that no man can take advantage of his own wrong. In *Union of India v. Maj. Gen. Madan Lal Yadav* [(1996) 4 SCC 127], the Hon'ble Supreme Court, while considering whether a trial under the Army Act was barred by limitation since the accused was available for trial owing to his escape from detention, held as follows:

"28. Even if narrow interpretation is plausible, on the facts in this case, we have no hesitation to conclude that the trial began on 25-2-1987 on which date the court martial assembled, considered the charge and the prosecution undertook to produce the respondent who was found escaped from the open detention, before the Court. It is an admitted position that GCM assembled on 25-2-1987. On consideration of the charge, the proceedings were adjourned from day to day till the respondent appeared on 2-3-1987. It is obvious that the respondent had avoided trial to see that the trial would not get commenced. Under the scheme of the Act and the Rules, presence of the accused is a precondition for commencement of trial. In his absence and until his presence was secured, it became difficult, nay impossible, to proceed with the trial of the respondent-accused. In this behalf, the maxim *nullus commodum capere potest de injuria sua propria*—meaning no man can take advantage of his own wrong—squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In *Broom's Legal Maxim* (10th Edn.) at p. 191 it is stated:

"... it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim *frustra legis auxilium invocat quaerit qui in legem committit*. He relies on *Perry v. Fitzhove* [(1846) 8 QB 757 : 15 LJ QB 239]. At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At p. 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed."

47. A similar view was expressed in the judgments in *Lily Thomas v. Union of India* [(2000) 6 SCC 224] and *Union of India & Ors. v. Prohlad Guha*

[2024 SCC OnLine SC 1865]. Recently, in Binod Pathak & Ors. v. Shankar Choudhary & Ors. [2025 SCC OnLine SC 1411], the Apex Court considered the distinction between the two legal maxims nullus

commodum capere potest de injuria sua propria and ex injuria ius non oritur, and the Court held as follows:

"48. A perusal of the aforesaid makes it abundantly clear, that while the maxim 'ex injuria ius non oritur' is a principle governing the general spirit of the jurisprudence of "rights", that a right cannot emanate or emerge from a wrongful act, the maxim 'nullus commodum capere potest de injuria sua propria', on the other hand, confirms the general rule of equity and prudence that no one can benefit from their own wrongdoing. The scope of the latter is wider than the former. The first maxim explains that the legitimacy of a right stands vitiated if such right, which otherwise would have been legitimately exercisable, accrues from a wrongdoing of the person claiming under or exercising such right. Although, under the law, a right may arise even if from a wrongdoing, yet if exercise of such right is allowed, it would malign the very jurisprudential underpinning of 'right' and 'duty'. A right has a legal sanctity and backing to it, in order for it to have a legitimising effect, since the jural correlative of a right is duty. More particularly, the term "right" is very specific to not include every benefit, profit or advantage. The maxim solidifies the faith in law that no wrong action will be given a legal validity. The legal validity of a right flows from other legal norms or from a source of law [See : Niel MacCormick, "Rights in Legislation", Law, Morality and Society : Essays in Honour of H.L.A. Hart, P.M.S. Hacker, and Joseph Raz (eds). 189- 206, Oxford : Clarendon Press (1977)].

49. The maxim nullus commodum capere potest de injuria sua propria, on the other hand lays itself as a rule of equity. An advantage falling from wrongdoing may be a legal or illegal advantage. The maxim dictates that, be that as it may, no profit or advantage of a person's wrongful act may be validated by the seal of law. It may very well happen, that the advantage may be legal or illegal, but the validation of law will not be extended to it by the law. Thus, the courts that have the discretion to allow or disallow the availing of such advantage in ordinary circumstances, are constrained to not permit a person who has committed a wrongful act to benefit from the advantageous position afforded to him because of such wrongful action as a matter of justice, equity and fairness. Fellmeth and Horwitz rightly extend an illustration, that when a person himself destroys evidence, he cannot take shelter of the defence of lack of evidence. The advantage falling from the wrong will not be validated by the courts of law."

