

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 04, 2021

+ W.P.(C) 5635/2021, CM Nos. 17562/2021, 18326/2021

RAVI

..... Petitioner

Through: Mr. Prashant Chandra and
Mr.Arvind Varma, Sr. Advs.
with Ms.Meha Rashmi, Mr.
Gantavya, Mr.Ashish Virmani
and Ms. Smridhi, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Chetan Sharma, ASG,
Mr.Ravi Prakash, CGSC with
Mr.Vinay Yadav, Mr.Akshay
Gadeock and Mr.Sahaj Garg,
Advs. for UOI.

Mr.Gopal Jain, Sr. Adv. with
Mr.Ramesh Babu, Ms.Manisha
Singh, Ms.Nisha Sharma and
Ms.Sanya Panjwani, Advs, for
R-2/BBB.

Mr.Varun Aggarwal, Adv. for
R-3 to R-12.

Mr.Bhupesh Kumar Chandna,
Adv. for R-6 & 9

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

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:-

“In view of the above grounds, it is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to issue an appropriate writ, order and/or direction;

A. issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the circulars dated 13.12.2018; 06.11.2019; and 09.06.2020 issued by the Respondent No. 13 (Annexures P-13, P-14 and P-15), the letter dated 06.11.2019 issued by the Respondent No.1 (Annexure P – 16) and the entire process of selection for appointment to the post of General Manager and Director, Public Sector General Insurance Companies undertaken by the Respondents in July/August 2020 and May 2021 (being de hors the law) and the consequent recommendations dated 11.05.2021 and 10.08.2020 made by the Respondent No. 2 (Annexures P-1 and P-2);

B. Issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the orders of appointment of Respondents No. 9 - 12 to the post of

General Manager & Director in Public Sector General Insurance Companies, issued by the Respondent No.1 in violation of principle of seniority and principles of law, pursuant to the impugned recommendation dated 10.08.2020 passed by the Respondent No. 2, after summoning the same in original;

C. issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the Respondents No. 1 to treat the Petitioner as having been appointed as General Manager & Director of any of 77 the PSGICs (preferably in the National Insurance Company Limited) with effect from August, 2020 and provide all consequential benefits arising therefrom;

D. issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the Respondents not to give effect to the impugned circulars dated 13.12.2018; 06.11.2019; and 09.06.2020 issued by the Respondent No.13; the letter dated 06.11.2019 issued by the Respondent No.1 and impugned recommendations dated 11.05.2021 and 10.08.2020 and to restrain the Respondents No. 9 to 12 from working as “General Manager and Director” of PSGICs (Annexure P-1 and P-2);

E. issue any other appropriate writ, order or direction which this Hon’ble Court may deem just and necessary in the circumstances of the case may also be passed; and

F. to allow the writ petition with costs.”

2. The petitioner in the instant petition joined National Insurance Company Limited (“NICL”, for short) in 1984 on the post of Assistant Administrative Officer and from 2018, is holding the post of General Manager at the said public sector insurance company. According to the petitioner, as General Manager of NICL, he is eligible for appointment to the promotional post of General Manager and Director in Public Sector General Insurance Companies (“PSICs”, for short).

3. The petition has been filed assailing the selections to the posts of General Manager and Director of PSICs made by respondent No. 2, Banks Board Bureau (“BBB”, for short), inter alia, on the ground that it is not a body competent to make the impugned selections. According to petitioner, BBB is a banking body established under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (“Act of 1980”, hereinafter), a special statute governing nationalised public sector banks listed in Schedule I thereof. The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980 (Scheme of 1980) was formulated by the Central Government in exercise of its powers under section 9 of the Act of 1980, and was amended by the Nationalised Banks (Management and Miscellaneous Provisions) Amendment Scheme, 2016 (“Scheme of 2016”, hereinafter) with the approval of the Parliament to constitute the BBB for overseeing appointments on the Board of Directors of Public Sector Banks pursuant to the Report and Recommendations of

Reserve Bank of India's ("RBI", for short) P.J. Nayak Committee to Review Governance of Boards of Banks in India.

4. It is averred by the petitioner that contrary to the express provisions of the Scheme of 2016 and *de hors* the law, the area of operation of respondent No. 2/BBB was enlarged, vide circulars of the Appointments Committee of the Cabinet ("ACC", for short and respondent no. 13 herein) dated December 13, 2018, November 06, 2019 and June 09, 2020. Pursuant thereto, the respondent No 2/BBB undertook selections to the post of General Manager and Director in PSICs in August 2020 and May 2021 in excess of its jurisdiction, powers and functions. It is stated that in undertaking the impugned selections, the respondent no. 2/BBB illegally amended and modified its composition and functions set out under Clauses 7A, 7B and 7C of the Scheme of 2016.

5. It is contended that in undertaking the impugned selections, regulations issued under the provisions of the Insurance Act, 1938, Insurance Regulatory and Development Authority ("IRDA", for short) Act, 1999, and General Insurance Business (Nationalisation) Act, 1972 ("GIBNA, 1972", for short) which mandate that appointment to the post of General Manager & Director, PSICs has to be undertaken strictly in accordance with seniority and that the senior-most General Manager is to be appointed to the Board of Directors as and when vacancies arise, provided he has at least one year of residual service on the date of the vacancy, have been violated by the respondents. The petitioner, despite being one of the most senior and eligible

candidates, has been superseded and persons much junior to him have been recommended for appointment.

6. It is further stated that under Section 17A of GIBNA, 1972, the Central Government may make schemes to regulate the terms and conditions of service of officers, which is to be placed before the Parliament. However, without taking recourse to and bypassing the provisions of Section 17A, the respondents have sought to amend the entire promotion and appointment process to the Board of Directors of PSICs through Circulars issued by the ACC, which is neither a legislative nor a rule making body. It is stated that it is settled law that where a power is given to do a certain thing in a certain manner, the thing must be done in that manner or not at all. It is further stated that therefore, the impugned Circulars, having been issued without authority of law and contrary to explicit statutory provisions, are liable to be quashed and set aside.

7. That apart, it is stated that the respondent No. 13/ACC has no role in the appointment of an employee of PSICs on the Board of Directors of the PSICs, as these appointments are made ex officio and are governed by the provisions of Insurance Act, 1938, Companies Act 2013 and the Charter Documents of the PSICs, and are subject to the final authority of the IRDA alone. It is also submitted that respondent No. 13/ACC was never involved in the process of appointment to the post in question, until it illegally usurped powers in August 2020.

8. It is further stated that insurance and banking sectors are two separate and distinct sectors, and are governed by separate

Central Legislations. The Act of 1980 is a special statute governing Public Sector Banks, and Section 9 of the said Act empowers the Central Government to make schemes for carrying out the provisions of the Act, in consultation with the RBI. It is in exercise of this power that the Scheme of 2016 was formulated and the BBB was created for improving the governance of Public Sector Banks.

9. It is further contended that Clause 7C of the Scheme of 2016 confines the functions of the respondent No. 2/BBB to matters related to the selection and appointment of Board of Directors in Public Sector Banks, and it has no role whatsoever in the selection and appointment of Directors in PSICs. It is for this reason that under Clause 7A of the Scheme of 2016, the respondent No. 2 consists of specialised experts from the banking sector, but none from the insurance sector. Clauses 7A and 7C of the Scheme of 2016 read as under:-

“7A. Creation of Banks Board Bureau.-

(1) The Banks Board Bureau (hereafter in this notification referred to as Bureau) shall be established by the Central Government for the purpose of evolving a sound managerial policy for the nationalized banks.

(2) The Board of Directors of the Bureau shall consist of seven members with one Chairman and six members as mentioned in the Table given below.

TABLE

Serial number	Name/Designation	Designation
1.	Part time Chairman	Chairman
2.	Secretary, Department of Financial Services	ex-officio member
3.	Secretary, Department of Public Enterprises	ex-officio member
4.	Deputy Governor, Reserve Bank of India	ex-officio member
5.	Part time Member	Member
6.	Part time Member	Member
7.	Part time Member	Member

(3) (i) *The Chairman shall be a retired official from the banking sector or regulatory institutions or a business person of repute with sufficient knowledge of the financial sector, or a person with at least twenty five years of experience in public administration with experience of banking and financial sectors.*

(ii) *Out of three part time members of the Board, at least two shall be ex-public or private sector bankers and the rest shall be academicians, former regulators, and business people, former administrators with experience in business management, information technology, human resource, finance and accounting.*

(4) *All the members except the official members as indicated in sub-clause (3) including Chairman of the Bureau shall be nominated by the Central Government on part time basis and shall be paid a sitting fee of fifty thousand rupee per sitting or as determined by Central Government from time to time.*

(5) *The Bureau shall appoint a person to act as Secretary of the Bureau Secretariat and the Secretariat shall have its office in Mumbai or such other place as the Central Government may, by notification specify.*

(6) The Secretary and staff of the Bureau shall be appointed as per notified recruitment rules by the Department in consultation with the Reserve Bank of India.

(7) The general superintendence, direction and management of the affairs of the Banks Board Bureau shall vest in the Secretary (BBB), who shall exercise all powers and do all acts and things which may be exercised or done by the Bureau in accordance with the Scheme.

7C Functions

The Bureau shall perform the following functions, namely:-

- (a) to recommend the selection and appointment of Board of Directors in Nationalised Banks (Whole Time Directors and Chairman);*
- (b) to advise the Central Government on matters relating to appointments, confirmation or extension of tenure and termination of services of the Directors of nationalised banks;*
- (c) to advise the Central Government on the desired management structure of nationalised banks, at the level of Board of Directors and senior management;*
- (d) to advise the Central Government on a suitable performance appraisal system for nationalised banks;*
- (e) to build a data bank containing data relating to the performance of nationalised banks and its officers;*

(f) to advise the Central Government on the formulation and enforcement of a code of conduct and ethics for managerial personnel in nationalised banks;
(g) to advise the Central Government on evolving suitable training and development programs for managerial personnel in nationalised banks.
(h) to help the banks in terms of developing business strategies and capital raising plan and the like; and
(i) any other work assigned by the Government in consultation with Reserve Bank of India.”

10. It is stated that it is evident from the above statutory provisions that the respondent No.2/BBB is a body constituted solely for the banking sector under the Act of 1980 with overall control of the RBI and that the respondent No.2/BBB had no jurisdiction or control over PSICs. It is further stated that the entire selection process was contrary to specific provisions of the statute and hence is void ab initio.

