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

Date of Decision: 21st March, 2023

+ **W.P.(C) 6915/2022**

RAJESH ARORA

..... Petitioner

Through: Petitioner in person. (M:9742499898)
versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Anil Soni, (CGSC) with Mr..
Devesh Dubey, GP.
Mr. Sandeep Chatterjee, Advocate for
R-2 (M-9911558224)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner-Mr. Rajesh Arora who is a qualified Company Secretary raising certain grievances in respect of the constitution of the Expert Committee/ Group on Secretarial Standards by the Institute of Company Secretaries of India (hereinafter 'ICSI').
3. The Petitioner's case is that he is a qualified Company Secretary having more than 28 years of experience and has worked in various well known corporate houses. He offered his services to ICSI to be considered for membership of the Secretarial Standard Board (now known as Expert Group on Secretarial Standards) in January, 2018. It is stated that the Expert Group on Secretarial Standards is usually constituted by the Council/ President every year. The Petitioner, subsequent to the response received from the Chairman of the Expert Group on Secretarial Standards on 27th

September 2021, filed an RTI application on 1st October, 2021 seeking the following details:

- “1. List of the current Members of Experts Group on the Secretarial Standards (erstwhile known as Secretarial Standard Board) with their tenure. How long they are serving as the members of the Experts Group of SS/ Board.*
- 2. Criteria of selection of the Members of the Experts Group on Secretarial Standard.*
- 3. Tenure for which a member of Experts Group Secretarial Standard/Board can continue/serve.*
- 4. Reason for not rotating few members of the Experts Group on Secretarial Standards/Board for more than 4 years.*
- 5. The relevant section/rule under which the President of ICSI and/or Council Members has/have got the discretionary power of appointment of the Members of Expert Group on Secretarial Standards/Board.”*

The same was replied to by the ICSI on 8th October 2021 as under:

S. No.	INFORMATION REQUESTED	REPLY
1.	List of the current Members of Experts Group on the Secretarial Standards (erstwhile known as Secretarial Standard Board) with their tenure. How long they are serving as the members of the Experts Group of SS/ Board.	Expert Group on Secretarial Standards has been constituted for the first time in the year 2021 only. List of members of Expert Group on Secretarial Standards for the year 2021 is available on ICSI Website at the weblink: https://www.icsi.edu/media/webmodules/List_of_Committees_16062021.pdf .
2.	Criteria of selection of	As may be determined by the Council.

	the Members of the Experts Group on Secretarial Standard.	
3.	Tenure for which a member of Experts Group Secretarial Standard/Board can continue/serve.	As may be determined by the Council.
4.	Reason for not rotating few members of the Experts Group on Secretarial Standards/Board for more than 4 years.	This cannot be construed as an information under Section 2(f) of the RTI Act.
5.	The relevant section/rule under which the President of ICSI and/or Council Members has/have got the discretionary power of appointment of the Members of Expert Group on Secretarial Standards/Board.	There is no prohibition under the CS Act/Regulations. The Council/President-ICSI under the authority of the Council may constitute such expert groups/ core-group as may be required for effective functioning of the Institute.

4. He, further, filed a second RTI application dated 3rd November 2021 seeking the criteria which is followed and adopted for appointment as a member of the Expert Group on Secretarial Standards along with other information. In respect of the second RTI application he received the following reply dated 16th December 2021:

S. No.	INFORMATION REQUESTED	REPLY
1.	Criteria determined by the Central Council of ICSI (hereinafter referred as 'Council')/ the President of ICSI for selection of the Members of the Experts Group on Secretarial Standard and what is the basis of the same	There is no such criteria. The selection of the members of the Expert Group on Secretarial Standards is determined by the Council as per requirement.
2.	What is the tenure for which a member of Experts Group on Secretarial Standard can continue//serve, which is determined by the Council. Please share the same.	There is no prefixed tenure. The same is determined by the Council as per requirement.
3.	There are few members which are continuing for more than 4 years on the Secretarial Standard Board) now known as Experts Group on Secretarial Standards) whereas the Expert Group/ Board is being constituted every year. The same members cannot continue forever, hence would like to know the reasons for not rotating them. Someone would have taken that decision and would have recorded the reasons thereof. Please share the name of the authority and the reasons recorded for not rotating the members of Expert Group/SS	Expert Group on Secretarial Standards is constituted for the first time during the year 2021. This cannot be construed as an information under Section 2(f) of the RTI Act.

