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

+ **W.P.(C) 6046/2017**

ASHWANI SETH

..... Petitioner

Through: Mr S.K. Ray, Mr S.P. Sausan, Mr
Amitara Poddar and Ms Nikita
Chaturvedi, Advocates.

Versus

**INSURANCE REGULATORY AND
DEVELOPMENT AUTHORITY & ORS**

..... Respondents

Through: Mr Dipak K. Nag and Mr Fahad
Imtiaz, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.02.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondents, to renew his licence as “Surveyor and Loss Assessor”. It is stated that the petitioner has been working as a Surveyor and Loss Assessor on behalf of several insurance companies, since the past twenty years. He has filed the present petition being aggrieved on account of non-renewal of his licence, which had expired on 21.07.2012.

2. The petitioner was awarded a Diploma from the Insurance Institute of India, Bombay on 12.05.1992. He was, thereafter, empanelled as a Surveyor and Loss assessor by the Insurance Regulatory and Development Authority of India (hereafter ‘IRDAI’) on 28.05.1992. The said membership/licence

was renewed from time to time.

3. On 28.11.2002, the petitioner was awarded a Diploma from the Institute of Insurance Surveyors and Adjusters.

4. The petitioner's surveyor's licence (Licence No. 36853/2007-2012) was valid till 21.07.2012. Accordingly, on 30.06.2012, the petitioner applied for the renewal of the said licence by filing the renewal application, in Form IRDAI-5-AF, with the Office of IRDAI, at Hyderabad.

5. Apparently, there were certain defects and the IRDAI required further documents for processing the said application. This was communicated to the petitioner by a letter dated 13.07.2012. According to the petitioner, he responded to the said letter by furnishing all documents as called for, under cover of his letter dated 30.07.2012. This is disputed by the respondents.

6. Since, the petitioner did not receive any response from the IRDAI, he sent various e-mails requesting that his licence be renewed. On 12.12.2014, IRDAI sent an e-mail informing the petitioner that it had not found any papers relating to his licence. Thereafter, on 15.12.2014, IRDAI sent another e-mail informing the petitioner that it had retrieved old papers and it was observed that the petitioner had not responded to the letter dated 13.07.2012 and the reminder dated 19.10.2012. The petitioner was also informed that since the petitioner's licence had expired in July, 2012, the same could not be considered for renewal.

7. The petitioner states that he immediately responded to the said e-mail and forwarded all the documents pertaining to his application. After

exchange of e-mails, on 10.05.2015, the petitioner moved a representation before the Chairman of IRDAI, requesting him to look into the matter. Thereafter, the petitioner also approached the Director (Licensing) IRDAI, in Delhi. On 29.09.2015, the petitioner received a response from IRDAI stating that since the petitioner had not responded to the letters dated 13.07.2012 and the reminder issued on 19.10.2012, his request for renewal of licence could not be considered. The said communication also referred to Regulation 7 of the IRDAI Surveyors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000 (hereafter 'the Regulations'), which mandates that a licence that is not renewed within a period of six months, from the date of expiry, ceases to exist. The petitioner was also informed that an application of such a licensee could be processed under Regulation 3 of the said Regulations and the applicant would be allotted "Licentiate level of Membership".

8. The petitioner, thereafter, filed further representation before IRDAI, and also filed applications under the Right to Information Act, 2005. Since the petitioner did not receive any satisfactory response, the petitioner has filed the present petition.

9. Mr Dipak K. Nag, learned counsel appearing on behalf of the respondent has contested the aforesaid petition, essentially, on two grounds. First, he submitted that the petition ought not to be entertained as the petitioner has an equally efficacious remedy by filing an appeal, under Section 110 of the Insurance Act, 1938. Second, he submitted that IRDAI had not received the petitioner's letter dated 30.07.2012 and, therefore, his application was not considered. He contended that the question whether the

petitioner had filed the requisite documents under the cover of the said letter is a disputed question of fact, which ought not to be examined in these proceedings.