11. It is also stated that in undertaking the impugned selections, the respondents entirely overlooked the existing regulations in relation to appointment to the Board of Directors in PSICs, which mandate that appointments are to be made strictly on the basis of seniority, and the senior-most General Manager is to be appointed as General Manager & Director as and when vacancies arise. This system of appointment has been followed ever since the petitioner joined service in 1984, and is codified under the Circular No. F. No. A-15011/02/2008 – Ins. III dated

February 16, 2012 issued by the respondent No.1 which reads as under:-

“Every time a vacancy of WTD arises due to any exit, by whatever reason, the next senior most GM, in the combined seniority list, be posted to the company where the vacancy has arisen. This may necessitate transfer of GMs from one company to other. However, it may be ensured that the person who has been transferred is left with at least one year of residual service on the date of vacancy in the other company. In case, the officer, who has more than a year of service left, is unwilling to move to the other company as WTD due to his locational preference or any other such reason, he foregoes the benefit available to WTD, in terms of Para 1 above. For this purpose, the Committee of CMDs prescribed under Para 13 of the Promotion Policy of Officers will make a suitable recommendation to the Government as per the existing practice and procedure.”

12. It is also stated that the provisions of the impugned Circulars are contrary to the provisions of the Articles of Association of PSICs, which are binding in nature and cannot be deviated from or amended, without the prior consent of the IRDA as set out under the Companies Act, 2013 and Section 34A of the Insurance Act, 1938. Hence, any Board of Directors constituted pursuant to the impugned selection process in violation of the provisions of the Articles would be without authority of law and

therefore void. Section 34A of the Insurance Act, 1938 reads as under:-

“Section 34A. Amendment of provisions relating to appointments of managing directors, etc., to be subject to previous approval of the I[Authority].-

(1) In the case of an insurer,-

(a) no amendment made after the commencement of the Insurance (Amendment) Act, 1968, of any provision relating to the appointment, reappointment, termination of appointment or remuneration of a managing or whole-time director, or of a manager or a chief executive officer, by whatever name called, whether that provision be contained in the insurer’s memorandum or articles of association, or in an agreement entered into by him, or in any resolution passed by the insurer in general meeting or by his Board of directors shall have effect unless approved by the I[Authority];”

13. It is stated that every Scheme made under Section 9 of the Act of 1980 is a Legislative Scheme and cannot be overridden by Executive Instructions.

14. It is further stated that vide the impugned selections conducted in August, 2020 nine vacancies which arose on the Board of Directors in different PSICs between November 2018 to July 2020 were sought to be filled and despite being eligible and meritorious and at rank 13 in the combined seniority list, the petitioner was superseded and out of the nine vacancies at least

three vacancies were filled by persons junior to him in seniority as well as merit, in a premeditated manner, i.e. by respondent nos. 9, 10 and 11 who were at ranks 14, 18, 19 of the combined seniority list, respectively.

15. Similarly, vide the impugned selections undertaken in May, 2021, five vacancies which arose on the Board of Directors in different PSICs between December 31, 2020 and April 30, 2021 were sought to be filled and despite being the third senior-most candidate in the combined seniority list with excellent service record and fulfilling all the qualifications and attributes/virtues as laid down in the Circular dated February 13, 2012 and the Promotion Policy of Officers, the petitioner has not been recommended for promotion and appointment. Instead, the vacancies have been filled by persons junior to him in seniority and merit. It is the case of the petitioner that while he is at rank 3 of the combined seniority list, he has been illegally superseded by the respondent Nos. 4, 5, 6, 7 and 8 who were all junior to him and are at ranks 9, 8, 7, 6 and 4 respectively.

16. It is stated that in the impugned recommendation dated May 11, 2021, the petitioner has been kept in the Reserve List for the post of General Manager & Director in Oriental Insurance Co. Ltd. ('OICL', for short) which itself evidences that he does not have any disqualification, and is perfectly eligible and fully qualified for appointment.

17. To safeguard the inter-se seniority of the General Managers, the Committee of Chairman and Managing Directors ("Committee of CMDs", for short) of the PSICs, constituted

under the Promotion Policy for Officers, is required to recommend transfer of General Managers from one PSIC to another at the time of appointment on the Board of Directors. For this purpose, the Committee of CMDs makes its final recommendation to the Central Government, on the basis whereof the Central Government issues the requisite transfer orders in exercise of its authority under Section 22 of the GIBNA, 1972. It is averred by the petitioner that however, the procedure prescribed in the Promotion Policy for Officers has entirely been overlooked and the functions exclusively vested in the Committee of CMDs as prescribed in the Circular dated February 16, 2012 and the Promotion Policy were conspicuously withdrawn without authority of law in an illegal and impermissible manner, and entrusted to the respondent No. 2. None of the CMDs were members of the Board which carried out the impugned selections and out of the total six members who sat on the respondent No. 2 in May, 2021, only one member was from the general insurance sector, and the remaining members had no knowledge or expertise in relation to general insurance.

18. It is also stated that the petitioner's Annual Confidential Report ("ACR", for short) of the year 2020-2021 was not considered while undertaking the impugned selection process of May 2021.

19. It is further stated that before the selection, contrary to established procedure and practice laid down, vacancies were neither announced nor published on the web-portal of any of the respondents before the expiry of tenure of the incumbent. The

zone of consideration, criteria and weightage for selection, process of selection, details of other candidates in the foray etc. were not circulated to the eligible candidate, and no HR agency was engaged for the process to carry out the necessary spade work as stipulated.

20. It is also the averment of the petitioner that the respondents altered the eligibility criteria for appointment to the post in question in violation of the statutory scheme, by considering and recommending for appointment, officers of Agricultural Insurance Company India Limited (“AICIL”, for short), who were ineligible, vitiating the entire procedure of selection. It is submitted that AICIL is a newly formed organisation and there is no batch parity between the employees of AICIL and other PSICs. AICIL does not participate in the common promotion exercise conducted for PSICs, and the Combined Seniority List followed for promotion of officers of PSICs does not include the officers of AICIL. General Managers of PSICs have never been appointed to vacancies arising on the Board of AICIL, and vice versa. AICIL is not governed by the provisions of GIBNA, 1972 and as a consequence thereto respondent no. 1 has no power to transfer any officer of PSICs to AICIL and vice versa. Despite being well aware of these anomalies, respondent nos.1, 2 and 13, included AICIL officers in the zone of consideration and even appointed one such officer, respondent no. 12, on the post in question, contrary to the standard procedure under law, without a Combined Seniority List being circulated.

21. Counter affidavit has been filed by respondent no. 2/BBB wherein it is stated that the petitioner is estopped from challenging the selection process after duly participating in the same. It is the stand of respondent no. 2/BBB that the petitioner participated without protest or demur not only in the current selection process of May 2021, but also in the selection process conducted in August, 2020, and therefore it is not open to him to challenge the jurisdiction, competency or procedure followed therein.

22. It is further stated that the number of vacancies filled in the month of August 2020 were nine, whereas as per the Combined Seniority List of General Managers maintained by General Insurance Public Sector Association ("GIPSA", for short), as on April 01, 2020 the name of the petitioner reflected at serial no. 21. Therefore, even if the selection was to be conducted solely on the basis of seniority, there were 20 candidates who were ranked above the petitioner.

23. It is stated that the President of India in exercise of his powers under Article 77 of the Constitution of India made rules titled *The Government of India (Transaction of Business) Rules, 1961* ("Transaction of Business Rules", for short) for convenient transaction of the business of the Government of India. The first Schedule to the Transaction of Business Rules categorically provides for the functioning of the ACC. On this mandate, the ACC vide its Office Order dated December 13, 2018 approved a proposal of the Department of Financial Services ("DFS", for short and respondent no. 1 herein) and assigned the process for

appointment of Whole-Time Directors of PSICs to the BBB. The ACC also directed to modify, with prior approval of the Competent Authority, the existing guidelines as prescribed in Office Order dated August 24, 2015 to expand the mandate of the BBB with respect to the PSICs. Accordingly, the ACC and DFS approved the revision of the guidelines and the same was issued vide Office Order dated November 06, 2019 by the ACC. The revised selection methodology as applicable for PSICs is reproduced under:

“Selection methodology to be adopted by the BBB:-

The revised system of interaction adopted for the year 2014-15 onwards would continue. The HR agency would be confined to only doing spadework about applicants and would not be involved in short listing of candidates. BBB would follow the process of three separate interviews for each candidate. Three panels for interaction with each candidate would consist of (i) Secretary (DFS) + One Expert Member (ii) Secretary, GOI + one Expert Member and (iii) DG, RBI + one Expert Member. In case of PSICs, DG, RBI would be replaced with chairman, IRDAI and expert members from banking sector would be replaced with expert members from insurance sector.

The methodology for awarding marks would be same as has been devised by RBI and which is being presently adopted by the Appointments Board. The BBB should meet after the interviews are over and

finalize the results based on the outcome of the 3 interview panels. Based on its discussions, BBB's recommendations regarding the ranking along with comments, if any, and the interview marks shall be sent to the Government of India for final approval.

Apart from that, BBB will also develop an appropriate methodology to enable the search and selection of High calibre part-time Chairpersons and Whole Time Directors for appointment on the Board of Directors of Public Sector Banks, Financial Institutions and Whole Time Directors on the Board of PSICs”

24. Accordingly, the BBB setup a separate Board for conducting selection in respect of PSICs and since then, has been making recommendations for Whole-Time Directors of mandated Insurance Companies in accordance with the methodology mentioned. Vide Office Order dated June 09, 2020 issued by the ACC, the BBB was directed to recommend candidates for the position of General Manager and Directors of PSICs. The said order also provided the eligibility conditions for the candidates, the zone of consideration, criteria for selections, the selection board etc.

25. It is stated that the BBB, by virtue of the aforesaid Office Orders issued by the DFS and the ACC, not only has jurisdiction to make recommendations to the position of General Manager and Directors in PSICs but is also competent inasmuch as a separate board consisting of the Chairman of the IRDA and

experts from the insurance sector has been formed for the said purpose.

26. That apart, it is submitted in the counter affidavit that the selection process/ mechanism, as devised by the ACC and DFS for recommendation and selection of General Manager and Directors in PSICs, aims to select most eligible and suitable candidates for the post while following a five-fold criteria in interview and giving 50% weightage to the APAR/ ACR scores for the last five years. The criteria for selection to the posts of General Manager and Directors of PSICs is as follows:

“Weightage in the ratio of 50:50 is to be awarded for interview and APAR/ACR scores for the last five years (maximum 10 marks for each year) in the selection process. Weightage will be assigned to various parameters by the Banks Board Bureau during interview as under:

- i. 35% to technical knowledge*
- ii. 20% to Managerial Capabilities*
- iii. 15% to Diversity of Experience*
- iv. 15% to General & Economic Awareness and*
- v. 15% to overall Personality*

The interview procedure and methodology for award of marks to be followed by Banks Board Bureau shall be the same as that in case of CMDs of LIC, PSGICs and Public Sector Banks. Based on its discussions, Banks Board Bureau's recommendations regarding the ranking along with comments, if any, and the

interview marks shall be sent to the Government of India for final approval.”

27. Interviews were conducted by the BBB constituted to conduct the selection and all candidates were called for the interview. It is also stated that, since the position of Chairman, IRDA was vacant at the time of selection process, the Secretary, Department of Personnel and Training was made the ex-officio Member in his place.

