

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

% *Date of decision: 21st December, 2018*

+ LPA 732/2018, Cav. 1209/2018 & CM Nos. 54238-54240/2018
ALL INDIA IDBI OFFICERS ASSOCIATION

..... Appellant

Through: Mr. Rajiv Bansal, Sr. Adv. with
Mr. Pranav Sachdeva and
Mr. Jatin Bhardwaj, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Tushar Mehta, SG, Ms. Maninder
Acharya, ASG, Mr. Sandeep Sethi,
Sr. Adv. with Mr. Siddharth Barua,
Mr. Sahil Sood, Mr. Harshul
Choudhary & Mr. Viplav Acharya,
Advs. for R-1 & 2
Mr. Sanyam Saxena, Adv. with
Mr. Sahil Khanna and
Mr. J.D. Baruah, Adv. for R3
Mr. Rana Mukherjee, Sr. Adv. with
Mr. Dipak K. Nag and Mr. Apurva
Upmanyau, Adv. for R-6
Mr. H.S. Parihar and Mr. Kuldeep S.
Parihar, Adv. for RBI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CAV. 1209/2018

Learned counsel for the caveator has put in appearance.

Caveat stands discharged.

CM Nos. 54239-54240/2018

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

LPA 732/2018

1. This Intra-Court appeal is filed by the All India IDBI Officers' Association challenging the order of the learned Single Judge dated December 17, 2018 whereby the learned Single Judge has dismissed the writ petition.

2. The appellant in the writ petition had challenged the action of the respondent Government of India reducing its shareholding in IDBI Ltd. below 51%. The appellant had also sought a direction that the Life Insurance Corporation of India should not acquire the controlling stake of 51% in the IDBI Ltd. The appellant had also impugned the direction granted by respondent No.6 Insurance Regulatory and Development Authority of India to the LIC to acquire more than 15% of equity share capital of IDBI Ltd.

3. Mr. Rajiv Bansal, learned Senior Counsel for the appellant by conceding the position of law that the disinvestment is the prerogative of the Government, would at the first instance submit that the dilution of the Government's shareholding in IDBI Ltd. would materially alter the conditions of service of employees and officers inasmuch as they would no longer be employees of a Government company. Hence, they would be deprived of benefits of the policies, in vogue in IDBI Ltd., which are available to them as employees of a Government company.

4. That apart, it is his submission that the decision of the respondent No.1 to reduce its stake in IDBI Ltd. is contrary to the assurance held out by the Government before the Parliament at the time of considering Industrial Development Bank (Transfer of Undertaking and Repeal) Bill, 2002. He states that this transaction is violative of Section 5(1) of the Industrial Bank (Transfer of Undertaking and Repeal) Act, 2003.

5. Further, he has challenged the decision of LIC to acquire the majority stake in IDBI Ltd being arbitrary, unreasonable and in breach of the fiduciary duty owed by the Board of LIC to various policy holders. According to him, the Board of Directors of LIC has failed to exercise due diligence and has, in effect, abdicated its powers, inasmuch as the Board has approved the decision to acquire the majority stake in IDBI Ltd. without fully examining the ramifications of the decision to make certain investment, more particularly, when IDBI Ltd. is a loss making entity and any investment to acquire a majority stake in IDBI Ltd. would result in a significant drain of resources of LIC at the cost of policy holders. The aforesaid three submissions of Mr. Bansal are similar to the ones advanced before the learned Single Judge. In support of his submissions, he has further drawn our attention to Section 3 (4)(f) of the Insurance Act, 1938 under which the Insurance Regulatory and Development Authority of India can suspend or cancel the registration of an insurer if the insurer carries on any business other than insurance business or any prescribed business.

