

\$~A-27

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

%

Date of decision: 03.11.2020

+

W.P.(C) 6117/2020 & CM Nos.21983/2020, 24958/2020

AJAY GIRDHAR AND ANR

..... Petitioners

Through Mr.Siddharth Sharma, Adv.

versus

INSURANCE REGULATORY AND DEVELOPMENT

AUTHORITY OF INDIA AND ORS

..... Respondents

Through

Mr.A.K.Singla,

Sr.Adv.

with

Mr.Abhishek K.Gola, Adv. for R-1.

Mr.Ashish Dholakia, Mr.Ankit
Mangla and Ms.Mehak Khurana,
Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

This hearing is conducted through video conferencing.

1. This writ petition is filed seeking an appropriate writ to quash the decision dated 06.09.2020 taken by respondent No.2/election officer appointed by respondent No.1 directing fresh draw of lots of 2/3rd outgoing members of the Central Council of Indian Institute of Insurance Surveyors and Loss Assessors (*hereinafter referred to as the IIISLA*)/respondent No.3.
2. Respondent No.3/IIISLA was established under section 25 of the Companies Act, 1956; is promoted by respondent No.1 under section 14(2)(f) of the Insurance Regulatory and Development Authority of India Act, 1999; and is the governing body of the Insurance Surveyors and Loss Assessors in India. Respondent No.3/IIISLA has been promoted by

respondent No.1 for purpose of training, education and regulation of categorized surveyors who are issued licenses as per section 64 UM of the Insurance Act, 1938. The members of IISLA are categorized surveyors who are holding the license issued by Insurance Regulatory and Development Authority of India. The membership is restricted only to such individuals who are holding valid license as stated above and also carrying practice as Independent Insurance Surveyors and Loss Assessors. There are almost 8500 enrolled members from all over India.

3. It is stated that respondent No.2 is the election officer appointed by respondent No.1 by order dated 13.08.2020 to conduct the 12th Council Elections for 1/3rd vacancies arising out of retirement of members.

4. Respondent No.3 has framed its Articles of Association, which provides for the norms for membership, the qualifications and disabilities of the members, procedure for appointment and removal of the members, etc. The administration of the company is run by the Council of Institute. It consists of not less three members or more than 15 members. Twelve members of the Council are to be elected from across India. Every member desiring to be elected as member of council is required to be a member of the Institute. Apart from the aforesaid 12 members of the Council, there are two nominee directors appointed one each by the Central Government and IRDAI. The Chairman of General Insurance Council is also an Ex.Officio member. Respondent No.3 has framed regulations under clause 69 of Articles of Association under direction of respondent No.1 for conducting elections. The concerned regulation is the Regulation and Procedure for Code of Elections framed in 2008.

5. It is the case of the petitioners that they alongwith 10 other members

of IIISLA were appointed to the Central Council in the 11th Council Elections. Subsequently, 12 elected members of the Council including the petitioners were invited and were appointed as Additional Directors. Their appointments were confirmed in the 11th Annual General Meeting held on 03.12.2019.

6. The controversy relates to Rule 3 of the Indian Institute of Insurance Surveyors and Loss Assessors, Regulation and Procedure for conducting the election to the Council. Rule 3 of IIISLA, Regulations and Procedure reads as follows:

“(a) As directed by IRDA, the Election Officer shall determine by lot 2/3rd of the members to be retired out of the Council excluding nominated members. The members so elected by the Election Officer, within a period of 3 days from the date of lot, will decide 50% i.e. 4 members who will retire this year.

(b) The names of the 4 person so elected will be communicated to the Election Officer by the person so authorized by the Council.

(c) The Election Officer will accordingly incorporate their names and their Constituencies in the Notification to be issued for the Elections to the Second Council.

(d) Every member shall be entitled to contest the elections or and have a right to vote.