28. It is submitted that as per the above selection process, merit is the criteria for the selection, and as such no officer has a legal right to be selected for promotion, except that he has only a right to be considered along with others and a selection of junior in service in preference to his senior does not amount to supersession.

29. It is also stated that the required spadework in the instant case was done by the Secretariat staff as appointment of HR agency is not a mandatory requirement. It is further submitted that a common merit list was prepared strictly based on the order of merit and recommendations were made for the positions and for reserve list. It is further submitted that the recommendations and reserve list were published on the official twitter handle and website within an hour of finalisation of the result.

30. A rejoinder has been filed by the petitioner, wherein it is stated that the participation of the petitioner in the impugned selections would not mean that a gross illegality would stand condoned and perpetuated by invoking the principle of estoppel.

31. It is further alleged in the rejoinder that none of the candidates, including the petitioner were informed of the manner of selections including the vacancy, criteria, weightage and process thereof prior to the selection process.

32. It is also stated by the petitioner that it is maliciously and mischievously stated by the respondent no.2/BBB that the petitioner was at serial no. 21 in the seniority list, whereas it is a matter of record that the petitioner was at serial no. 13, as evidenced by the Combined Seniority List annexed to the writ petition.

33. It is further stated that the Transaction of Business Rules relied upon by the respondent No.2/BBB have been formulated in exercise of the Executive Power of the Union under Article 77 (3) (“Conduct of Business of Government of India”) of the Constitution of India, contained in Part V (“The Union”), Chapter I (“The Executive”). These Rules are for the more convenient transaction of the pre-defined business of the Government, to carry out administration of the country in accordance with the powers conferred on it by law. Simply put, the Rules of Business are procedural and do not envisage conferment of legislative powers upon the executive. As a consultative body constituted under the Transaction of Business Rules, the ACC is strictly bound to exercise its powers in accordance with the Constitution and statutes, and cannot claim sovereignty or supremacy over other organs. Its role is limited to approving the selections already made under the extant service rules, and it does not have

the power to rewrite the rules itself, or abdicate upon itself the power to make appointments on higher posts.

34. It is further stated that under the Transaction of Business Rules, Schedule 1 (i), power of the ACC to take decisions is restricted to board level appointments with a pay grade of the level of Joint Secretary (namely, posts carrying Grade Pay of Rs. 10,000 in Pay Band-4 and above). There is no separate pay scale for a Whole-Time Director of PSICs and even after being appointed as General Manager and Director, the employee continues to draw Scale VII pay of General Manager, which is much lower than the pay grade of a Joint Secretary. This is contrasted with the pay scale of Directors of Public Sector Banks (higher than Joint Secretary) and even that of the Chairman and Managing Directors of PSICs (equivalent to Additional Secretary). It is submitted that for this reason, until the impugned selections in August 2020 and May 2021, the ACC had no role whatsoever and was never involved in the appointment of Whole-Time Directors in PSICs.

35. Counter Affidavit has been filed on behalf of respondent no. 1/DFS wherein, apart from reiterating the contentions as set forth in the counter affidavit filed by respondent no. 2/BBB, it is stated that the DFS is a Department within the Ministry of Finance and as per Allocation of Business Rules, 1961, respondent No.1 is responsible for matters pertaining to banking as well as insurance, including general insurance and re-insurance companies in public sector. Further as per Transaction of Business Rules, the standing committee of the Union Cabinet

is the ACC. As per Annexure-1 to the First Schedule of the Transaction Business Rules, appointments to the post of Chairman and other members of the Board of PSICs require approval of ACC. Entry 6 of the Annexure to First Schedule reads as under:

"6. Appointment, whether salaried or not, of Chairman, and other Members of the Board of Management (including the Managing Director and the Financial Adviser, if the Financial Adviser is a member of the Board of Management) of any Schedule 'A' or Schedule 'B' State-owned public corporation, Public Sector Banks, Public Sector Insurance Companies and Financial Institutions, company or enterprise, except where such appointment is made ex-officio by the Government."

The BBB was created by way of an Office Order dated August 24, 2015 pursuant to approval granted by the ACC based upon the proposal of the respondent No.1. The functions of the BBB were laid down in the order dated August 24, 2015 and BBB started functioning from April 1, 2016. In terms of the Office Order dated August 24, 2015, the BBB was *inter alia* responsible for the selection and appointment of Board of Directors in public sector banks and financial institutions. The ACC vide office order dated December 13, 2018 had approved the respondent No.1's proposal for assigning the process of

appointment of whole-time Directors of PSICs to the BBB with the following composition:

1.	Sh. B.P. Sharma, Former Secretary, DoPT	Part Time Chairman
2.	Secretary, Department of Financial Services	Ex-officio Member
3.	Secretary, Department of Public Enterprises	Ex-officio Member
4.	Chairman, Insurance Regulatory and Development Authority	Ex-officio Member
5.	Shri G.N. Bajpai	Part-Time Member
6.	Shri Mathew Verghese	Part-Time Member
7.	Shri T. Bhargava	Part-Time Member

36. Further ACC has vide order dated November 6, 2015 also approved the respondent No.1's proposal for revision in the BBB guidelines contained in the Office Order dated August 24, 2015, as a result of which, BBB became responsible for the selection and appointment of whole-time Directors in PSICs as well. The ACC vide Office Order dated June 9, 2020 also approved the respondent No.1's proposal to frame guidelines for selection to the post of General Manager and Directors in PSICs. Pursuant to above, the respondent No.1 had written to BBB on June 18, 2020 asking BBB to initiate the process of filling up of 9 posts of General Manager and Directors in PSICs in the manner prescribed by ACC approved guidelines dated June 9, 2020. The BBB thereafter undertook the selection exercise for filling up the posts of General Manager and Directors in PSICs in which 22

candidates participated. By way of recommendation dated August 10, 2020, BBB recommended the names of 9 candidates for the vacant posts of General Manager and Directors in PSICs. The petitioner's name did not figure among the 9 recommended candidates. Further, on account of 4 vacancies on the post of General Manager and Director have arisen in PSICs, the respondent No.1 vide its communication dated April 27, 2021 wrote to BBB to carry out selection exercise for the aforesaid four vacancies. Respondent No.1 has also forwarded a list of General Managers, who had minimum one year of residual service on the relevant dates of vacancy based on zone of consideration of 12 for the four vacancies applied to common seniority. One more vacancy had arisen in the post of General Manager on account of superannuation of Atul Jerath. Accordingly, the zone of consideration of 14 eligible General Managers for five vacancies was communicated to the BBB. Pursuant to the selection undertaken, the BBB vide its recommendation dated May 11, 2021 recommended five names for the posts of General Manager and Director and Ms. Rajeshwari Singh and the petitioner were placed as the candidates for the reserved list in the said order for the vacancies of General Manager and Director in United India Insurance Company Ltd. and OICL. It is stated that the Circulars dated December 13, 2018, November 06, 2019 and June 09, 2020 have been validly issued and are not in violation of Section 34A of the Insurance Act or any other law.

37. It is stated that pursuant to the enactment of the GIBNA, 1972, the Central Government issued a Notification dated December 29, 1972 in exercise of the powers conferred by Section 35 of the said Act. The notification categorically specifies the exceptions, restrictions, limitations in Column (2) as a result of which the provisions of Section 34A of the Insurance Act, 1938 requiring prior approval of IRDA for appointment of Directors on the Board has been made "not applicable" for companies covered under the GIBNA, 1972. In view of the same, the selection for the post of the General Manager and Director in the petitioner's employer company i.e., NICL or the OICL where the petitioner was put in reserve list, would not be governed by the provisions of Section 34A of the Insurance Act, 1938.

38. It is further stated that upon enactment of the GIBNA, 1972, certain powers have been vested upon the Central Government under Section 16 (1)(e) read with Section 16 (7) of the said Act, wherein the Articles of Association or the Memorandum of Association can be altered for the companies covered under the purview of the Act. Pursuant to the aforesaid provision envisaged under GIBNA, 1972 and the Office Order dated December 20, 2007, the Articles of Association of NICL and OICL provides that the Directors and Whole Time Chairman-cum-Managing Director shall be appointed by the Central Government.

39. A short rejoinder has been filed by the petitioner to the counter affidavit filed by the respondent no.1.

40. The statement of respondent no.1 in the counter affidavit that Section 34A of the Insurance Act, 1938 is not applicable to PSICs by virtue of notification dated December 29, 1972, is denied by the petitioner. It is submitted that the said notification is outdated and does not apply to Section 34A in its current form. The notification relied on was made way back in 1972, whereas the IRDA was established only 1999, whereafter Section 34A was amended vide Act 41 of 1999.

41. It is stated that furthermore, perusal of the notification of 1972 discloses that the same has been made specifically and only for the General Insurance Corporation of India constituted under Section 9 of the GIBNA, 1972 and has no application to the PSICs including NICL, OICL, New India Assurance Company Limited and United India Insurance Company Limited which are constituted under Section 10A of GIBNA, 1972. These PSICs are separate and distinct legal entities owned by the Central Government.

SUBMISSIONS

42. It is the submission of Mr. Prashant Chandra, Learned Senior Counsel appearing on behalf of the petitioner that the impugned exercise for selection to the post of General Manager and Directors in PSICs has been undertaken by the BBB, per se without jurisdiction. BBB is a Statutory Body established for making selections of personnel in nationalised banks under the provisions of the Act of 1980 and the Scheme of 2016, and has no jurisdiction over the insurance sector, which is a separate and distinct sector governed by separate Central enactments.

43. It is further contended that the ACC is not conferred with any legislative powers under Article 77(3) enabling it to override Statutory Schemes. The view of ACC is not sacrosanct and mere office orders communicating the acceptance by ACC of proposals of DFS cannot enlarge the mandate of BBB and confer upon it the jurisdiction over PSICs.

44. Mr. Chandra submitted that impugned communications are inter-departmental communications issued by the Secretariat of the ACC, Office of the Establishment Officer, and DoPT recording an opinion of the ACC. They are mere opinion of the executive and have not culminated into an order of the Government under Article 77 issued and expressed in the name of the President, and hence, cannot affect the rights of the parties. Reliance in this regard is placed on *Shanti Sports Club and Anr. v. Union of India and Ors., (2009) 15 SCC 705*.

45. He further submitted that the Constitutional scheme does not permit the ACC to usurp powers under a Statute and vest them in the respondent no.2, a body which has no jurisdiction over Insurance Companies. As a consultative body constituted under the Transaction of Business Rules, the ACC is bound to exercise its executive powers under Article 77 strictly in accordance with Article 53(3) of the Constitution. The ACC cannot amend the Statutory Scheme, has no “seed” jurisdiction or “inherent” law-making power and cannot intermeddle with the existing law, either of the Union, or of the State, or other authority. The ACC cannot claim sovereignty or supremacy over other organs.