6. On the submission No.1, the learned Single Judge held that:-

- (i) By virtue of Section 5(1) of the IDBI Repeal Act, 2003 all employees and officers of the Development Bank had an option to accept the employment with IDBI Ltd. on the same terms and conditions and with the same rights and obligations as they would have had in respect of the employment with the Development Bank if its undertaking had not vested with IDBI Ltd.
- (ii) The assurance held out to them is with regard to the terms and conditions of their service and not as to the nature of the employer – IDBI Ltd.
- (iii) There was no assurance that can be read with Section 5(1) of the IDBI Repeal Act, 2003 to the effect that IDBI Ltd. would continue to be a Government Company.
- (iv) The Section 4(1) of the IDBI Act, 1964, which required the Government of India to hold at least 51% of the total share capital in the Development Bank, stood repealed by virtue of Section 15(1) of the IDBI Repeal Act, 2003 and in any event was not applicable to IDBI Ltd., which is a company incorporated under the Companies Act, 1956.
- (v) The question whether employees have any vested right in their employer continuing to be a Government company, is no longer res integra. This was considered by the Supreme Court in *Balco Employees Union (Regd.) v. Union of India and Ors.*: (2002) 2 SCC 333. In that case, the Supreme Court had in unequivocal terms held that the employees had no such vested right.

(vi) The Supreme Court had also held that disinvestment in the shares of any government company did not result in change of the employer or the employment.

(vii) The rights and obligations of employees viz-a-viz the employer are determined by the contractual terms of employment. The employees of a company constitute the human resource of an entity which is deployed for achieving the goals and objects of the company. The equity held by the shareholders in a company are assets of the shareholders and they have full right to deal with the same. Their rights to deal with the property are not subject to the employment contract between the companies and its employees.

7. The learned Single Judge, finally did not accept the contention that the disinvestment by the Government of India of the shares in IDBI Ltd. would amount to a change in the terms and conditions of services between IDBI Ltd. and its employees so as to fall foul of Section 5(1) of the IDBI Repeal Act, 2003.

8. Insofar as the submission No.2 is concerned, the learned Single Judge has held as under:-

(i) The contention that the Government of India is estopped from selling its stake in IDBI Ltd. as it violates the assurance held out in the Parliament during the discussions relating to the Industrial Development Bank (Transfer of Undertaking and Repeal) Bill, 2002, is also unmerited. The aforesaid Bill was referred to the Standing Committee on Finance. The said Committee recommended certain amendments which were debated in the House.

(ii) During the course of discussions before the Parliament, it was proposed to include the following proviso:-

“Provided that the Central Government shall always remain the majority shareholder of the Company and at no point of time its shareholding shall fall below 51%”

(iii) The said amendment was not carried out. During the course of the debate, the then Finance Minister had informed the members of Rajya Sabha that the Government believed that the same could be done through executive action. The Finance Minister also held out an assurance that the Government would maintain IDBI Ltd. as a Development Financial Institution. It appears that the issue of Government holding was considered in the aforesaid context.

(iv) The statements made before the House almost 15 years earlier, in a debate relating to a legislative activity, would not preclude the Central Government from diluting its stake in IDBI Ltd.

(v) The legislation enacted by the Parliament after the debate did not contain the amendment that was sought to be introduced.

(vi) The statements made before the House cannot substitute or override the statute so enacted by the Parliament.

(vii) The Parliament was conscious of the import of not including the proviso as proposed.

(viii) The principles of promissory estoppel are wholly inapplicable in the aforesaid context. He did not accept that the statements made in Parliament amounted to a representation made to the employees and they had acted to their prejudice based on such representation. The statements made before the House were in the context of enacting a legislation (the IDBI Repeal Act, 2003), and the said Act has to be interpreted in conformity with the settled principles of statutory interpretation.

(ix) There is no ambiguity in the language of the IDBI Repeal Act, 2003 and there is no scope to read any provision into the said enactment which proscribes the Government from reducing or divesting its stake in IDBI Ltd.

(x) If the Government is in breach of any of its assurance to the Parliament, it would be for the members of the House to take up the matter. It, certainly, does not create any right in favour of the petitioner.

9. On the third submission, the learned Single Judge has, held as under:-

(i) The decision of LIC to invest in IDBI Ltd. is a commercial decision and no interference in these proceedings would be warranted unless it is established that the said decision is illegal or fails the Wednesbury test, that is, it is so unreasonable and arbitrary that no sensible person could possibly take such decision. The Courts would also interfere in cases where a decision making process itself is otherwise vitiated.