48. Admittedly, respondents 4 to 7 are continuing in office after the expiry of their term. Going by the dictum in the Ext.P1 judgment approved by the Ext.P2 judgment, even their election to office in 2015 cannot be legally justified since not all members were permitted to vote. In Ext.P2, a Division Bench has

held that the Directors had assumed office on 9.8.2015 and are continuing even now on the strength of the invalid provisions in the Articles of Association. Without conducting an election, the respondents 4 to 7 have managed to be at the helm of affairs of the Yogam. In the above factual background, if the contention of the counsel for the respondents 4 to 7 that the ineligibility has ended is accepted, it would, in effect, be subscribing to and perpetuating an illegality. In *Madan Lal Yadav (supra)*, the Hon'ble Supreme Court held that the trial began on the day the Court Martial assembled, though the accused, who had escaped detention, was brought before the Court Martial more than one year later and negated the contention of limitation. Inferentially, in the case at hand, the only interpretation possible is that the period of 5 years contemplated in Section 164(2) will begin from the day the respondents cease to be Directors. This is more so, since admittedly, there has been no election held after 2015. I hence hold that the respondents 4 to 7 have become disqualified under Section 164(2) of the 2013 Act.

DISQUALIFICATION UNDER SECTION 164(1):

49. Section 164(1)(h) says that a person shall not be eligible for appointment as a Director of a company, if he has not complied with sub-section (3) of section 152. The question is whether any disqualification is attracted for not having a Director Identification Number (DIN). Section 152(3) of the 2013 Act says that no person shall be appointed as a Director of a company unless he has been allotted the DIN under Section 154 or any other number as may be prescribed under Section 153. Section 152(4) says that every person proposed to be appointed as a Director shall furnish his DIN or such other number as may be prescribed under Section 153 and a declaration that he is not disqualified to become a Director under the Act. Every individual intending to be appointed as a Director shall make an application for allotment of DIN as provided under Section 153. Under Section 154, the Central Government shall within one month from the receipt of an application under Section 153, allot a DIN to the applicant in the manner prescribed. Section 155 prohibits applying, obtaining or possession of another DIN by a person who has already been allotted a DIN under Section 154. Thus, no person can have two DINs. Every Director on obtaining a DIN must intimate the company/companies in which he is a Director and the companies in turn should intimate this fact to the Registrar of Companies under Section 157. It can thus be seen that having a DIN is a compulsory requirement for a person to be appointed as a director. Section 164(1)(h) says that a person shall not be eligible for appointment as a Director of a Company if he has not complied with sub-section (3) of Section 152. The above provision is a re-affirmation of what is contained in Section 152. The contention of the petitioners is that except 16 Directors, nobody else possess a DIN. It is further contended that the 4th respondent and the 6th respondent are in possession of 2 DINs, which itself is a disqualification.

50. Yet another contention that is taken is that 5 of the persons among the 16

persons who possess DIN are persons who have been nominated to the Board, which is impermissible under the Companies Act. In the case on hand, since the Yogam is governed by the Kerala Act, the authority to issue DIN is the Government of Kerala, since the words "Central Government" in Section 154 will have to be read as the "State Government". Admittedly, no rules have been framed for the allotment of DIN by the Government of Kerala. As such, it cannot be said that any of the Directors possess a DIN. The DIN that some of the Directors are in possession of are ones issued by the Central Government. A question then arises whether the said DINs can be made use of by the said Directors to submit that they have complied with the requirement under Section 152. There is also a question whether such a condition can be insisted upon if there is an impossibility of performance. Even though this Court had directed the Inspector General of Registration to consider the question of disqualification under Section 164(2) as well as the disqualification owing to not having a DIN, Ext.P16 order (in W.P.(C)No.8198/2024) does not consider the question regarding DIN and all that is stated is that the issue is pending with the Government. In the light of the admitted facts, I find that there is a disqualification attracted for non-compliance with Section 152(3) of the Companies Act, since admittedly none of the Directors have a DIN issued by the State Government. Having a DIN is a pre-condition for appointment as a Director. Hence, none of the appointments of the Directors of the Yogam after 2014 (when the requirement of having a DIN was introduced in the statute book) are in accordance with the provisions of the statute. It necessarily follows that all of them are holding office against the provisions of the Statute. In Ext.P2 judgment, a Division Bench of this Court has already held that the Directors are holding and continuing in office on the strength of the invalid provisions in the Articles of Association.