(e) The Election Officer, in consultation with the Council, shall notify the elections to the Council for filling up the vacancies so created by the retirement of 1/3rd members in a National Newspaper containing such details of the particulars mentioned in Article 49(b), as are necessary and relevant for the conduct of elections. The same shall also be notified through the Website of the IRDA.

xxxx”

7. Hence, the election officer has to determine by lot 2/3rd of the members to be retired out of the Council excluding nominated members. The members so selected by the election officer within a period of 3 days from the date of lot will decide 50%, i.e. four members who will retire this year. On 26.08.2020, the returning officer/respondent No.2 determined the lot of eight(2/3rd) members to be retired out of the Council. Respondent No.2 also requested the said eight members to decide 50%, i.e. four members who will retire this year.

8. It is the case of the parties that the four members who were to retire this year were also selected. These four members who are to retire were selected based on the suggestions/preference of the majority members of the Council that were sent to respondent No.2.

9. The grievance of the petitioner is that instead of finalising the aforesaid names of retiring members as per list sent to him and to proceed with elections respondent No.2 has done a complete *volte face* and issued a communication on 06.09.2020 stating that inadvertently the name of Mr.Elango, a deceased Council member was excluded during the draw of lots which necessitates a redraw/fresh draw of lots for determining the 2/3rd members as per the Regulations by ignoring the earlier draw of lots.

10. It is the case of the petitioners that respondent No.2 has acted in a completely arbitrary manner and in violation of the Regulations. It is pleaded that respondent No.2 is dissatisfied with the names forwarded by president of IIISLA as retiring 1/3rd members and seeks to conduct a fresh draw of lots in order to procure a more favourable outcome. Hence, the present writ petition.

11. It is in those backgrounds, this court on 08.09.2020 passed the following orders:

“W.P.(C) 6117/2020 and CM No. 21983/2020

1. This writ petition is filed by the petitioner seeking an appropriate direction to quash the order/decision dated 06.09.2020 taken by respondent No. 2-the Election Officer appointed by respondent No. 1 directing fresh draw of lots of the 2/3rd outgoing members of the Central Council of The Institute of Insurance Surveyors and Loss Assessors. Other connected reliefs are also sought.

2. Reliance is placed on the regulations and procedure for the conduct of elections to the Council, namely, The Indian Institute of Insurance Surveyors and Loss Assessors under Clause 3(a) & 3(b). It is pleaded that the aforesaid procedure was completed and a draw of lot took place on 26.08.2020 where the eight members were selected in terms of Clause 3(a) of the Rules. The said members together nominated the four members who are to retire as is apparent from communication dated 28.08.2020. It is pleaded that now on the pretext that the draw of lots is erroneous on account of not having included the name of one of the deceased members of the Council, respondent No.2-the Election Officer on his own without any complaint is seeking to redo the draw. It is pleaded that this is wholly contrary to the stated procedure as per the stated rules and regulations.

3. The petitioner has made out a prima facie case.

4. Issue notice.

5. Learned counsel for respondent No. 3 accepts notice.

6. Notice be issued to respondents No. 1 and 2, returnable for 25.09.2020.

7. In the meantime, respondent No. 2 will maintain status quo regarding the entire election process/retirement of the members till the next date of hearing. Learned counsel for the petitioner is permitted to communicate on his letter head, the interim order passed by this court today to respondent No. 2.”

12. Learned senior counsel appearing for the applicant/respondent No.1 states that presently as far as petitioner No.1 is concerned, in the fresh draw of lot that took place on 08.09.2020 because the interim order was communicated late, the name of petitioner No.1 is not there at all. Regarding petitioner No.2, as per the draw of lot that took place earlier in August, petitioner No.2 was in the list of eight members so selected, and he was to as per the decision taken by eight members to retire in the next year. His name was also figures in the new list. As of now the eight members so selected in the draw held on 08.09.2020 have so far not nominated the four persons who are to retire this year.

