***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 20th May, 2016**

\+ **W.P.(C) No.1767/2014 & CM No.3685/2014 (for stay)**

DILEEP WANGOO & ANR ..... Petitioners

Through: Mr. Kayesh Begg, Adv. for Mr. Sandeep Mahapatra, Adv.

Versus

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY & ANR ..... Respondents

Through: Mr. Dipak K. Nag, Adv. for R-1.
Mr. Ashutosh Dixit, Adv. for R-2.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition, under Article 226 of the Constitution of India was filed (i) seeking declaration of the election process initiated by the respondent no.2 Indian Institute of Insurance Surveyors and Loss Assessors (IIISLA) as null and void; (ii) seeking a direction to the respondent no.2 IIISLA to follow the directions of the respondent no.1 Insurance Regulatory and Development Authority (IRDA) and grant membership to all licensees under Section 64 UM of the Insurance Act, 1938 and Insurance Regulatory and Development Authority Act, 1999 (IRDA Act); and, (iii) seeking a further direction to the respondent no.1 IRDA to ensure that the election held by the respondent no.2 IIISLA is free, fair and transparent and as per the statute.

2. The petition came up first before this Court on 18th March, 2014 when while issuing notice thereof, on the application of the petitioners for interim relief it, was ordered that the outcome of the elections shall be subject to further orders of the Court.

3. It is the case of the two petitioners namely Mr. Dileep Wangoo and Mr. Sudhir Kataria (i) that each of them are licence holders under Section 64 UM of the Insurance Act and the IRDA Act; (ii) that the petitioner no.2 Mr. Sudhir Kataria is also a member of the respondent no.2 IIISLA; (iii) the respondent no.2 IIISLA had declared undated election without following the procedure prescribed under the Act, Rules and Regulations; (iv) the respondent no.2 IIISLA has not granted membership to all licenced Surveyors & Loss Assessors (SLAs) as per direction of the respondent no.1 IRDA and without membership, the petitioner and other such persons shall not get the voting right/contesting right; (v) that the respondent no.1 IRDA has been established to regulate and develop the insurance industry as a whole; (vi) the respondent no.2 IIISLA was established in the year 2005 as a Section 25 Companies Act, 1956 Company, as a professional body for licensed SLAs with a view to professionalising survey and loss assessment in the country and is governed under Section 14(2)(f) of IRDA Act; (vii) the first elected Council took over the affairs of

respondent no.2 IIISLA in December, 2007; (viii) at the time of filing of the petition, the fourth elected Council was conducting the affairs of the respondent no.2 IIISLA; (ix) elections for 5th & 6th Council were to be declared soon by the appointed Election Officer; (x) no notification for conducting elections had been issued; (xi) the respondent no.2 IIISLA was yet to grant membership to all licencees under Insurance Act and IRDA Act; (xii) the respondent no.2 IIISLA was also violating and contravening the provisions of Surveyors Regulations, 2013; (xiii) though the respondent no.1 IRDA, vide its letter dated 3rd February, 2014 had issued some directions to the respondent no.2 IIISLA but the respondent no.2 IIISLA was not following the same also; and, (xiv) as per Clause 49(b) of the Articles of Association (AoA) of the respondent no.2 IIISLA, the Election Officer is to be appointed by the respondent no.1 IRDA and to issue notification for 90 days prior to the end of the term of the existing Council but the same had also not been issued.

4. The respondent no.1 IRDA in its counter affidavit pleaded that (i) it is a statutory regulatory authority established to perform various functions in relation to the protection of the interest of the policyholders, to regulate, promote and ensure orderly growth of the insurance industry, to regulate professional organisations connected with the insurance business including

surveyors who are an integral part of the insurance business; (ii) with the said objectives the respondent no.1 IRDA also regulates the SLAs under the Insurance Regulatory and Development Authority Surveyors Regulations, 2000 (as amended in 2013); (iii) the respondent no.1 IRDA vide circular dated 6th May, 2013 *inter alia* informed all licenced SLAs and trainees that all existing surveyors were being provided with a time limit of six months within which they could apply for membership of the respondent no.2 IIISLA; (iv) the respondent no.2 IIISLA is the only recognized professional body in India to develop and regulate the profession of surveyors and loss assessors and is akin to the Institute of Company Secretaries of India; (v) that initially the membership of IIISLA was not compulsory and any person holding a valid licence could become a member of IIISLA; (vi) that till the year 2007 over 5000 licensed surveyors had enrolled as members of IIISLA; (vii) membership of IIISLA has become compulsory w.e.f. 13th March, 2013 and as on 23rd August, 2015, IIISLA had about 8082 members; (viii) IIISLA as an independent body is governed by its own AoA and Regulations; (ix) membership of IIISLA is issued to the surveyors subject to the provisions of Clauses 2 & 3 of the AoA and other Regulations of IIISLA; (x) the surveyors have to apply for membership by submitting the applications, by paying the required fees and completing other formalities as required by IIISLA; (xi) the petitioner no.1 Mr. Dileep Wangoo is not a member of IIISLA; (xii) the elections are an internal matter of IIISLA; (xiii) the petitioner no.1 being not a member of IIISLA does not have any locus or any right to challenge the election process; (xiv) Clause 49 of the AoA of IIISLA concerns only the elections of the Council of IIISLA and there is no provision in the AoA for conduct of Chapter and Zonal elections which have to be conducted by the Council of IIISLA; (xv) IIISLA had vide notification dated 1st February, 2014 announced conduct of the Chapter and Zonal elections and the first, second and final lists of candidates were put up on 17th February, 2014, 23rd February, 2014 and 28th February, 2014 respectively; (xvi) with regard to elections to Council of IIISLA, IRDA had already initiated the process by nomination of the Election Officer vide order dated 11th August, 2014, to conduct the Council elections as provided in Clause 49 of AoA; (xvii) that the writ petition is vague; and, (xviii) the petitioner no.1 Mr. Dileep Wangoo having not taken the membership of IIISLA is not recognized as a licenced surveyor under the IRDA Act and under the Regulations aforesaid.