10. Before proceeding further, it would be relevant to refer to Regulation 7(1) of the said Regulations and the same is set out below:-

“7. Renewal of licence.”-(1) An insurance surveyor and loss assessor, desiring to renew the licence granted earlier, either under these regulations or prior to the commencement of these regulations, shall apply to the Authority atleast thirty days before the expiry of the period of validity thereof, in FORM-IRDAI-5-AF (for individuals)/FORM-IRDAI-6-AF (for corporate surveyors) as given in the Schedule to these regulations, alongwith a renewal fee of two hundred rupees.

Provided that the Authority may, if it is satisfied that undue hardship would be caused otherwise, accept any application, within six months of its expiry on payment by the applicant of a penalty of seven hundred and fifty rupees.”

11. In terms of the said Regulations, the petitioner was required to apply for the renewal of the licence, at least thirty days prior to the expiry of the period of validity. Although, there was a delay of seven days, the petitioner had admittedly applied for the renewal of the licence, prior to the expiry of the period of the validity of the licence. The said application was not processed, as according to IRDAI there were certain deficiencies which were communicated to the petitioner, by a letter dated 13.07.2012. However, no order was passed rejecting the petitioner’s application. Even in these proceedings IRDAI has not filed any such order.

12. At this stage, it is relevant to refer to Regulation 8(1) and 8(2) of the aforesaid Regulations which read as under:-

“8. Procedure where licence is not to be granted or renewed, or where licence is to be suspended or cancelled.”-(1) Where an applicant does not satisfy the provisions of the Act and these regulations, the Authority may reject the application for grant of licence or renewal thereof and refund to the applicant not more than 60 per cent of the fee received:

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity to make good the application within a time frame as may be deemed appropriate by the Authority, according to the facts and circumstances of each case.

(2) The refusal shall be communicated to the applicant within thirty days of such refusal, stating the grounds of rejection.”

Admittedly, there was no order of refusal which was communicated to the petitioner as no such order was passed.

13. Section 110 of the Insurance Act provides a remedy of an appeal to any person who was aggrieved by an order of IRDAI, made under the Insurance Act or the Rules and Regulations, made thereunder. Since in this case, IRDAI had neither passed nor communicated an order of refusal, the petitioner could not exercise its remedy of filing an appeal.

14. It is further stated that the IRDAI had sent a reminder dated 19.10.2012. However, the petitioner claims that the same was sent at an incorrect address. The petitioner is a resident of 86-B, Pocket-D, Phase-3, Ashok Vihar, Delhi- 110052. However, it appears that the said reminder

does not bear any address other than Delhi -110052. The IRDAI has also not produced any evidence to show dispatch of the aforesaid reminder.

15. In the aforesaid circumstances, this Court is of the view that IRDAI ought to have considered the petitioner's case for renewal of his licence and passed a formal order. The contention that the petitioner can apply afresh would be prejudicial to the interests of the petitioner, because the same would be considered as a fresh application, and the petitioner would be accepted only as a "Licentiate Member". Consequently, he would be deprived of the credit for his past experience. According to the petitioner, he is entitled to be included as a "Fellow Member".

16. In view of the above, this Court considers it apposite to remand the matter to the IRDAI for considering the petitioner's application for renewal, on the basis of the initial application and the documents as stated to have been provided, under the cover of the letter dated 30.06.2012. In view of the submission that the said documents were not received by IRDAI, the petitioner is directed to supply the same afresh, within a period of two weeks, from today. In the event, IRDAI is of the view that any further documents are required, the petitioner may be called upon to furnish the same. If IRDAI is satisfied on the documents so provided that the licence ought to have been renewed, IRDAI shall renew the license of the petitioner, from the date it expired.

17. In the event IRDAI comes to the conclusion that the petitioner would not be entitled for renewal, it shall communicate its decision to the petitioner within a period of 30 days, thereafter. It is also clarified that the petitioner's

request would not be refused without affording him an opportunity to be heard.

18. The petition is disposed of in the aforesaid terms. The parties are left to bear their own costs.

FEBRUARY 28, 2019
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VIBHU BAKHRU, J