51. In *Sajith Kannanunni Nair v. Union of India* [2021 SCC OnLine Mad. 49], the Court was considering a case of disqualification as a Director under Section 164(2) of the Companies Act, 2013. The learned Single Judge followed the Division Bench judgment of the same court in Writ Appeal No.569 and others of 2020 in *Meethelaveetil, Kaitheli Muralidharan V. Union of India*. That was a case where there was a deactivation of the DIN pursuant to disqualification under Section 164(2). The Court held that the Registrar of Companies cannot deactivate the DIN. On facts, the court was dealing with the case of a person who was a director of several companies and the disqualification was on the ground of not filing financial statements for 3 consecutive years. In *Zacharia Maramkandathil Mohan & Ors. V. Union of India & Ors.* [2021 (3) KHC 550], a learned Single Judge of this Court considered the question whether Sections 164 and 92 of the 2013 Act are unconstitutional. This Court held that the provisions were not unconstitutional. It was held that Section 164 (2) can have only prospective operation. The above judgments do not apply to the fact situation in these cases.

52. As per the Statute, a DIN has to be issued by the Government within one

month of the application. It was hence for the Directors concerned to have taken steps for obtaining the DIN from the Government. This Court is not, in these writ petitions, called upon to issue any directions to the Government regarding the issuance of DIN to the Directors of the Board. On the admitted facts, it has to be held that none of the Directors who are holding office now have complied with the requirement of Section 152(3) and are hence disqualified under Section 164(1) of the 2013 Act.

Question No.(3):

53. The next question is whether by virtue of Section 167, the Directors will vacate office on having been disqualified under Section 164. Section 167 reads thus:

"167. Vacation of office of director.—(1) The office of a director shall become vacant in case—

(a) he incurs any of the disqualifications specified in Section 164:

Provided that where he incurs disqualification under sub-section (2) of Section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.

(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(c) he acts in contravention of the provisions of Section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of Section 184;

(e) he becomes disqualified by an order of a court or the Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

(g) he is removed in pursuance of the provisions of this Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

(2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

(4) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

54. The counsel for respondents 4 to 7 contended that Section 164(2) does not prohibit continuation in office, even if there is a default. It is argued that the section only makes a Director ineligible to be re-appointed. It is submitted as per the proviso to Section 167(1) that if a disqualification is incurred under Section 164(2), the office of the Director in the company which is in default will not become vacant. It is hence argued that, on a combined reading of Sections 164 and 167, even if there is a default by the Company, there is no vacating of office contemplated. The counsel draws support from the judgment in *Yashodara Shroff v. Union of India & Anr.* [ILR 2019 Kar. 3768] and the decision in *Kaynet Finance Ltd. v. Verona Capital Ltd.* [2019 SCC OnLine Bombay 1203]. A mere reading of the Section would show that the Office of the Director does not become vacant immediately on non-compliance with the requirement of Section 164(2). Section 164(2) also only says of ineligibility to be reappointed. It does not state that the Director of a Company, which is in default, immediately vacates office. The argument on behalf of respondents 4 to 7 that a disqualification under Section 164(2) does not call for a direction restraining the respondents 4 to 7 from functioning as Directors of the Yogam is hence well-founded. It is only the consequences which flow from the operation of Section 164(2) that would apply to such persons. However, that may not be true in the case of disqualification incurred under Section 164(1)(h).

55. Under Section 167(1) of the Act, the office of a Director shall become vacant in case he incurs any of the disqualifications specified in Section 164. (emphasis supplied). The proviso to Section 167(1)(a) only protects Directors who incur disqualification under sub-section (2) of Section 164. A person shall not be eligible for appointment as a Director if he has not complied with sub-section (3) of Section 152, going by Section 164(1)(h). Admittedly, in the case on hand,

respondents 4 to 7 have not complied with sub-section (3) of Section 152 and are hence not eligible for appointment as Directors. The question then is whether the disqualification, which was existing even at the time of appointment of respondents 4 to 7 as Directors, will not invite any consequence by the operation of Section 167. A reading of Section 167(1)(a) may suggest that the appointment as Director precedes the disqualification. However, when read along with Section 152(3) which mandates that the person to be appointed has a DIN, the Section 167(1)(a) cannot be understood as suggesting that the disqualification occurred after becoming a Director. It can only mean that a person who is appointed as a Director without complying with Section 152(3) will vacate the office. Hence the only conclusion possible is that the Office of Director in the case of respondents 4 to 7 will stand vacated by operation of Section 167(1)(a).