5. The counter affidavit of the respondent no.2 IIISLA filed through the same Advocate who had filed the counter affidavit on behalf of the respondent no.1 IRDA is identical to that of the respondent no.1 IRDA.

6. When the petition was listed on 26th August, 2015, none appeared for the respondents and the petitioners appearing in persons stated that the Advocate earlier engaged by them was no longer interested in representing them and they were unable to afford another Advocate. Mr. Sandeep Mahapatra, Advocate was requested to and agreed to *pro bono* assist the petitioners. Thereafter on 19th April, 2016 the counsel who was earlier appearing for both respondents stated that he was not receiving instructions from the respondent no.2 IIISLA and was discharged from appearing for the respondent no.2 IIISLA. Though an attempt was made to hear the matter on that date but it was felt that no purpose would be served in considering the matter *ex parte* against the respondent no.2 IIISLA. Accordingly, personal presence of the President of the respondent no.2 IIISLA was directed. The counsel for the respondent no.2 IIISLA appeared on 18th may, 2016 but upon the counsels being unable to explain the controversy in reference to the provisions of the Act, the matter was adjourned to today. Today Mr. Sandeep

Mahapatra, Advocate has not appeared and has sent his colleague and the counsels for the respondents have been heard.

7. The Insurance Act which consolidates and amends the law relating to the business of insurance in Section 64 UM (4) provides that no claim can be admitted for payment or settled by the insurer unless he has obtained a report on the loss that has occurred from a person who holds a licence issued under Section 64 UM to act as a surveyor or loss assessor.

8. Vide Section 64 UM (1), no person can act as a SLA in respect of general insurance business unless he possesses academic qualifications as may be specified by the Regulations and unless he is a member of a professional body of SLAs namely IIISLA.

9. Section 42D of the Insurance Act provides for issuance of licence to intermediary or insurance intermediary. Section 2(10B) provided that intermediary or insurance intermediary shall have the same meaning as under the IRDA Act and under Section 2(f) of the IRDA Act, intermediary includes SLAs.

10. Thus, report of SLA is essential for payment/settling a insurance claim and such report can be given only by persons who have the requisite

qualification and hold the licence under the Insurance Act and are members of the respondent no.2 IIISLA.

11. The counsel for the respondent no.2 IIISLA has explained (i) that as per Clause 21 of AoA of IIISLA, IIISLA with its Head Office at Hyderabad has four Zonal Offices situated at Kolkata, Chennai, Mumbai and New Delhi with each zonal office being administered by a Zonal Council comprising of six members; each Zonal Council from amongst its members elects Zonal Chairman, Zonal Office Chairman, Zonal Secretary and Zonal Treasurer; besides the Zonal Offices the Council of IIISLA in the interest of its members of one or more States can also have a Chapter for any one State; (ii) IIISLA is otherwise governed by Council of which eight members are to be elected in the ratio of two members from each of the four Zones and four members to be elected on all India basis; to qualify for being elected as a member of the Council, one has to first be a member of IIISLA; (iii) IIISLA also has on its Council the nominees of Central Government, IRDA and the Chairman of the General Insurance Council appointed under Section 64F of the Insurance Act; (iv) the election of the Zonal Council and the State Chapter are in the domain of the Council; (v) the Council of IIISLA on 31st January, 2014 notified the second election of the Zonal Councils and State Chapters all over India and

impugning which this petition was filed; (vi) any person holding a valid licence under Section 42D of the Insurance Act can obtain the membership of the IIISLA by complying with the requisite formalities; and, (vii) it is only the election to the Council of IIISLA which is under supervision of Election Officer appointed by IRDA and not the election to the Zonal Council and the State Chapters, which are under the supervision of the Council.

12. Needless to state, each of the aforesaid is supported by the provisions of Insurance Act, IRDA Act and the AoA of IIISLA.

13. The petitioner no.1 present in person is unable to explain that if eligible, when he applied for membership of IIISLA and when was he refused the same.

14. The counsel for the respondent no.2 IIISLA states that if the petitioner no.1 applies and complies with requisite formalities and is found eligible, he would definitely be admitted to the membership of respondent no.2 IIISLA and if still remains aggrieved, would have his remedies in law.

15. It appears that the present petition was filed under misconception and without understanding the relevant provisions and distinguishing the election to the Council and election to the Zonal Counsels and State Chapter. There is

nothing to suggest that the petitioner no.1 was denied the membership of IIISLA or that the petitioner no.2 if a member, was restrained in any manner from exercising his rights as a member of IIISLA including of contesting the election to the Council or the Zonal Council if otherwise eligible therefor.

16. The petition is thus found to be baseless and misconceived and is dismissed. However I refrain from imposing costs. The respondent no.2 IIISLA shall however remain bound by its statement.

RAJIV SAHAI ENDLAW, J

MAY 20, 2016
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(Corrected and released on 17th June, 2016).