

Rahul Narayanrao Jadhav And Ors vs Insurance Regulatory And Development ... on 16 August, 2021

Author: Prateek Jalan

Bench: Prateek Jalan

\$~14 (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, Advocate with
Ms. Aishwarya Singh and Mr.
Dhruv Pande, Advocates for
petitioners
Mr. Ashish Mohan, Mr. Kushal
Kumar, Mr. Harsh Ahuja, Mr.
Akash Deep Gupta, Mr. Additya
Kapoor, Advocates for applicants
versus

INSURANCE REGULATORY AND DEVELOPMENT

AUTHORITY OF INDIA AND OTHERS

..... Respondent

Through: Mr. A. K. Singla, Sr. Advocate
with Mr. Abhishek K Gola,
Advocate for IRDAI
Mr. Ashish Dholakia, Sr. Advocate
with Mr. Ankit Mangla, Ms.
Surbhi Sharma, Mr. Rohan
Chawla, Mr. Akash Panwar,
Advocates for Indian Institute of
Insurance Surveyors and Loss
Assessors

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 16.08.2021 The proceedings in the matter have been conducted through video conferencing.

CM APPLs. 26186-26187/2021 (exemption) Exemptions allowed, subject to all just exceptions.

These applications stand disposed of.

CM APPL. 26305/2021 (for impleadment)

1. The applicants seek impleadment as party-respondents to the writ petition.

2. The writ petition has been filed by four individuals who hold office as directors of the respondent No. 3-Indian Institute of Insurance Surveyors and Loss Assessors ["the Company"]. It is directed

against a communication of the respondent No. 1-Insurance Regulatory and Development Authority of India ["IRDAI"] dated 24.05.2021, to the extent that the IRDAI held that the petitioners would retire as directors of the company on 28.07.2021.

3. The applicants who seek impleadment are individuals who have been elected to the Board of Directors of the Company. The proposed respondent Nos. 4 to 7 were elected in the elections held in January, 2021, pursuant to the retirement of directors in the year 2020. However, they have not yet taken office as the Annual General Meeting for the year 2020 had already been held and the next General Meeting has not yet been held. The proposed respondent Nos. 8 and 9 are contesting the elections which are being presently being held and aspire to replace the writ petitioners in the election.

4. It is evident that the relief sought in the writ petition, therefore, does not concern the proposed respondent Nos. 4 to 7. Mr. Ashish Mohan, learned counsel appearing on behalf of the applicants, restricts the prayer for impleadment to proposed respondent Nos. 8 and 9 [Tilak Raj Verma and Rishi Partap Bhasin] as respondents in the writ petition.

5. As the proposed respondents would be affected by the relief sought in the present writ petition, the application is allowed and the proposed respondent Nos. 8 and 9 are impleaded as respondents Nos. 4 and 5 in the writ petition.

6. The petitioners are directed to file an amended memo of parties within one week.

7. The application is disposed of in these terms.

1. The review petitioners seek review of an interim order dated 28.07.2021 passed in W.P.(C) 7154/2021. By the aforesaid order, this Court had recorded as follows:-

"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."

2. Mr. Ashish Mohan, learned counsel for the review petitioners, submits that there is an error apparent in the order, inasmuch as this Court has observed that the next Annual General Meeting ["AGM"] of the Company will be held only in December, 2021. Mr. Mohan points out that under Section 96 of the Companies Act, 2013 ["the Act"], the AGM is ordinarily to be held within a period of six months from the date of closing of the financial year. As the financial year of the Company admittedly closes on 31st March each year, he submits that the AGM is required to be held by 30.09.2021. This is however subject to any extension which the Registrar of Companies ["ROC"] may grant under the fourth proviso to Section 96(1) of the Act. Mr. Mohan further submits that in terms of Section 152(2) of the Act, directors may be appointed not just at an AGM, but at any general meeting.

3. Mr. Manik Dogra, learned counsel for the writ petitioners, Mr. Ashish Dholakia, learned Senior Counsel for the Company, and Mr. A.K. Singla, learned Senior Counsel for the IRDAI, do not dispute the aforesaid legal position. However, Mr. Dholakia submits that for several years, the ROC has, in fact, granted orders extending the time for holding of the AGM in December.

4. The review petition is therefore disposed of with the clarification that the order under review is not intended to hold that the AGM can be held only in December, 2021. The observations contained in paragraph 9 of the order under review stands modified to this extent.

5. It is made clear that the General Meeting/AGM of the Company may be held in terms of the provisions of the Act, read with the Articles of the Association of the Company. In the event the Company seeks an extension of time for holding of the AGM under the fourth proviso to Section 96(1), that issue will be decided by the ROC on its own merits. This Court has expressed no view in this regard.

6. The review petition is disposed of in these terms. CM APPL. 26185/2021 (seeking permission bring additional documents on record) Mr. Mohan does not press this application, which stands disposed of.

W.P.(C)7154/2021

1. The respondents, including the newly impleaded respondents, may file their counter affidavits to the writ petition within four weeks. Rejoinders thereto, if any, may be filed within two weeks thereafter.

2. List on the date fixed, i.e. 22.10.2021.

PRATEEK JALAN, J AUGUST 16, 2021 'j'