46. It is the contention of Mr. Chandra that, the Transaction of Business Rules relied upon by the respondents are only for the more convenient transaction of the pre-defined business of the Government. The Rules of Business are procedural and ACC's role there under is limited to approving the selections already made under the extant service rules, and it does not have the power to rewrite the rules itself, or abdicate upon itself the power to make appointments on higher posts. Reliance is placed by Mr. Chandra on the Division Bench Judgment of this Court in **Waris Rashid Kidwai v. Union of India, 1998 (3) SCT 178 (Delhi)** wherein it was held that act of ACC is only in the name of the President and is not an act of the President. In **Sunil Alag v. Union of India and Ors., 221 (2015) DLT 199**, this Court held that the ACC is not above the law, and cannot be permitted to violate statutory provisions and regulations laying down the procedure for appointment.

47. He submitted that the contention of the respondents that the BBB was created vide the communication dated August 24, 2015 is contrary to the stand of respondent no.2 in its Annual Report wherein it is unequivocally admitted that it has been established under the Scheme of 2016. It is a matter of record that the BBB as envisaged under the DFS proposal never came into existence. The DFS proposal which was approved by the communication dated August 24, 2015 was examined in detail by the RBI as mandated by the Act of 1980 and significant changes were made. The finalised Scheme was then placed before the Houses of Parliament, approved and the Gazette Notification was

issued on March 23, 2016. Thereafter, the BBB was established under Clause 7A of the Scheme of 2016 and started functioning from April 01, 2016.

48. Mr. Chandra further submitted that every scheme made under Section 9 of the Act of 1980 is a legislative scheme and cannot be overridden by executive instructions. Reliance in this regard is placed upon the Judgment of the Supreme Court in ***New Bank of India Employees Union and Ors. v. Union of India, (1996) 8 SCC 407.***

49. That apart, he further submitted that it is a matter of record that ACC has never been involved in the appointment of Directors of PSICs, and neither its consent nor approval was sought until the power was illegally usurped by it in July 2020. It is settled law that once the legislature intervenes to enact a law, the power of executive, including the President, is totally displaced on the "doctrine of occupied field". Once the statutory Scheme of 2016 occupied the field, the ACC could not have exercised its executive power inconsistent with the provisions thereof. To buttress this argument, reliance is placed upon the Judgments in ***K. P. Sudhakaran & Anr v. State of Kerala, AIR 2006 SC 2138, Radhashyam Panigrahi v. Registrar (Admn.), Orissa High Court and Ors., 107 (2009) CLT 673; J & K Public Service Commission v. Dr. Narinder Mohan, (1994) 2 SCC 630*** and ***A.B. Krishna v. State of Karnataka, (1998) 3 SCC 495.***

50. According to Mr. Chandra, it is a settled position of law that Executive Orders cannot modify or override Statutory Schemes. Reference in this regard has been placed on the

Judgment of the Supreme Court in *K. Kuppusamy and Anr. v. State of Tamil Nadu and Ors.*, 1998 (8) SCC 469.

51. The BBB is a statutory body and can only function within the four-corners of the Act of 1980 and the Scheme of 2016. It does not have the authority or power to constitute a separate board outside the statutory Scheme. In support of this submission, reference has been made to the Judgments in *Embassy Property Developments Pvt. Ltd. v. State of Karnataka and Ors.*, (2020) 13 SCC 308; *Nautam Prakash & Ors v. K.K. Thakkar*, (2006) 5 SCC 330 and *N.C. Dhoundial v. Union Of India*, (2004) 2 SCC 579.

52. He stated that ACC was never involved in the appointment of Director of PSICs, neither its consent nor approval was sought until the power was illegally usurped by it in July, 2020. This according to Mr. Chandra is because the three Central enactments, i.e., GIBNA, 1972, IRDA Act, 1999 and Insurance Act, 1938 are a complete code in themselves. In other words, once the legislature intervenes to enact law, the power of the executive including the President is totally displaced on the doctrine of occupied field. He stated the Transaction of Business Rules do not apply as unlike Public Sector Banks there is no separate cadre of whole-time Directors in PSICs. Appointments are made on the basis of seniority as provided under the Articles of Association and Circular dated February 16, 2012 with prior approval of IRDA.

53. He submitted that under Sections 34A to 34H of the Insurance Act, 1938 the control over management of insurance

companies is vested in the IRDA. Section 34A of IRDA Act, 1999 is the final authority on appointment of Directors of PSICs, and there can be no amendment of provisions relating to such appointments without IRDA's prior approval. Section 34D of the Insurance Act, 1938 gives overriding effect to Sections 34B and 34C over all other laws.

54. According to Mr. Chandra the contention of the respondent no. 1 that sections 34A to 34H of the Insurance Act, 1938 are not applicable to PSICs by virtue of an alleged notification dated December 29, 1972 is untenable as the alleged notification was issued in 1972 only with respect to the General Insurance Corporation constituted under Section 9 of the GIBNA, 1972. Subsequent to the notification, the IRDA was constituted vide Act 41 of 1999 and Sections 34A to 34H were amended to their current form. Thereafter, vide the Amendment Act 40 of 2002, the PSICs were taken out of the ambit of the General Insurance Corporation and were established as separate and distinct legal entities owned by the Central Government under Section 10A of GIBNA, 1972.

55. The section 17A of the GIBNA, 1972 is almost *pari materia* with section 9 of the Act of 1980 and empowers the Central Government to make schemes to regulate the terms and conditions of service of officers of PSICs with the approval of both Houses of Parliament. Mr. Chandra contended that it is settled law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all and therefore it was incumbent upon the respondents to

promulgate a scheme under Section 17A to designate or establish a selecting body for PSICs, as was done under Section 9 of the Act of 1980 for establishment of respondent no. 2. Reference is made in this regard to *Nazir Ahmad v. Emperor (January 20, 1936 – Privy Council) AIR 1936 PC 253*; *Brajendra Singh Yambem v. Union of India, (2016) 9 SCC 20* and *CIT vs Anjum Ghaswala 2002 (1) SCC 633*.

56. He further submitted that seniority is an incident of service which cannot be overlooked, and the petitioner has a fundamental right as well a legitimate expectation for being fairly considered for appointment with due regard to his seniority, which has been denied to him in the present case. In violation of the cardinal principal of seniority, despite being at Rank 3 in seniority amongst candidates being considered for selection, the petitioner was illegally superseded in the impugned selections of May 2021 by the respondent nos. 4, 5, 6, 7 and 8 who are at Ranks 9, 8, 7, 6 and 4, respectively. The petitioner does not have any disqualification and is perfectly eligible for appointment, as he has in-principle been approved for promotion but maliciously placed in the wait list or “Reserve List” in the impugned recommendation dated May 11, 2021. He further stated that there is no dispute that the post in question is a promotion post as it carries a higher status and benefits, with full protection of seniority and emoluments. Reliance is placed on *State of Rajasthan v. Fateh Chand Soni, (1996) 1 SCC 562* wherein it was held that promotion means advancement in honour and dignity and can be either to a higher pay scale or to a higher post.

57. He submitted that the cause of action for filing the present petition has arisen as the entire exercise of selections is already over and only the mere formality of ACC's approval remains. As per settled law, recommendations of the selection committee are binding on the ACC and will ordinarily not be deviated from, but for grave and justifiable reasons. Reliance in this regard is placed on the Judgment of the Apex Court *in A.K. Doshi v. Union of India, 2001 AIR (SC) 1369*.

58. Mr. Chandra further contended that assuming that the BBB has jurisdiction to undertake selections of Directors of PSICs, it cannot do so under the impugned Communications as they are unconstitutional, arbitrary and violate the cardinal principle of seniority and amends the service conditions of the petitioner with retrospective effect.

59. It is stated that the impugned Communication dated June 09, 2020 fixes excessive marks of 50% for interview, which is patently arbitrary as three successive fleeting interviews are conducted and each interview lasts merely for ten minutes on video conferencing. Even for the selection on the higher post of Chairman and Managing Directors of PSICs contained in circular dated December 20, 2007 only 20% weightage is accorded to interview.

60. That apart, it is submitted that officers of AICIL, who are ineligible, have been included in the zone of consideration under the impugned communication dated June 09, 2020, in violation of the statutory scheme vitiating the entire procedure of selection.

61. It is also submitted that the respondents indulged in selective changes to manipulate merit and contrary to the mandatory requirement under Point 1.4 of the impugned Communication dated June 09, 2020 and failed to consider the petitioner's ACR of 2020-2021 for filling a vacancy which arose in 2020-2021 and deprived him of the benefit of due consideration of his performance in 2020-2021. It is the submission of the counsels for the petitioner that, under the ACC circular dated June 16, 2008, any proposal for appointment which is not accompanied by ACR of the last five years is considered incomplete and is liable to be returned.

62. It is stated that the Chairman, IRDA, who is a compulsory member of the BBB under the impugned Communication dated December 13, 2018, was not a part of the Interview Board of May, 2021 as the said position was vacant. In the absence of the Chairman, IRDA, the Chairman of BBB is required to be a part of the Interview Board as per the office order dated June 18, 2020. However, the Chairman of the BBB was also not on the Interview Board.

63. It is the submission of Mr. Chandra that the Board for the impugned selection consisted of Mr. G.N. Bajpai and Mr. Mathew Verghese, who were disqualified in terms of Point 2(ix) of the impugned Circular dated November 06, 2019 on the ground of conflict of interest, as the former is a Chairman of the Board of Future Generali Insurance Co Ltd, a private general insurer of Kishore Biyani Group and the latter works with an insurance broker firm Bharat Re and also serves as an advisor of

non-life insurance Shriram Group and is appointed as Independent Director on the board of Shriram General Insurance Company.

64. It is also contended that vacancies were changed mid-way through the impugned selection process of May 2021. It is also submitted that the 'Behavioural Assessment Round', mandatory under Point 2(vi) of impugned Circular dated November 06, 2019 and undertaken to assist in the interview process in August 2020, was arbitrarily skipped in May 2021. According to Mr. Chandra, 15% of the total marks towards 'overall personality' which was to be assessed during this round, was left to the unbridled discretion of the Interview Panel.

65. Mr. Chandra submitted that the respondents erred in publishing the reserve list of candidates which is to be kept in a sealed envelope, thereby irreparably compromising the transparency and fairness of the selection process.

66. That apart, it is submitted that the question of estoppel does not arise as there is patent material unconstitutionality and illegality in the impugned selections undertaken by respondent no. 2 *de hors* the Law. To fortify this argument, reliance has been placed on the Judgments of the Supreme Court in ***Dr. (Major) Meeta Sahai v. State of Bihar and Ors., (2019) 20 SCC 17***; ***Raj Kumar v. Shakti Raj (1997) 9 SCC 527*** and ***Mriganka Mondel v. Dr. Asitabha Das (2018) SCC OnLine Cal 16646***.

67. It is submitted by Mr. Gopal Jain, learned Sr. Counsel appearing on behalf of respondent no.2/BBB that the petitioner is estopped from challenging the selection process after

participating in it not once, but twice. Reliance in this regard is placed on the judgments of the Supreme Court in *Manish Kumar Shahi v. State of Bihar*, (2010) 12 SCC 576, *Ramesh Chandra Shah and Ors. v. Anil Joshi and Ors.* (2013) 11 SCC 309, *Madras Institute of Development Studies and others v. K. Sivasubramaniyan and Ors.*, (2016) 1 SCC 454 and *K.H. Siraj v. High Court of Kerala and Ors.*, (2006) 6 SCC 395.