13. Clearly, as far as petitioner No.1 is concerned, there is no prejudice being caused to him by the action taken by the election officer/respondent No.2 on 08.09.2020. In my opinion, similar is the case regarding petitioner No.2 as the fresh elections are now to take place amongst the eight members so picked up in the draw on 08.09.2020. Presently he is not worse off then he was in the earlier draw.

14. That apart, in my opinion, the draw was to take place amongst the twelve members of the Council and 2/3rd members were to be selected in the draw. One of the members had deceased. Accordingly, respondent No.2 now on account of the fact that the death of one of the Council members had been ignored in the earlier draw of lot, seeks to make appropriate modifications. This is obvious from a perusal of the impugned communication dated 06.09.2020, relevant portion of which reads as follows:

“Considering that the full council was elected in the year 2019.
It is necessary to determine which 4 seats out of 12 will fall

vacant in the first year, which 4 seats in the second year and which 4 seats in the third year respectively irrespective of whether any seat is presently vacant or not. Accordingly, the said vacancy created by the demise of one member shall also be made part of the process being adopted for drawing of lots as only by that process will the tenure of the position vacated by the deceased member will be known. In effect, all the 12 positions should have formed part of the procedure for drawing of lots as per Regulations 3 (1) of the RPCEC Regulations.

But inadvertently the name of Mr.Elango was not included while drawing the lot and which necessitated now to redraw the lot of eight persons again ignoring the earlier draw. Hence, a meeting to draw afresh, the list of Eight members to retire is arranged now. The inconvenience caused to all members is regretted. The venue, date and time of the Draw will be as below. Considering the COVID19 situation I hope that most of you will be attending the meeting through Video conferencing. Please conform either your physical presence for the meeting or through VC so that necessary arrangements can be done.”

Clearly, the above steps taken by respondent No.2 are reasonable and cannot be said to be arbitrary.

15. Accordingly, in my opinion, there is no infirmity in the steps taken by respondent No.2 to warrant any interference in the election process.

16. In this context reference may be had to the judgment of the Supreme Court in the case of *Supreme Court Bar Association and Ors. vs. B. D. Kaushik (2011) 13 SCC 774*. The Supreme Court held as follows:

“43. It hardly needs to be emphasised that in any body governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the governing body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed

thereunder. The contention of the respondents that the amendment to the Rule whereunder the right to be eligible to contest for any post for the Association or the eligibility to cast the vote at the election, takes away the right completely, is misconceived since by the amendment the right is not taken away but is preserved subject to certain restrictions on its exercise and this could always be done.

XXXXX

60. Further, the appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed, should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by way of granting injunction. The argument advanced by the appellants that election process having started, the injunction should not be granted is dealt with by the learned Judge by holding that in the present case the plaintiffs have not prayed for injunction against the election process.

61. This Court has no doubt at all that the injunction granted by the learned Judge has propensity to intervene and interfere with the election process which had already started. Apart from the prayers claimed in the applications filed under Order 39 Rules 1 and 2 read with Section 151 CPC the Court could not have ignored the effect of granting an injunction. If the injunction granted by the learned Judge had not been stayed by this Court, the office-bearers of SCBA would have been required to prepare a new voters' list as if unamended Rule 18 was in operation and the exercise undertaken by them for preparing voters' list in the light of the amended Rule 18 would have been of no consequence. Thus the injunction claimed by the respondent-plaintiffs which had very wide repercussions on the elections, which were to be held in the year 2003, should not have been granted by the learned Judge.”

Clearly a court should not normally stall the process of formation of the Governing Body.

17. Further it is manifest that except for a bald allegation that respondent No.2/the Election Officer have a vested interest in selecting somebody else there is no material available on record to show that respondent No.2 has not acted in a bona fide manner and as per rules and regulations. There are no reasons for this court to interfere in the completion of the election process.

18. Accordingly, the present petition is dismissed. All pending applications, if any, are also dismissed.

JAYANT NATH, J.

NOVEMBER 3, 2020/v
corrected and released on 12.11.2020.



सत्यमेव जयते