

\$~39 (2021 Cause List)

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

+ W.P.(C) 7154/2021

RAHUL NARAYANRAO JADHAV AND ORS. .... Petitioners

Through: Mr. Manik Dogra, Ms. Aishwarya  
Singh, Mr. Dhruv Pande, Advs.

versus

INSURANCE REGULATORY AND  
DEVELOPMENT AUTHORITY  
OF INDIA AND OTHERS

..... Respondents

Through: Mr. Abhishek K. Gola, Adv. for R-  
1 & 2.

Mr. Ashish Dholakia, Sr. Adv. with  
Ms. Surbhi Sharma, Adv. for R-3.  
Mr. Ashish Mohan, Mr. Kushal  
Kumar & Mr. Akash Deep Gupta,  
Advs. for the Intervenors.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**

% **28.07.2021**

The proceedings in the matter have been conducted through video conferencing.

**CM APPLs. 22594-22595/2021 (exemptions)**

Exemption allowed, subject to all just exceptions.

The applications are disposed of.

**W.P.(C) 7154/2021 & CM APPL. 22593/2021 (stay)**

1. Issue notice. Mr. Abhishek Kumar Gola, learned counsel, accepts notice on behalf of respondent no. 1-Insurance Regulatory and Development Authority of India [“IRDAI”] & respondent no. 2-Election Officer. Ms. Surbhi Sharma, learned counsel, accepts notice on behalf of respondent no. 3-Indian Institute of Insurance Surveyors and Loss Assessors [“the Institute”].

2. The petitioners are members of the Board of Directors of the Institute, which is a company within the meaning of Section 8 of the Companies Act, 2013 [“the Act”]. They are aggrieved by an order of the IRDAI dated 24.05.2021, to the extent that it records that they will retire as Members of the Board of Directors of the Institute on 28.07.2021.

3. The Institute’s Board of Directors comprises of 12 elected members, two nominated members [one each to be nominated by the Government of India and IRDAI], and the Chairman of General Insurance Corporation of India. It appears that in July 2019, there were vacancies in all the 12 positions of elected Directors and elections were therefore held for all the positions on 29.07.2019. The Institute was then advised that the directors so elected could not take office immediately, as the Annual General Meeting [“AGM”] of the Institute was scheduled to be held only in December 2019. Consequently, a meeting of the Board of Directors was held on 29.07.2019, at which the 12 elected members were apparently appointed as Additional Directors of the company. A copy of the Resolution of the Board of Directors has been screen shared by Mr.Ashish Dholakia, learned Senior Counsel for the Institute. It appears therefrom that the appointment of these persons as Additional Directors

was stated to be subject to regularization at the next AGM, for the remainder of their term.

4. Curiously, although the aforesaid resolution refers to Section 161 of the Act, the said section confers the power to appoint Additional Directors upon the Board of Directors only if provisions in this regard are contained in the Articles of Association. It is common ground that the Articles of Association of the Institute contain no such power. Nevertheless, all the 12 elected members appear to have been appointed as Additional Directors and thereafter duly elected as Directors at the AGM of the company on 03.12.2019.

5. Mr. Manik Dogra, learned counsel for the petitioners, submits that upon a conjoint reading of Section 152(2) of the Act and Article 15 of the Articles of Association of the Institute, the petitioners' term as Directors only started running from the date of the AGM, i.e. 03.12.2019. Mr. Dholakia supports this contention.

6. Mr. Abhishek Kumar Gola, learned counsel for IRDAI, seeks time to take instructions.

7. It may be mentioned that Mr. Ashish Mohan and Mr. Kushal Kumar, learned counsel, appear on behalf of persons who wish to contest the elections called by the IRDAI vide notice dated 24.05.2021. They state that they wish to intervene in the present proceedings, and have filed or will be filing intervention applications.

8. For the purpose of interim relief, it may be noted that the petitioners can be taken to retire on 28.07.2021 only if their term of office is reckoned from 29.07.2019 (the date they were purportedly appointed as Additional Directors), and not 03.12.2019 (the date of the AGM at which

they were elected).

9. I am *prima facie* of the view that this does not appear to be the correct position. Section 152(2) of the Act provides that every Director shall be appointed by a company in General Meeting, unless otherwise provided in the Act. The AGM of the Company, at which these Directors were appointed, was held in December, 2019 and it is undisputed that the next AGM will be held only in December, 2021.

10. The provision for appointment of Additional Directors under Section 161 of the Act requires the Articles of Association of the company to confer such a power. Although the effect of the resolution dated 29.07.2019 will have to be examined, for the present purposes, I am unable to find any authority in the Articles of Association for appointment of Additional Directors.

11. Consequently, I am *prima facie* of the view that the position taken by IRDAI in the impugned order that the petitioners would retire on 28.07.2021 is erroneous. For the aforementioned reasons, the direction of the IRDAI to this extent is stayed, until the next date of hearing. Mr. Dholakia assures the Court that the AGM will be held in accordance with the schedule prescribed by the Act and the Institute's Articles.

12. As far as Mr. Mohan's and Mr. Kumar's clients are concerned, suffice it to say that their clients are only prospective candidates at the election which has been announced. The election process has just commenced and, according to the Articles of Association of the Institute, will be held at least 75 days hence. If these candidates succeed in the election, they will be entitled to take over when the retiring members demit office. Their rights at this point are, at best, inchoate. They are not

impeded from contesting the election by the present proceedings.

13. It is made clear that the election process may continue, and is in any event, not the subject matter of challenge in these proceedings.

14. List on 22.10.2021.

**PRATEEK JALAN, J**

**JULY 28, 2021/ 'hkaur'**