68. Mr. Jain denied the allegation that the selection process is conducted in an arbitrary or illegal manner while excluding the most meritorious candidate. He submitted that the selection was made on the basis of merit inasmuch as weightage in the ratio of 50:50 is awarded for interview and ACR scores for the last five years (maximum 10 marks for each year) in the selection process. And furthermore, weightage is assigned as per various parameters during the interview i.e., 35% to Technical Knowledge, 20% to Managerial Capabilities, 15% to Diversity of Experience, 15% to General & Economic Awareness and 15% to Overall Personality. The petitioner was provided equal opportunity along with other candidates and after strictly following the aforesaid selection process and guidelines, a common merit list was prepared by the BBB and recommendations were made. It is also stated that the BBB is not the appointing authority and it only conducts the selection process and make recommendations to the Government. It is the Government who appointment Directors in PSICs as per the Memorandum and Articles of Association of the respective companies.

69. He further stated that it is a well settled principle of service jurisprudence that where merit is the criteria for the selection amongst the members of the service, no officer has legal right to be selected for promotion, except that he has only a right to be considered along with others and a selection of junior in service in preference to his senior does not amount to supersession. Reliance in this regard is placed on ***R.S. Dass and others v. Union of India and others, 1986 Supp (1) SCC 617.***

70. It is also contended by Mr. Jain that the impugned recommendations are mere recommendations and the appointment is to be done by the Government and that the petition challenging the recommendation of shortlisted candidates is not maintainable. In this regard, reliance is placed on judgments of the Supreme Court in ***Geomin Minerals and Marketing Pvt. Ltd. v. State of Orissa and Ors. (2013) 7 SCC 571, G. Sarana v. University of Lucknow and Ors., (1976) 3 SCC 585***, judgment of the Division Bench of the High Court of Calcutta in ***Utpal Kumar Chowdhury v. Pranab Kumar Dhar (1995) ILR 1Cal. 176*** and ***Sadhan Kumar Bose v. Anirudha Mukherjee, (1993) 4 SLR 473.***

71. It is submitted by Mr. Jain that Mr. Chandra has contended that procedure of the selection followed by the respondents in August 2020 and May 2021 were not uniform and the candidates were required to undergo a “Behavioural Assessment Round” conducted by a talent management consultancy firm in the process conducted in August 2020, whereas no such procedure was resorted to in May 2021. In this

regard, it is submitted that it is well settled proposition of law that the Authority which is making selection is fully entitled to evolve its own procedure for selection. Furthermore, the Behavioural Assessment Round by talent management firm is not a mandatory procedure as per the prevailing guidelines and it was the procedure adopted by the BBB for assisting the interview process. The findings of Behavioural Assessment are not a part of the overall score and do not have any weightage. He has referred to the Judgment of the Division Bench of this Court in ***Rakesh Kumar v. The Chairman, Staff Selection Commission and Ors., 2010 (3) SLR 758.***

72. He submitted that the selection process by the selection committee was conducted on the basis of guidelines / circular and procedure laid down by the Competent Authority i.e., the ACC and this Court cannot be called upon to sit in appeal while considering the proceedings of the selection committee and the scope to interfere is limited where either the selection is actuated with *malafide* or statutory provisions have not been followed. It is stated by Mr. Jain that the petitioner herein has failed to demonstrate any *malafide* upon the selection committee and he has also failed to showcase any violation of any statutory provisions. Furthermore, the petitioner himself relies upon the Executive Order of the respondent no. 1 to contend that he is entitled to be appointed as General Manager and Director in terms of seniority. The appointment of Directors in PSICs is the prerogative of the Central Government and it is the sole discretion of the Government to make appointments. The post of

Director is not in the staff hierarchy of the companies. In this regard, reference has been made to *M.V. Thimmaiah and Ors. v. Union Public Service Commission and Ors., (2008) 2 SCC 119.*

73. Mr. Jain further submitted that the contention of the petitioner that a Scheme for making appointments to the post of General Manager and Director ought to have been promulgated under Section 17A of the GIBNA, 1972 is misplaced. He submitted that under Section 16(1)(g) of the GIBNA, 1972, the Central Government can frame one or more Schemes providing for rationalisation or revision of pay scales and other terms and conditions of service of officers and other employees of the insurance companies, whereas as per Section 17A (inserted by way of amendment in the year 1985) a Scheme can be framed for regulating the terms and conditions of services of officers and other employees. While exercising the powers under Section 16, the Central Government has framed a General Insurance (Rationalisation of pay scales and other conditions of service of officers) Scheme 1975, which has been subsequently amended under Section 17A to amend the matters related to pay scales, increments and allowances of officers and staff of PSICs. The said Scheme of 1975 as well as Section 17A and Section 16 of the GIBNA, 1972, are applicable only to officers and other employees and not Directors.

74. As regards the allegation of the petitioner that his ACR of last five years upto 2020-21 was not taken into consideration, it is submitted by Mr. Jain that ACR of previous five years upto 2019-20 were considered uniformly for all the candidates and the same

has been given 50% weightage in the scores as per the rules and procedure. Furthermore, the ACR for 2020-21 of the petitioner was not even prepared at the time of selection process and the same was approved only on July 07, 2021 which is much later after the recommendations were made.

75. It is submitted by Mr. Jain that the BBB has conducted the selection and recommended candidates for appointment as Director of PSICs in the past also. Already nineteen such candidates were appointed and there was no challenge to the process or to the authority of the Board to conduct the selection. The petitioner has decided to challenge the process only after participating in the selection twice and failing. He further stated that the appointment of Director of PSICs is not by way of promotion and even when a General Manager is appointed as Director, he continues to get the salary and perks of a General Manager only. This, according to Mr. Jain, is the reason the designation is General Manager and Director. PSICs being Government Companies, appointment to the post of Director is the prerogative of the Government. No one has any right of appointment as Director due to his seniority or otherwise. He further contended that even the order dated February 16, 2012 relied upon by the petitioner which talks about seniority as the criteria is a procedure followed by the Government and can be changed by the Government by issuing another order. The Government has done that by issuing the circulars dated December 13, 2018, November 06, 2019 and June 09, 2020. It was done in the best interest of the public sector companies. It is

submitted by Mr. Jain that such action taken by the Government in good faith and in public interest cannot be unsettled at the behest of a person who attempted to take benefit of the selection and failed.

76. That apart, it is submitted that the argument of the petitioner that there is a conflict of interest between members of the board is baseless and deserves no consideration. When the members of the Board have to be constituted with experts from the insurance sector, they will obviously be persons who held high posts in insurance companies or are still in the advisory positions. Conflict will arise only if there is conflict of interest in the subject matter of selection. In this case, none of the members have any conflict of interest with the impugned selection. Mr. Jain has relied upon the Judgment of the Supreme Court in *G. Sarana (supra)*.

77. Further Mr. Chetan Sharma, Ld. ASG appearing on behalf of respondent no. 1 stated that the Circulars dated December 13, 2018, November 06, 2019 and June 09, 2020 are not in violation of any law, as the ACC has been assigned the function, inter alia, to take decisions in respect of appointments specified in Annexure I to the First Schedule of the Transaction of Business Rules and therefore the appointments in PSICs require the approval of the ACC.

78. It is stated by Mr. Sharma that the Notification dated December 29, 1972 categorically specifies the exceptions, restrictions, limitations in Column (2) thereof as a result of which the provisions of Section 34A of the Insurance Act, 1938

requiring prior approval of IRDA for appointment of Directors on the Board has been made "not applicable" for companies covered under the GIBNA, 1972, including both the General Insurance Corporation and other acquiring companies.

79. It is further submitted that Section 24A of GIBNA, 1972, which was subsequently inserted through amendment effected by the Third Schedule to the IRDA Act, 1999, provides that the exclusive privilege of the Corporation and the acquiring companies of carrying on general insurance business in India shall cease on from the commencement of the IRDA Act, 1999 and the Corporation and the acquiring companies shall, thereafter, carry on general insurance business in accordance with the provisions of the Insurance Act, 1938. Insofar as the applicability of the IRDA Act, 1999 on the insurance companies governed under GIBNA, 1972 is concerned, it is submitted that the same shall be applicable only to the extent of mode of carrying out the general insurance business in India and has no relation whatsoever with the appointment of the Managing Director/ Whole-Time Director of PSICs.

80. It is submitted that the power/jurisdiction to appoint a Managing Director/ Whole Time Director of PSICs has always been vested with the ACC under Transaction of Business Rules and when the IRDA Act, 1999 came into force, Section 35 of the GIBNA, 1972 and the exemption notification dated December 29, 1972 were not rescinded and are still in force.

81. It is also submitted by Mr. Sharma that if the intent of Section 24A inserted under the Third Schedule of the IRDA Act,

1999 in amending GIBNA, 1972 had been to provide for the provisions of the Insurance Act to apply without any exceptions, the said enactment would have omitted Section 35 of the GIBNA, 1972 as well. Therefore, given that Section 35 has remained on the statute book despite the insertion of Section 24A, there is need to read provisions of both the sections harmoniously, which logically leads to the conclusion that the reference to the provisions of the Insurance Act, 1938 in relation to the said insurers, should be construed as a reference to the Insurance Act, 1938 as applicable to them after taking into account any exceptions etc. (including the one in respect of section 34A of Insurance Act) as notified under Section 35. He further stated that the subject matter domain of Section 24A of GIBNA, 1972 is the carrying out of general insurance business in India. Even if one were to take the view that the provisions of the Insurance Act, 1938 shall apply notwithstanding any exceptions notified under Section 35 of the GIBNA, 1972, the language of Section 24A of GIBNA, 1972 expressly provides for applicability of Insurance Act, 1938 provisions only in relation to the carrying on of general insurance business in India.

82. It is the submission of Mr. Sharma that Section 118 (c) of the Insurance Act, 1938 on *Exemptions* provides that nothing in the Insurance Act, 1938 shall apply if the Central Government so orders in any case, modifications as may be specified in the order to any insurance business carried on by a Government Company. The impugned Orders were issued by the ACC exercising the powers conferred under the Transaction of Business Rules. It is

submitted that therefore, the impugned Circulars issued by the ACC constitutes as an Orders in terms of Section 118 (c) of the Insurance Act, 1938.

83. Reference is made to the Index of the Insurance Act, 1938, wherein Chapter II contains 'Provisions Applicable to Insurers'. Provisions specific to carrying out the business by Insurance Companies are categorised under different sub headings therein. It is contended by Mr. Sharma that since Section 34A does not feature in any of these specific sub headings, it is not applicable to companies covered under the GIBNA, 1972 and therefore appointments to these companies shall only be governed by the ACC under the Transaction of Business Rules.