	Board.	
4.	Which section/regulation authorizes the Council/ the President of ICSI to constitute Expert Group/Board of Secretarial Standard of there is no prohibition under the CS Act/Regulation. Please share the resolution that would have been passed by the Council to constitute such an expert group.	The Council/ President- ICSI, under the authority of the council, may constitute such expert groups as may be deemed necessary for effective functioning of the Institute. There is no such resolution.

5. Mr. Arora who is appearing in person submits that a perusal of the chart of members, who have been part of this group for the last several years, would show that the same members are being continued year on year without any change, at the discretion of the President/ Council. He, thus, prays for proper fixation of criteria and rotation of members of the Expert Committee/Group.

6. Notice was issued in this matter and ICSI has filed a counter affidavit. In the said counter affidavit it is stated that in terms of Regulation 105A of the Companies Secretaries Regulations, 1982, the Council is empowered to constitute the Secretarial Standards Committee ('SSC') and the Auditing Standards Committee. It is further stated that, in terms of the said regulations, the SSC as well as the Expert Group on Secretarial Standards was first constituted in 2021 and members are co-opted. Further, the Expert Group on Secretarial Standards is a support group which facilitates the process of formulation of various standards and guidance notes. The relevant extracts of the counter affidavit are set out below:

“5. I say that the contents of Para 5 are misconceived and hence denied. In this regard, I say that Regulation 105A of the Company Secretaries Regulations, 1982 [‘CS Regulations’], which was inserted by the Company Secretaries (Amendment) Regulations, 2020, Notification No.710/1(M)/1, published in the Gazette of India, Extraordinary dated 03-02-2020, provides that the Council may constitute (a) the Secretarial Standards Committee and (b) the Auditing Standards Committee as it may deem necessary for the purposes of carrying out the functions of the Institute.

Considering the mandate of CS Regulations, Secretarial Standards Committee (SSC) was first constituted in the year 2021 and it solely comprised of Council Members of Respondent No. 2 and such other members as may be co-opted by the SSC. In this regard, reference may be made to Section 17(2) & (6) of Company Secretaries Act, 1980 [‘CS Act’] read with Regulation 105A of CS Regulations, 1982. To support and facilitate the process of formulation of Secretarial Standards/ Guidance Notes by the SSC, an "Expert Group on Secretarial Standards" is also formed comprising of eminent members of ICSI and representative of various regulatory authorities, industry association and professional bodies. It may be noted that the Secretarial Standards Board (SSB) was functional till the year 2020 only and as on date there is no such SSB. The Secretarial Standards Committee and Expert Group on Secretarial Standards were constituted for the first time in the year 2021.

6. I deny the contents of para 6 as the same are misleading and misconceived. I deny that the Expert Committee on the Secretarial Standards to be reconstituted every year and the members of the same also needs to be rotated to give the other members a chance to serve as a member of Expert Committee on the Secretarial Standards. In this regard, I say that there is no Expert Committee on Secretarial Standards

as such. Further, this is the prerogative of the Council to decide the composition in the best interest of the institute.

7. I say that the contents of para 7 is meritless and without any base or substance. In this regard, I reiterate that the Expert Group on Secretarial Standards was constituted for the first time in the year 2021. As such, the averments made in the corresponding para is on the face of it misconceived.”

7. Ld. counsel for the Respondent submits that as on date there is no Expert Committee/Group.

8. A perusal of paragraph 6 above would show that , though, there is no Expert Committee/Group as on date and it is claimed that it is the pure prerogative of the Council to decide the composition in the best interest of ICSI.

9. However, this Court has perused the RTI replies which are extracted above and the chart of the members who have been continuing on a year on year basis. The court is of the opinion that some criteria ought to be evolved by ICSI for membership of the said Expert Committee/Group. Accordingly, since there is no Expert Committee/Group as on date, before constituting the said Expert Committee/Group, the council may prescribe the term/ criteria for appointment of the Expert Committee/Group before going forward with the constitution of the Expert Committee/Group.

10. It is made clear that this Court has not opined on the question as to whether members can be continued for several years inasmuch as in bodies of this nature, the experience of the senior members along with some continuity may also be essential. Thus, the direction being given to the

council is merely for laying down the criteria and term so that the same may operate in a transparent manner.

11. The present petition, along with all pending applications, is disposed of, in these terms.

**PRATHIBA M. SINGH
JUDGE**

MARCH 21, 2023

dj/rp