(ii) This Court cannot reappraise the decision of the LIC Board to invest in IDBI Ltd. on merits. This Court does not have the wherewithal or the competence to examine the merits of a commercial decision made by LIC. Given the limited scope of judicial review, the examination by this Court must be confined to the decision making process. The first time that the Board of LIC was moved to consider the aforesaid proposal was by a circulation of an agenda note dated 02.05.2018. The said note was captioned “Re: Diversification in the Area of Banking” and had sought the approval of the Board to take initiatives for taking a controlling stake in or taking over a bank. The said note did not mention IDBI Limited, but merely sought approval of the Board to take controlling stake in ‘a bank’. On 03.05.2018, the LIC’s Board approved the following resolutions:-

“RESOLVED THAT the Board accords inprinciple approval for LIC of India to take initiatives for taking controlling stake in/taking over a Bank.

RESOLVED FURTHER THAT the Chairman, LIC of India is authorized to initiate steps in the matter including obtaining necessary Government/Regulatory approvals.”

(iii) Immediately on the next day – that is, on 04.05.2018 – the Chairman of LIC addressed a letter to the Secretary Department of Financial Services, Government of India seeking clearance to go ahead in the matter. The said letter did not specifically mention

acquiring any stake in IDBI Ltd. but alluded to the speech of the Finance Minister for transformation of IDBI Limited. A plain reading of the said letter also indicates that there had been certain informal discussions between the Chairman and Officials of the Government of India. Thereafter, LIC sent communications to IRDAI seeking the approval to acquire 51% shares of IDBI Ltd. and also took the further steps in the said direction.

(iv) On 04.05.2018, the LIC's Board had only considered a proposal for acquiring majority stake in a bank. It is also clear that the proposal for acquiring majority stake in IDBI Ltd was on the anvil but was not specifically placed before the LIC's Board. He found no infirmity with such procedure, as it is common for the executives of a company to complete the ground work and finalise the details of a transaction before seeking the final approval in the Board of Directors. It is apparent that the Chairman of LIC had engaged in informal talks with the officials of the Government for acquiring stake in IDBI Ltd. It is also possible that the first overtures for LIC to acquire such stake may have been made by the Central Government (although there is no material to establish the same). However, the LIC's decision to acquire 51% stake in IDBI Ltd. cannot be faulted as the approval of LIC's Board had been obtained on various occasions as the transaction had progressed.

(v) The IRDAI had, by a letter dated 19.06.2018, also enquired whether LIC's Board had approved the proposal to acquire controlling stake in IDBI Ltd. In response to the same, LIC had explained that its Board had already approved initiations of steps for

acquiring a controlling stake in a bank and a specific proposal regarding the acquisition of controlling stake in IDBI Ltd. would be placed before LIC's Board after approval from the Government of India.

(vi) After obtaining the approval of IRDAI, a specific approval was sought by LIC's Board. On 05.07.2018, the LIC's Board granted its approval to undertaking the due diligence based on data available in public domain for acquiring the stake of 51% in IDBI Ltd. It also granted approval to appoint two Merchant bankers, one external audit firm and one rating agency for appraising the acquisition of 51% stake in IDBI Ltd. It is apparent from the above that even at that stage LIC's Board had not granted its final approval for acquiring 51% shares in IDBI Ltd.

(vii) LIC's Board once again considered the transaction on 16.07.2018. The minutes of the meeting indicate that detailed discussions were held in the Board Meeting held on 16.07.2018. Several issues were discussed including the huge NPAs of IDBI Ltd. and the strategy for LIC to manage the same. After considering the same, the LIC's Board passed the following resolutions:-

“RESOLVED THAT LIC of India may acquire controlling stake upto 51% stake in IDBI Bank.

RESOLVED THAT LIC of India to have proper structured mechanism to ensure that IDBI bank is professionally managed under the supervision of a professional Board and to have an effective oversight of the performance

of the investment in the Bank as stipulated by IRDAI and also suggested by consultants.