84. It is submitted that the BBB was created vide the Office Order dated August 24, 2015 issued by the ACC based on the proposal of the DFS. It is also stated that Banking Schemes made under Section 9 of the Act of 1980 only requires consultation with the RBI, and not approval of the RBI. Furthermore, Mr. Sharma states that sub section (6) of Section 9 requires only post facto laying of a Scheme in Parliament and therefore it is incorrect that the Scheme was notified subsequent to the approval of the Parliament. It is further submitted that since the origin/ creation/ establishment of BBB is by way of the Office Order dated August 24, 2015 issued by the ACC, any change or modification in the mandate of the BBB could have been carried out only by way of a subsequent Office Order / Circulars of ACC,

which in the present case has rightly been issued by the ACC vide the impugned Circulars.

85. Mr. Sharma has reiterated the contention of respondent no.2/BBB that having participated in the 2020 Selection Process and 2021 Selection Process without protest or demur, the petitioner is estopped from challenging the same. Reliance in this regard is placed on the Supreme Court Judgments in *Manish Kumar Shahi vs. State of Bihar and others (supra)* and *Ramesh Chandra Shah and Ors. v. Anil Joshi and Ors., (supra)*.

86. It is also stated that the BBB consists of specialised experts from the insurance sector for the purpose of carrying out selection for posts of Whole-Time Directors of PSICs.

87. That apart, it is stated that upon enactment of the GIBNA, 1972, certain powers have been vested upon the Central Government under Section 16 (1)(e) read with Section 16 (7) of the said Act, wherein the Articles of Association or the Memorandum of Association can be altered for the companies covered under the purview of the Act. Pursuant to the said provision, the Articles of Association of NICL and OICL have been amended to state that the Whole Time Chairman-cum-Managing Director shall be appointed by the Central Government.

88. It is submitted that Department of Personnel and Training issued a Notification dated December 20, 2007, which provides for the criteria of Selection of the Chairman-cum- Managing Directors. The said notification was issued prior to the

notification dated February 16, 2012 and the selection criteria include weightage to the experience, performance of the officer during the service and the interview. Thus, seniority alone was not the criteria of selection for a Whole-Time Director of PSICs.

89. It is submitted that later, General Manager and Directors were also included in the list of Whole-Time Directors as the General Manager and Directors also have statutory and legal obligations to fulfil as per the Companies Act, 2013 and SEBI Rules. Therefore, it was decided with the approval of the Finance Minister to appoint General Manager and Directors also with the approval of ACC.

90. Mr. Sharma disputes the contention of the petitioner that that the selection process of a Whole-Time Director can only be done on the basis of seniority. It is submitted that the Circular dated December 13, 2018 was issued by the ACC under Article 77(3) of the Constitution of India and it automatically supersedes the order dated February 16, 2012, which is merely an Executive Order.

91. Mr. Varun Agarwal, learned counsel appearing for respondent Nos. 3 to 7 and 9 to 12, stated that he concurs with the extensive submissions made by the counsels for respondent nos. 1 and 2.

92. That apart, he submitted that the respondent no. 3 GIPSA provides a forum for facilitating consultations and deliberations amongst PSICs on matters of common interest. He further stated that the appropriate government is fully empowered to frame the rules of selection for the posts intended to be filled by it in PSICs.

The entire selection process has been carried out in an open and fair manner and the modus/stages of selection were informed in advance to all participants concerned. He also stated that respondent Nos. 4 to 8 are the General Managers of PSICs who have been selected by BBB for the post of General Manager and Director on May 11, 2021 (second impugned selection). He further submitted that respondent Nos. 9 to 12 were selected by BBB for the post of GM and Director on October 8, 2020. Out of these respondent No.9 Anjan Dey did not join the post of General Manager and Director as he was later on also selected for the post of Chairman-cum-Managing Director of OICL. Further respondent No.2 has already been superannuated from the post of General Manager and Director. In the end, he stated that BBB has carried out the selection process for the appointments of Whole Time Directors of PSICs as empowered to do so by the appropriate Government and the respondents have bonafidely participated in the selection process. The selection made is justified.

CONCLUSION:

93. Having heard the learned Counsel for the parties and perused the record, so also the written submissions filed by them, before I deal with their rival submissions, it shall be appropriate to cull out, in brief the facts as highlighted by the counsel for the parties.

94. In 2018, petitioner was working as General Manager in National Insurance Corporation Limited (NICL). As a General Manager he is eligible for appointment to the post of General

Manager and Director in PSICs. Between November, 2018 to July, 2020, nine vacancies arose on the Board of Directors in different PSICs. The first impugned selection was held in the month of August, 2020.

95. It is the case of the petitioner, despite being eligible and meritorious and ranked 13 in the overall seniority, he was superseded by persons junior to him.

96. A second impugned selection took place in the month of May, 2021 for filling five vacancies, when the petitioner was kept in the reserved list. Previous to the impugned selections, the mode of selection, as per Mr. Chandra was by seniority by the Committee of the CMDs of PSICs, which makes recommendation to the Central Government, who issues the requisite transfer orders in exercise of its authority under Section 22 of the GIBNA, 1972.

97. The plea of Mr. Chandra is primarily that the consideration / selection undertaken by BBB, a body constituted solely for banking sector with overall control of Reserve Bank of India has no jurisdiction or control over PSICs. In other words, BBB could not have undertaken the selection of General Manager and Directors in PSICs. To understand this submission, it is necessary to understand the constitution of BBB.

98. Vide order dated August 24, 2015, the ACC approved the proposal of DFS for creation of BBB, which stipulated structure / composition / functions / management and methodology for selection / tenure of members of BBB. The functions of BBB primarily are with regard to selection and appointment of Board

of Directors in Public Sector Banks and Financial Institutions. It appears that upon consultation with the Reserve Bank of India, a Gazette Notification dated March 23, 2016 was issued by respondent No.1 DFS. In terms of this notification, the scheme called “*Nationalised Banks (Management and Miscellaneous Provisions) Amendment Scheme, 2016*” amending the “*Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980*” framed under Section 9 of the Act of 1980 was notified, whereby in Clause (2) after sub-clause (b), sub-clause (ba) was inserted defining “Bureau” to mean Banks Board Bureau (BBB). Further Clause 7(A) was inserted with regard to establishing Banks Board Bureau (BBB) in the scheme of 1980, so also stipulating the Board of Directors of the Bureau consisting one Chairman and six members as mentioned below: -

Serial number	Name / Designation	Designation
1.	Part time Chairman	Chairman
2.	Secretary, Department of Financial Services	ex-officio Member
3.	Secretary, Department of Public Enterprises	ex-officio Member
4.	Deputy Governor, Reserve Bank of India	ex-officio Member
5.	Part time Member	Member
6.	Part time Member	Member
7.	Part time Member	Member

99. Clause 7(B) was also inserted which refers to the manner of appointment of Whole-Time Directors and Chairman of BBB and creation of Bureau. Clause 7(C) was also inserted, which details the functions of the Bureau in the following manner:

- (a) *to recommend the selection and appointment of Board of Directors in Nationalised Banks (Whole Time Directors and Chairman);*
- (b) *to advise the Central Government on matters relating to appointments, confirmation or extension of tenure and termination of services of the Directors of nationalised banks;*
- (c) *to advise the Central Government on the desired management structure of nationalised banks, at the level of Board of Directors and senior management;*
- (d) *to advise the Central Government on a suitable performance appraisal system for nationalised banks;*
- (e) *to build a data bank containing data relating to the performance of nationalised banks and its officers;*
- (f) *to advise the Central Government on the formulation and enforcement of a code of conduct and ethics for managerial personnel in nationalised banks;*

- (g) *to advise the Central Government on evolving suitable training and development programs for managerial personnel in nationalised banks.*
- (h) *to help the banks in terms of developing business strategies and capital raising plan and the like; and*
- (i) *any other work assigned by the Government in consultation with Reserve Bank of India.*

100. The case of the respondent No.1 as contended by Mr. Chetan Sharma is that the President of India in exercise of his powers under Article 77 (3) of the Constitution of India has made Transaction of Business Rules. In terms of First Schedule to the Rules, the ACC has been assigned the function, inter alia to take decision with respect to appointments specified in Annexure-A1 to the First Schedule which includes appointment with respect to Chairman and other members of the Board of Management of PSICs and as such the ACC is competent to issue the circulars dated December 13, 2018 and June 9, 2020 approving the proposal of DFS to modify the guidelines dated August 24, 2015 to expand the mandate of BBB and also vide circular dated November 6, 2019 prescribing the changes in composition of the BBB; selection / tenure of the members of the BBB, selection methodology to be adopted by BBB etc. to include selection and appointment of Whole-Time Directors of PSICs. In fact, it is stated by Mr. Sharma, that BBB was created vide office order dated August 24, 2015 issued by the ACC based on the proposal

of DFS and before the amendment of the Banking Scheme vide notification dated March 23, 2016, many compliances have been carried out through various documents. The plea is not appealing for the reason that BBB has been created only vide notification dated March 23, 2016 and not before, that too by amending the Scheme of 1980, though pursuant to the approval granted by the ACC to the proposal of DFS and in consultation with the RBI. The approval granted by the ACC vide order dated August 24, 2015 for creation of BBB has been achieved with the issuance of the notification dated March 23, 2016. The administrative order of ACC dated August 24, 2015 shall not have the effect of amending the Scheme of 1980 known to law. A further change or modification of functions of BBB for purposes other than appointments in the Banks, that is in PSICs cannot be affected as the BBB has its roots / origin in Section 9 of the Act of 1980 which empowers the Central Government to make the Scheme, after consultation with RBI, which includes for the constitution of the Board of Directors in the Banks and Financial Institutions only. In exercise of this power under Section 9, the Central Government has framed the Scheme of 1980 which includes detail provisions made in Chapter II with respect to constitution of the Board which includes the appointment of Chairman and Managing Director and whole-time Directors in banks by the Central Government in consultation with the RBI, which has no concern with the PSICs. The Act of 1980 / Scheme of 1980, is enactment / scheme relating to Banking Companies with no concern with Insurance Companies and the provisions thereunder

cannot be invoked to govern the selection / appointment in the PSICs. In fact, there is no provision in the Act of 1980 / Scheme of 1980 to include the scheme / provision relating to appointments in PSICs.

101. So, it must be held that the impugned circulars by which ACC decided to modify the mandate of BBB to make appointments in the insurance companies; changing the composition of BBB for making appointments in PSICs, also laying down the eligibility conditions / criteria for selection etc. to be carried out through BBB shall be untenable and ultra vires the Act of 1980 / Scheme of 1980.