56. The next issue is regarding correctness of Ext.P16 order which has been challenged. Ext.P16, though it is a very elaborate order, except in the last paragraph which is captioned as Order, there is no consideration of the issues directed to be considered. Even in the last paragraph, all that is stated is as follows;

"On the basis of the statements and other documents submitted by the parties, perusing all the relevant provisions of the Companies Act, 2013 and other facts and after examining the matter in detail, came to conclusion that the Directors of SNDP Yogam No. 995/1903 are not disqualified for the period of 2014-2015,2015-2016."

The order is bad for several reasons. This Court had directed the Inspector General of Direct Registration to consider the question of disqualification after the financial year 2014-2015. However, the finding is restricted to 2014-15 and 2015-16. None of the subsequent years have even been considered for the purpose of disqualification. The order only extracts the submissions made by the counsel appearing for the applicants and the respondents before the Inspector General of Registration. Almost the entire order has been devoted for extracting the contentions and pleadings, and the relevant provisions of the Companies Act. (Sections 152, 153, 156, 157, 164 and 167). Thereafter, the order proceeds to identify the points that need decision in the following manner;

"Disqualification of directors of SNDP Yogam under sections 164(2) &167(1)(a) of the Companies Act, 2013 as SNDP Yogam did not file financial statements/ returns for consecutive period of 3 years from 2013- 2014 to 2015-2016."

57. Thereafter it is stated that the State Government had condoned the delay in submitting the returns and authorised the Deputy Inspector General of Registration(Licensing) and Kerala Non-Trading Company Registrar as the Adjudicating Officer to adjudicate the penalty regarding filing of annual returns of the Yogam from 2006-07 to 2016-17. It is stated that immunity certificate had been issued to the Yogam as per CFSS 2020. However, the crucial question

whether the disqualification under Section 164(2) exists despite condonation of the delay in filing of returns has not even been considered. In fact, that alone was the issue that was directed to be considered. Hence, I find that Ext.P16 cannot be legally sustained since there is absolutely no consideration of the question of disqualification.

58. As I have found that respondents 4 to 7 have vacated the office of the Director in view of Section 167(1), a question arises as to what should follow. Even though the question of disqualification of other Directors have not been considered in this judgment, if the law which has been laid down is applied in their cases, necessarily, the fall out will be that they will also be disqualified. The functioning of the Yogam cannot come to a total standstill, since elections are yet to be conducted. The Statute provides an answer for such situation also in the form of Section 167(3) which says that the Government shall appoint the required number of Directors who shall hold office till Directors are appointed by the company in the general meeting. The word "Central Government" in Section 167(3) will have to be read as "State Government" in the case of the Yogam. It is hence for the Government to do the needful by appointing the required number of Directors to continue the functioning of the Yogam and to ensure that an election is conducted at the earliest and a proper Board of Directors is put in place. Section 167(2) says about punishment to persons who function as Directors even after knowing that the Office of Director held by him had become vacant. Those are aspects which the Inspector General of Registration will have to look into and pass necessary orders.

CONCLUSION:

59. In the light of the discussions and findings in the preceding paragraphs, these writ petitions are disposed of with the following directions and findings.

- (i) The order Ext.P16, produced in W.P. (C)No.8198/2024 is quashed.
- (ii) It is declared that respondents 4 to 7 are not eligible to be re-appointed as Directors in view of non-compliance with the requirements of Section 164(2) of the Companies Act, 2013.
- (iii) It is declared that no person shall be eligible to be appointed/re-appointed as Director of the SNDP Yogam unless they possess a DIN which is issued by the State Government under the Provisions of Kerala Act read with the Companies Act, 2013.
- (iv) It is declared that respondents 4 to 7 are not holding office in accordance with the requirements of the Kerala Act read with the Companies Act, 2013 since admittedly none of them have a DIN issued by the State Government.
- (v) Respondents 4 to 7 are declared to have vacated office under Section 167(1) (a) of the Companies Act, 2013 as they are disqualified under Section 164(1)(h) of the Act.

(vi) The 1st respondent in W.P.(C)No.8095 of 2024 is directed to take necessary measures contemplated under Section 167(3) for appointing required number of Directors to hold office till Directors are appointed by the Company in the general meeting.

(vii) The Inspector General of Registration (2nd respondent in W.P.(C)No.8095 of 2024) is directed to take consequential action under Section 167(2) in view of the declaration that respondents 4 to 7 have vacated office of the Director owing to disqualification under Section 164(1)(h).