RESOLVED FURTHER THAT the Chairman, LIC of India is authorised to initiate process of taking approvals from GOI, RBI, SEBI, other related agencies and to initiate further process with IDBI Bank and decide related matter.”

(viii) LIC's Board had also raised several questions as to the strategy to turn around IDBI Ltd. Mr Bhushan had contended that in view of the questions raised by LIC, its resolution to grant approval was clearly without application of mind and amounted to abdication to its obligation to safeguard the interests of its stake holders. This contention was, however, found not persuasive. Undoubtedly, LIC's Board had raised questions with regard to the affairs of IDBI Ltd. and had directed preparation of an action plan to turn around IDBI Ltd. With regard to the IRDAI's decision to reduce LIC's stake over the years, LIC's Board had also directed that LIC bring out a strategy paper. However, these issues related to how LIC would proceed further after the acquisition; it does not establish that LIC's Board had any reservation as to the investment in IDBI Ltd. On the contrary, it clearly establishes that LIC's Board was conscious of the state of affairs of the IDBI Ltd. and despite the issues had resolved that LIC acquires a controlling stake in IDBI Ltd. The minutes of the meetings of the Board of LIC held on 16.07.2018 clearly indicate that the LIC's Board's decision to grant approval

was after deliberation and after the LIC's Board was fully apprised of the affairs of IDBI Ltd.

(ix) The decision of LIC's Board is a commercial decision and, therefore, it is not open for the Court to examine the merits of the said decision. Mr Bhushan had, undoubtedly, made a compelling case to establish that LIC's decision was erroneous. He had also contended that the said decision had been thrust upon LIC by the Government of India. Mr Bhushan may have been correct in his submissions; investment in IDBI Ltd. may or may not be beneficial for LIC and its stakeholders; but that is not a controversy that this Court is required to enter into. Even if Mr Bhushan's contention in this regard is accepted, this Court cannot supplant its opinion over that of the Board of LIC. This Court is also unable to accept that the decision to invest in IDBI Ltd. is so perverse and unreasonable that no sensible person would take the same. LIC believes that acquiring a bank would be of strategic importance and this Court has no reason to question the same.

(x) Once it is established that the Board of LIC was aware of the state of affairs of the IDBI Ltd. and yet had approved the investment in their commercial wisdom, no further examination is necessary. He held that LIC's Board had once again discussed the matter at a meeting held on 20.08.2018 and had taken decisions to take further steps to implement the decision to make investment in IDBI. This also establishes that the LIC's Board has been apprised from time to time as to the progress of the transaction and has consciously approved the same.

10. We find, even on the aspect of whether the decision of the Insurance Regulatory Development Authority of India to relax the provisions of Regulation 9 of the Insurance Regulatory and Development Authority of India (Investment) Regulations, 2016 is arbitrary and unreasonable, the learned Single Judge has held as under:-

(i) The plain language of Regulation 14 of the Investment Regulations is that the Board of IRDAI is duly empowered to relax the rigours of Regulation 9 of the Investment Regulations either by a general or a special order.

(ii) The petitioner also does not dispute that IRDAI is vested with such powers. However, the petitioner claims that such exercise is arbitrary, unreasonable and without application of mind. Thus, essentially, the petitioner challenges the manner in which the IRDAI has exercised such powers.

(iii) It is settled law that every power is coupled with a duty to exercise the same for the purposes for which such power is vested. Thus, the IRDAI is required to modify or relax the applications of the specified provisions of the Investment Regulations, only if the same is warranted.

(iv) The Investment Regulations are silent as to the factors to be considered by IRDAI while exercising its powers under Regulation 14 (2) or the grounds on which such power is required to be exercised. However, it's apparent that where an insurer presents a bona fide reason, which in view of IRDAI warrants departure from

the Investment Regulations, it would be incumbent upon IRDAI to grant the same.

(v) The IRDAI is also required to bear in mind the object for regulating the investment of an insurer while considering whether to relax any restrictions as specified in the Investment Regulations. The principal object in framing the Investment Regulations is to insulate the policyholders from unwarranted risks and to ensure that the insurers do not default in their commitment to the policyholders.