102. Mr. Chandra is justified to say that the Act of 1980 / Scheme of 1980 occupies the field of appointment to the Board of Directors of the Banks / Financial Institutions only and cannot include in its fold the appointments in PSICs. The issue can also be looked from another angle inasmuch as Transaction of Business Rules on which reliance has been placed by Mr. Sharma justifying the issuance of the impugned circulars by the ACC, have been framed under Article 77 (3) of the Constitution of India by the President of India and to that extent is in exercise of legislative power, but the provisions of the Transaction of Business Rules are administrative in nature for the governance of the business of the Government of India (*Ref: Crawford Bayley & Co. and Ors. Union of India and Ors. 2006 6 SCC 25*). If the Transaction of Business Rules are administrative in nature, the exercise of power by the ACC under the said rules to amend already existing statutory provisions / legislative scheme of 1980

is impermissible. Even under Section 9(6) of the Act of 1980, a Scheme framed becomes effective only after the same is placed before the Houses of Parliament and after Parliament agrees to the Scheme and made modifications. (*Ref. New Bank of India Employees' Union & Ors. (supra)*). This exercise has not happened, nor could have happened, as the impugned circulars, could not have varied / amended the Scheme of 1980 to include the selection and appointment in PSICs being *ultra vires*. Mr. Chandra is also justified in relying upon *K.P. Sudhakaran and Anr. (supra)* wherein the Supreme Court held, where the statutory rules occupy the field, the executive instructions, cease to apply. Similarly, reliance placed by Mr. Chandra on the Judgment of *Radhashyam Panigrahi (supra)*, of the Division Bench judgment of the Orissa High Court, wherein it was held that the executive instructions cannot override the statutory rules. In the said Judgment, reference is also made to a Constitution Bench Judgment of the Supreme Court in the case of *B.N. Nagarajan v. State of Mysore, AIR 1966 SC 1942* wherein the Supreme Court has held as under:

“It is hardly necessary to mention that if there is a statutory rule or act on the matter, the executive must abide by that act or rule and it cannot in exercise of its executive powers under 162 of the Constitution ignore or act contrary to that rule or that Act”

103. From the above, it is clear that the Scheme made under the Act of 1980 would only govern the appointments made to the Board of Management of the Banks / Financial Institutions and not the PSICs. In other words, BBB, the Statutory Authority

must exercise the jurisdiction within the four corners of the Act of 1980 / Scheme of 1980.

104. That apart the issuance of circulars dated December 13, 2018, November 6, 2019 and June 9, 2020 has resulted in an anomalous position inasmuch as two different Board of Directors / composition have been created with regard to one body called BBB. This I say so in view of the Board of Directors of BBB stipulated in the notification dated March 23, 2016 and composition stipulated in the approval of ACC dated December 13, 2018, are at variance.

105. It is the conceded case of the parties that prior to the impugned selections, the appointment as General Manager / Directors was made in terms of the notification issued on December 20, 2007, with the approval of ACC. The circular states, the appointment of Chairman-cum-Managing Director is made by the Central Government under Memorandum and Articles of Association of respective Company. The relevant part of circular of 2007 reads as under:

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Appointments of Chairman-cum-Managing Director of GIC (Indian re-insurer), Oriental Insurance Company Ltd., National Insurance Company Ltd., New India Assurance Company Ltd., United India Insurance Company Ltd., and Agriculture Insurance Company of India Ltd. are made by the Central Government under the Memorandum and Articles of Association of the respective Company.

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This circular is followed by circular dated February 16, 2012. The 2012 circular also indicate the appointment of the Whole-Time Directors in PSICs shall be from amongst the General Managers. Having said that it must also be stated that in view of Transaction of Business Rules, the competency of ACC to make / prescribe the eligibility conditions / criteria for selection / composition of the Selection Committee cannot be disputed. But prescribing mode / process of selection through BBB and composition of the Selection Committee in BBB cannot be sustained. Even otherwise, assuming that the proposal as mooted out by DFS as approved by the ACC on December 13, 2018 and November 6, 2019 with respect to Insurance Companies is valid, still they have not been notified in the Gazette as has been done on March 23, 2016 amending the scheme of 1980 incorporating clauses 7(A), 7(B) and 7(C). This I say so as the proposal approved by the ACC has the affect of amending clauses 7(A), 7(B) and 7(C) of the Scheme of 1980 as inserted vide the notification dated March 23, 2016. Mr. Chandra is justified in relying on the Judgment of the Supreme Court in the case of *Shanti Sports Club and Anr. (supra)* wherein in Para 37, the Supreme Court has held as under:

“37. In the light of the submissions made by the learned counsel for the parties, we shall now consider whether the note dated 8-6-1999 recorded by the then Minister for Urban Development can be treated as a decision of the Government to withdraw from the acquisition of land in question in terms of Section 48(1) of the Act, which lays down that:

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.—(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.”

Although, the plain language of Section 48(1) does not give any indication of the manner or mode in which the power/discretion to withdraw from the acquisition of any land is required to be exercised, having regard to the scheme of Parts II and VII of the 1894 Act, which postulates publication of notification under Section 4(1), declaration under Section 6 and agreement under Section 42 in the Official Gazette as a condition for valid acquisition of the land for any public purpose or for a company, it is reasonable to take the view that withdrawal from the acquisition, which may adversely affect the public purpose for which, or the company on whose behalf the acquisition is proposed, can be done only by issuing a notification in the Official Gazette.”

(emphasis supplied)

106. In view of the above discussion, if the BBB could not have undertaken the process of selection of General Manager / Directors in PSICs, then the selection by BBB would not be in conformity with law. The process of selection to the post of General Manager / Directors of PSICs need to have been undertaken in terms of the provisions of the Memorandum and Articles of Association of each PSIC, through the circulars already issued or validly framed rules / guidelines relating to the criteria, composition of the Committee etc. It is settled law that an Authority approving / making appointment can evolve the procedure / criteria for selection, but only in accordance with

law. The reliance placed by Mr. Jain on the Judgment of this Court in ***Rakesh Kumar (supra)*** wherein it is held that the authority which is making recruitment is fully competent to evolve its own procedure cannot be disputed but that is subject to competency of the authority and is not in violation of any law. As I have already held that ACC could not have evolved the process of selection and appointments through BBB, the Judgment is distinguishable. Hence, the stand of the respondent No.1 that BBB was competent to carry out selection and recommend the candidates for approval by ACC is unsustainable.

107. A plea was advanced by Mr. Jain and Mr. Sharma that the petitioner having participated in the 2020 and 2021 selection process conducted by BBB based on the Circulars issued by the ACC dated December 13, 2018, November 6, 2019 and June 9, 2020 without protest and demur and as he is not selected, he is estopped from challenging the process of selection including the jurisdiction and competency of BBB by relying on the Judgments in the case of ***Manish Kumar Shahi (supra)***; ***Ramesh Chandra Shah and Ors. (supra)***; ***Madras Institute of Development Studies and others (supra)***; ***K.H. Siraj (supra)*** is concerned, the same is unmerited, for the reason that the principle of estoppel / acquiescence would not come into play when the selection undertaken by the BBB is in violation / contrary to the statutory scheme of 1980 (including the amendments made vide notification dated March 23, 2016). In other words, there is no estoppel against law. The above

argument of Mr. Jain was rightly opposed by Mr. Chandra by relying upon the Judgment in **Raj Kumar (supra)** in Para 16, where it is held as under:

“16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.”

(emphasis supplied)

108. Similarly, in the case of **Dr. (Major) Meeta Sahai (supra)**, the Supreme Court has in Para 15 to 17 has held as under:

“15. Furthermore, before beginning analysis of the legal issues involved, it is necessary to first address the preliminary issue. The maintainability of the very challenge by the appellant has been questioned on the ground that she having partaken in the selection process cannot later challenge it due to mere failure in selection. The counsel for the respondents relied upon a catena of decisions of this Court to substantiate his objection.

16. It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it as iterated by this Court in a plethora of judgments including Manish Kumar Shahi v. State of Bihar [Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , observing as follows: (SCC p. 584, para 16)

“16. We also agree with the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC OnLine Pat 321 : (2008) 4 PLJR 93] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The [appellant] invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.” [See also: Madan Lal v. State of J&K, (1995) 3 SCC 486 : 1995 SCC (L&S) 712, Marripati Nagaraja v. State of A.P., (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68, Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 and K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57]

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.

(emphasis supplied)

109. Similarly, in **Mriganka Mondel (supra)**, the Calcutta High Court while referring to the Judgment of the Supreme Court in **Raj Kumar (supra)** has in Para 50 & 51 held as under:

“50. In Raj Kumar (supra), the Supreme Court while dealing with the legality of a selection process that had been challenged by unsuccessful candidates had observed as follows:

“16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification and the posts were taken out from the

purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J&K and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in this case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.

(underlining for emphasis by us)

51. *Reading the decisions in Dalpat Abasaheb Solunke (supra) and Raj Kumar (supra) does suggest that the process of selection can be challenged on the*

ground of illegality or patent material irregularity or mala fides vitiating the selection. This is also the conclusion we have reached above reading the decision in C.D. Govinda Rao (supra)."

(emphasis supplied)

110. In a more recent Judgment, the Supreme Court in the case of **Ramjit Singh Kardam and Ors. v. Sanjeev Kumar and Ors.** 2020 SCCOnline SC 448 has in Paras 36 to 38 held as under:

"36. The preposition that a candidate, who participates in a selection without a demur taking a calculated chance to get selected cannot turn around and challenge the criteria of selection and the constitution of the selection committee is well settled. The appellants have placed reliance on judgment of this Court in Madan Lal v. State of J&K, (1995) 3 SCC 486; K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515; Manish Kumar Shahi v. State of Bihar, (2010) 12 SCC 576; Madras Institute of Development Studies v. K. Sivasubramanian, (2016) 1 SCC 454 and Ashok Kumar v. State of Bihar, (2017) 4 SCC 357.

