
(2009) 11 KL CK 0067
In the High Court Of Kerala
Case No : O.P. No. 39428 of 2002

S.M. Thaj

APPELLANT

Vs

Registrar of Companies

RESPONDENT

Date of Decision : 02-11-2009

Acts Referred:

Companies Act, 1956 — Section 560, 560(1)

Citation : (2010) 97 SCL 192

Hon'ble Judges : C.T. Ravi Kumar, J

Bench : Single Bench

Advocate : P.B. Sahasranaman and K. Jagadeesh, for the Appellant; Prakash Puthiadam and George Joseph, for the Respondent

Judgement

C.T. Ravikumar, J.—The petitioner was the Managing Director of a company in the name and style of Major Chemicals Ltd., duly registered under the Companies Act, 1956, According to the petitioner, it was incorporated as public company on 1-6-1984 but as per the respondents it was so incorporated on 2-2-1984. The main object of the company was to manufacture Potassium Chlorate and Sodium Chlorate. The petitioner approached this Court by filing the above Writ Petition mainly with the following prayers:

(i) To issue a writ of certiorari calling for the records leading to Exhibits. P5 and P6 complaints pending before the Special Court of the Additional Chief Judicial Magistrate (Economic Offences) as ST Nos. 296 and 299 of 2000.

(ii) To issue a writ, direction or order in the nature of mandamus commanding the respondent to take necessary steps contemplated u/s 560 of the Companies Act to struck off the Major Chemical Ltd. (Reg. No. 3906 of 1984) from the register.

2. For the manufacturing of the aforesaid products, it requires sanction from the Central Government as also from the State Government. The case of the petitioner is that though it was incorporated on 1-6-1984, on account of failure

to obtain necessary licence even from the Kerala Government it could not commence its functioning. Paradoxically the petitioner has another contention that the company had intimated the respondent on 1-2-1989 that it became defunct. However, no documents were produced showing issuance of any such intimation. While so, the petitioner received Ext. P2 dated 11-6-2000. Along with Ext. P2 a copy of the Company Law Settlement Scheme, 2000 was also forwarded. It is stated therein that the scheme would be in operation for a limited period of three months from 1-6-2000 to 31-8-2000 and that it permits the defaulting companies to file all pending documents on payment of lump sum amount based on the period of delay in terms of the table given thereunder. On receipt of Ext. P2, the petitioner had submitted Ext. P3 dated 5-7-2000. In Ext. P3 it was specifically stated that the company could not commence its business and therefore requested the Registrar of Companies to strike off the company from the register u/s 560(1) of the Companies Act, 1956. The said request was repeated in Ext. P4 as well. In fact Ext. P4 is a "Nil Return" submitted by the company. In the said letter it was requested to treat the company as defunct and also to treat that letter as an annual return and further to take immediate steps to strike off the name of the company from registers u/s 560(1) of the Companies Act, 1956. Thereafter the petitioner had received copies of Exts. P5 and-P6 complaints along with summons from the Special Court of the Chief Judicial Magistrate (Economic Offences), Ernakulam directing him to appear in ST Nos. 296 and 299 of 2000. It was in the said circumstances, the petitioner approached this Court by filing the above Writ Petition.

3. I have heard learned Counsel for the petitioner Sri. P.B. Sahasranaman and the learned Counsel Addl. CGSC Sri. George Joseph.

4. The specific contention of the petitioner is that the company which was incorporated on 1-6-1984 had, in fact, never commenced its functioning and at any rate, it had become a defunct company from 1-2-1989. Stating that fact and with a request to strike off its name from the registers of the Registrar of Companies an application was filed on 1-2-1989. That apart, it is the contention of the petitioner that on receipt of Ext. P2, Ext. P3 has been submitted before the respondent. As per Ext. P3, it was specifically requested to strike its name off the registers. In Ext. P4, though it is a Nil Return, the aforesaid request was reiterated. However, the respondent who has the power to strike the name of the company off the registers did not take any action in spite of the receipt of Exts. P3 and P4. A perusal of Section 560 of the Companies Act, 1956 would show that it is well within the powers of the respondent to strike off the name of a defunct company from the registers. It virtually casts a duty on him to exercise his power u/s 560 when he was called upon to exercise that power.

5. The respondent has filed a counter-affidavit. In the counter-affidavit it has been specifically stated that the company in which the petitioner was the Managing Director had filed its annual return up to 30-5-1998. However, the company did not file any annual accounts for the years ended on 31-3-1998 and

31-3-1999 and also did not submit the documents for subsequent periods as well. In the meanwhile, the Government of India had declared, a scheme by name "Company Law Settlement Scheme, 2000" carrying provisions enabling defaulted companies to file all pending documents in terms of the conditions stipulated thereunder. It is further contended therein that proper notices were issued to the company and to its directors on their default in submitting the documents and accounts by the year 1999. Since they have failed to discharge their duty cast upon them under the Act, they are liable to be proceeded against. In short, according to respondent, the prosecution has been launched against the petitioner and the company strictly in accordance with law.

6. Though counter-affidavit has been filed on behalf of the respondent, he did not deny the receipt of Ext. P3 therein. Ext. P3 carries a specific request to strike off the name of the company from the registers by invoking the power u/s 560(1) of the Companies Act, 1956, There is no explanation in the counter-affidavit as to why Exts. P3 and P4 carrying the aforesaid request were not considered. An authority clothed with a power is bound to exercise the same when it is called upon to exercise that. The disuse of that power is equally contemptuous as abuse or misuse of power. In the absence of a denial with regard to Ext. P3, I think the petitioner is perfectly justified in asking for a direction to the respondent to consider Ext. P3 and to take appropriate action thereon in terms of Section 560(1) of the Companies Act, 1956.

7. Therefore, there will be a direction to the respondent to pass appropriate orders on Ext. P3 by invoking the power u/s 560(1) of the Companies Act, 1956. This shall be done by the respondent within a period of three months from the date of receipt of a copy of this judgment. Needless to say that after passing such an order, a copy of the same shall be communicated to the petitioner. Considering the fact that this Writ Petition has been admitted in the year 2002 and a stay of all further proceedings pending before the Additional Chief Judicial Magistrate (Economic Offences) in ST Nos. 276 and 299 of 2000 (Ext. P5 and P6) is in force till date, I find no reason for not extending the same till an order has been passed on Ext. P3.

The Original Petition is disposed of accordingly.