(vi) In the present case, the proposed investment for acquisition of majority shares in IDBI Ltd. is ₹10,000 cr. which, the LIC states, is 2.5% of yearly incremental investment and 0.4% of total investment assets. Thus, evidently, there is no reason to believe that the said investment would expose the policy holders to any unwarranted risk. The LIC has not been exempted from investing the specified percentage of its controlled funds in Government Securities (which is perceived as involving minimal risk). The proposed investment is within the limit set for investment in other than approved investment, as specified in Section 27A(2) of the Insurance Act; that is, it is 15% of the funds as specified in Section 27(1) of the Insurance Act.

(vii) The safeguards put in the Investment Regulations for ensuring that LIC does not default in its commitments and the investments made are within the parameters stipulated for protecting the interests of the policy holders, are duly complied with.

(viii) The restrictions stipulated for making investment in any one company are two-fold. The first is the extent of 'controlled funds'

that can be invested in one company (the investee company); and the second is the extent of the capital of the investee company that can be acquired. The object of the first type of restriction is to avoid excessive exposure in an investee company to minimise the risk. Admittedly, this restriction has been complied with.

(ix) The object and rationale of imposing the second restriction – that is, to ensure that an insurer does not acquire more than 15% equity stake in any one investee company – is to ensure that LIC remains a plain investor and not a promoter and the insurer does not use the funds to acquire managerial control of companies. A miniscule and relatively insignificant percentage of the controlled funds of LIC may be sufficient to acquire controlling stakes in companies having a low market capitalisation. Although, this acquisition may have little risk for the policy holders, it does have the propensity to dilute the role of LIC as a plain investor. Permitting such acquisition could also mean use of public funds for take-over of companies (hostile or otherwise). Such investments may result in LIC taking up a role where its interest as an investor conflict with its interest to further the business of an investee company.

(x) The decision of IRDAI to relax the application of Regulation 9 of the Investment Regulations by a special order must be viewed in the above perspective – it is not a relaxation of the risk profile of investments but a permission to LIC to take up controlling stake in the investee company.

11. We also find that the learned Single Judge has even examined the relevant factual context in which Insurance Regulatory Development Authority of India's permission was sought and granted and on examination of the same, the learned Single Judge in para 99, has held as under:-

“99. IRDAI had examined the proposal and there was sufficient material for IRDAI to take the decision that it did. This Court is not called upon to supplant its view over that of IRDAI or examine IRDAI's decision on merits. The scope of judicial review in these proceedings is limited. This Court does not sit in appeal on the merits of the decision taken by IRDAI. It is apparent that there was sufficient material for IRDAI to accept that the policyholders' funds were duly protected and that LIC had a sufficient reason to make a strategic investment in IDBI Ltd. Thus, IRDAI's decision cannot be called into question in these proceedings.”

12. The aforesaid conclusion of the learned Single Judge on all the three submissions made by Mr. Bansal, before us now, are, justified keeping in view the factual as well as the legal aspect of the matter. We concur with the same. Even the Supreme Court has, in catena of judgements, reiterated that in matters of policymaking, the courts would normally not interfere, until and unless it is categorically shown that the exercise of legislative judgment appears to be palpably arbitrary. A Court cannot strike down a policy decision taken by the Government merely because it feel that

another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the Court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable dispossession. (Ref. *Parisons Agrotech (P) Ltd. and Ors. v. Union of India and Ors. (2015) 9 SCC 657, IVS Gahlot v. Union of India and Ors. (2018) 8 SCJ 517,*

13. Insofar the submission of Mr. Bansal relatable to Section 3(4)(f) of the Insurance Act is concerned, the same does not impress us, in view of our conclusion above upholding the decision of the learned Single Judge on all the aspects including the Government of India reducing its stake in IDBI Ltd. and LIC in acquiring 51% stake in IDBI Ltd. and the decision of IRDAI, approving the decision. The appeal is dismissed.

CM No. 54238/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 21, 2018/ak