37. In Madan Lal (supra), this Court laid down following in paragraph 9:—

"9.It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285, it has

been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

38. *The above preposition has been reiterated in other judgments of this Court noted above. In the present case, whether the respondents-writ petitioners are estopped from challenging the selection? While noticing the facts of the case, we have noted above that both appellants and the respondents had submitted applications in pursuance of advertisement dated 28.07.2006 No. 6/2006. In advertisement, it was provided that the Commission may shortlist the candidates for interview by holding a written examination or on the basis of a rational criteria to be adopted by the Commission. The Commission on 28.12.2006 published the criteria for calling the candidates for interview. Notice dated 28.12.2006 provided that written examination shall be held for post of PTI on 21.01.2007, on 100 objective type multiple choice questions, each question carrying two marks. The notification also prescribed the minimum qualifying marks- 50% for General category, SC BC and ESM 45% and 25% marks was assigned to the viva voce. The above criteria was implemented and written examination was conducted on 21.01.2007, which examination was cancelled citing complaints regarding malpractices in the written examination. Further notice dated 11.06.2008 was published fixing 20.07.2008 for written examination as per criteria earlier notified. Before the above examination could take place, by public notice dated 30.06.2008, it was cancelled. Another public notice dated 11.07.2008 was published where Commission decided to shortlist eight times the candidates of the advertised post with minimum weightage secured in each category. The said shortlisting was also given up by notice dated*

31.07.2009 when it was decided to call all eligible candidates for interview. Commission did not publish any criteria or marks on the basis of which interview was to be held. The criteria, which was published by the Commission on 28.12.2006, 11.06.2008 and 11.07.2008 were given up step by step and no criteria was published for interview, which was scheduled to take place in from 2nd September to 17th October, 2008. When Commission had not published any criteria on the basis of which candidates were going to be subjected for selection process and the candidates participated in the selection without knowing the criteria of selection, they cannot be shut out from challenging the process of selection when ultimately they came to know that Commission step by step has diluted the merit in selection. When candidate is not aware of the criteria of selection under which he was subjected in the process and the said criteria for the first time is published along with final result dated 10.04.2010, he cannot be estopped from challenging the criteria of selection and the entire process of selection. Further when the written examination as notified earlier was scrapped and every eligible candidate was called for interview giving a go bye to a fair and reasonable process for shortlisting the candidates for interview, that too only by Chairman of the Commission whereas decision regarding criteria of selection has to be taken by Commission, the candidates have every right to challenge the entire selection process so conducted. This Court in Raj Kumar v. Shakti Raj, (1997) 9 SCC 527 held that when glaring illegalities have been committed in the procedure to get the candidates for examination, the principle of estoppel by conduct or acquiescence has no application. Referring to judgment of this Court's judgment in Madan Lal (supra), this Court laid down following in paragraph 16:—

“16.The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J&K, (1995) 3 SCC 486 and other decisions referred therein had held that

a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.”

(emphasis supplied)

111. Mr. Jain and Mr. Sharma have in support of their submissions on estoppel and acquiescence relied upon the Judgments in the cases of **Manish Kumar Shahi (supra)**, **Ramesh Chandra Shah (supra)**, **Madras Institute of Development Studies and others (supra)** and **K.H. Siraj (supra)**. The same will have no applicability in the facts of this case and as such are distinguishable. In fact, the judgments referred by Mr. Jain and Mr. Sharma have been considered by the Supreme Court in **Ramjit Singh Kardam (supra)**, except **K.H. Siraj (supra)**, which was considered by the Supreme Court in the case of **M.V. Thimmaiah (supra)** of which a reference has been made by Mr. Jain, which Judgments are also distinguishable on facts.

112. Hence, it must be held that the process of selection can be challenged if the same is contrary to statutory / legislative scheme making the said process, patently illegal. Hence, this plea of Mr. Jain is liable to be rejected.

113. Insofar as the submission of Mr. Chandra that ACC was never been involved in the appointment of Director of PSICs and neither its consent nor approval was sought until the appointments in August, 2020 is a new case set up by the petitioner in the written submissions. No such case has been set up in the writ petition. There was no opportunity for the respondent No.1 to deal with such a stand. In any case, the submission of Mr. Chandra is contrary to the very document relied upon by the petitioner (Annexure P-7) which is a circular dated February 16, 2012, Para 2 (II) thereof, clearly stipulates the Committee of CMDs making recommendation for appointment of Whole-Time Directors to the Government as per the existing practice and procedure. So the plea of Mr. Chandra that appointments were made as provided under the Articles of Association and circular dated February 16, 2012 with prior approval of IRDA cannot be accepted. His connected plea is that vide Sections 34A to 34H of the Insurance Act, 1938, the control over the PSICs is vested in IRDA and it is the IRDA (and not ACC) which is the final authority for appointment of Directors in PSICs and there cannot be any amendment of provisions relating to such appointment without the IRDA's approval. He also stated, Section 34D of the Insurance Act, 1938 gives overriding effect to Sections 34B and 34C over the

other laws. The plea is unmerited. Mr. Sharma is right in stating that in terms of notification dated December 29, 1972, the Sections 34A to 34H of the Insurance Act, 1938, are not made applicable to PSICs. I reproduce the notification dated December 29, 1972 as under:

“S.O. 771(B) – In exercise of the powers conferred by Sections 35 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), the Central Government hereby specifies the exceptions, restrictions and limitations specified in column (2) of the Table below subject to which the Insurance Act, 1938 (of 1938) shall apply to or in relation to the General Insurance Corporation of India formed under Section 9 of the first mentioned Act and to every acquiring company as defined under the said Act: -

TABLE

<i>Sections of Insurance Act</i>	<i>Exceptions, restrictions and limitations.</i>
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Sections 1C, 2B, 3B, 4, 6 to 9 (both inclusive), 13, 16, 17A, 22, 27, 27A, 28, 28A, 29 to 31 (both inclusive), 31A, 31B, 32, 32A, 34, 34A to 34H (both inclusive) 35, 36, 37, 37A, 38, 39, 40A, 40B, 42A, 42B, 42C, 44, 45, 47, 47A, 48, 48A, 48B, 49 to 52 (both inclusive), 52A, 52B, 52BB, 52C to 52N (both inclusive), 53 to 64, 64A to 64T (both inclusive), 64V, 64VA, 64VC, 65 to 101 (both inclusive), 101B, 101C, 106A, 110E to 110G (both inclusive), 112, 113, 115, 116 and 120	Not applicable.
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114. The submission of Mr. Chandra in this regard was, that notification issued in 1972 is only with respect to the General Insurance Corporation constituted under Section 9 of

the GIBNA, 1972 and subsequent to the notification, IRDA was constituted in the year 1999 and Sections 34A to 34H were amended in the current form and vide amendment of 2002 PSICs were taken out of the ambit of General Insurance Corporation and were established as separate legal and distinct entities owned by the Central Government under Section 10A of GIBNA, 1972. Though, the plea of Mr. Chandra looks appealing on a first blush but on a deeper consideration the following facts being relevant the plea cannot be accepted inasmuch as pursuant to the Insurance Act enacted in the year 1938, the GIBNA, 1972 came into force in 1972 whereby certain Insurance Companies were nationalised. The respondent No.1 in exercise of power under Section 35 of the GIBNA, 1972 issued a notification dated December 29, 1972. The notification clearly specifies the exemptions, restrictions, limitations in Column II as a result of which the provisions of Section 34A (amongst other sections) of the Insurance Act, 1938 requiring prior approval of IRDA for appointment of Directors on the Board has been made “not applicable” for Companies covered under the GIBNA, 1972. Mr. Chetan Sharma is right in stating that such an amendment was made applicable to both GIC and acquiring Companies. So it follows the notification dated December 29, 1972 exempt the Companies covered under the GIBNA, 1972 from applicability of various Sections including Sections 34A to 34H which includes 34D on which reliance was placed by Mr. Chandra to

state that the said Section stipulates Sections 34B and 34C shall override other laws.

115. The plea of Mr. Chetan Sharma that if the intent of Section 24A of the GIBNA, 1972 inserted under the Third Schedule of the IRDA Act, 1999 is to provide for provisions of Insurance Act to apply without exceptions then by the said enactment Section 35 of the GIBNA, 1972 would have been deleted, is appealing. I find that Section 35 continues to remain on the Statue Book despite insertion of Section 24A. The only way to harmonise the notification issued under Section 35 of the GIBNA, 1972 and Section 24A as contended by Mr. Sharma is to read the provisions harmoniously which shall lead to the conclusion that the reference to the provisions of the Insurance Act in relation to the said insurers should be construed as a reference to the Insurance Act as applicable to them after taking into account any exceptions etc., including the one in respect of Section 34A of the Insurance Act, 1938 as notified under Section 35 of the GIBNA, 1972.

116. The position which emerges from the above is that in view of the notification dated December 29, 1972 as reproduced above, the Sections referred therein being exempted are not applicable with regard to General Insurance Corporation and the acquired Companies under Section 10A of the GIBNA, 1972. Hence, the requirement to seek the approval of the IRDA for appointments of Directors in PSICs has no applicability. I may also state that the petitioner has relied upon Annexure P-10 in support of his stand that the MD / CEO of the insurance

companies are appointed in terms of the guidelines issued by IRDA. Suffice to state, the order dated May 18, 2016, is with the subject matter '*guidelines for corporate governance for insurers in India*' and the same does not relate to the PSICs.

117. The aforesaid position is also clear, as no document has been shown to me that after the enactment of IRDA Act, 1999 that the appointments of Chairman and Managing Director / General Manager and Directors have been made with the approval of the IRDA.

118. That apart, the petitioner has not challenged the vires of the notification dated December 29, 1972, which has not been revoked. I find even the guidelines for making appointment to the post of Chairman Managing Director / General Manager and Directors in PSICs in the years 2007 and 2012 have been framed with the approval of the ACC which continues to be in vogue till the impugned selections. This plea of Mr. Chandra is liable to be rejected and the Judgments in the cases of ***J & K Public Service Commission (supra)*** and ***A. B. Krishna (supra)*** relied upon by Mr.Chandra in support of his submission that once the legislature intervenes to enact law, the power of executive including the President is totally displaced, on the doctrine of occupied field, shall not be applicable in view of my conclusion above, in the facts of this case.

119. The plea of Mr. Chandra that Section 17A of GIBNA, 1972 is almost *para-materia* with Section 9 of the Act of 1980 and empowers the Central Government to make Schemes to regulate the terms and conditions of service of Officers of

PSICs with the approval of the Houses of Parliament is unmerited. This I say so because Section 17A of GIBNA, 1972 primarily relates to the power of the Central Government to regulate the service conditions of the Officers and other employees of the PSICs and in exercise of this power, the Central Government has framed the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Officers) Scheme 1975. The same is applicable to Officers from AAO to General Managers. In other words, Section 17A is not a provision applicable to General Managers / Directors, for framing of a Scheme.

120. Although, various submissions have been made by Mr. Jain and Mr. Sharma on the nature and scope of judicial review in the matter of selection by relying on the judgments in the case of *R.S. Dass and others (supra)*, *Geomin Minerals and Marketing Pvt. Ltd. (supra)*, *G. Sarana (supra)*, *Utpal Kumar Chowdhury (supra)* and *Sadhan Kumar Bose (supra)*, suffice to state the same may not be relevant, as such an issue is not required to be gone into in view of my finding above to the extent that the process of selection / appointment as General Manager / Directors could not have been made through BBB.

121. Similarly, various submissions have been made by Mr. Chandra with regard to violation of certain provisions framed by the ACC even in the impugned selections. For similar reasons, in view of my finding above, these submissions are also not required to be gone into.

122. In view of my above discussion, it must be held that the impugned Circulars dated December 13, 2018, November 9, 2019, June 9, 2020 are ultra-vires the Act of 1980 and Scheme of 1980 (as amended vide notification dated March 23, 2016) and as such are set aside. Consequently, the impugned selections could not have been undertaken by BBB. The appointments made pursuant to the impugned selections of General Manager and Directors of PSICs are liable to be set aside. It is ordered accordingly. Liberty is with the respondent No.1 to make selection and appointments of General Manager / Directors in accordance with law. No costs.

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In view of my decision above, these applications have become infructuous and are dismissed as such.

V. KAMESWAR RAO, J

OCTOBER 04, 2021/jg