



INDIAN INSTITUTE OF INSURANCE SURVEYORS AND LOSS ASSESSORS

(Promoted by IRDA, Govt. of India)

Date: 17-09-2020

Dear Members,

In continuation with our previous communication dt.18.08 2020 to members regarding challenging proposed regulation 2020 a WP [C] no. 5486 /2020 was filed before Hon. Delhi High court on 19.08.2020 by IIISLA and was disposed off on 20.08.2020 by issuing order , asking IRDAI to maintain transparency and share MOM of IRDAI board meeting dt.13.08.2020 also On a query raised by the Court as to whether the petition is premature, Mr. Dipak K. Nag, Id. counsel appearing for the IRDAI submits that as per Section 27 of the Insurance Regulatory and Development Authority Act, 1999 (hereinafter, "IRDA Act"), the rules and regulations have to be laid before the Parliament. Under instructions, he submits that the draft regulations would not be given effect until and unless the same are duly notified and passed by Parliament.

A review petition was filed by IRDAI against the HC Order Dt. 20.08.2020 (copy attached herewith) which was listed on 15.09.2020 and a order is passed (copy attached)herewith in which IRDAI has been asked to submit a tabulated chart within two weeks stating what representations they have considered from SLAs / IIISLA in finalizing the regulation 2020 ,the extract of the order says "Accordingly, let a complete chart be furnished by Mr. Ananthakrishnan, Chief General Manager, IRDAI through the Id. counsel Mr. Dipak K. Nag, to the Id. counsel for the Petitioner, giving a tabulation of the representations and suggestions made by the Petitioner and the consideration afforded thereto by the IRDAI, within a period of two weeks from today."

Though the action was prematured as regulations yet to be notified BUT challenging it with the ground that We got ignored at all stages during the process of drafting of regulation 2019/2020 was heard by the honourable court and relief to the surveyor profession is likely to be granted in near future.

We thanks to the members for their moral support during this fight for our existence and expects the same in the coming future.

Regards

Er. Rahul Jadhav
BE , LLM,PGDRIM
National secretary
IIISLA.

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

+ **W.P.(C) 5486/2020 & CM APPLs.19769-72/2020**

INDIAN INSTITUTE OF INSURANCE SURVEYORS
AND LOSS ASSESSORS

..... Petitioner

Through: Mr. Ashish Dholakia and Mr. Ankit
Mongla, Advocates. (M:9899948838)

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sanjeev Sabharwal, Sr. Panel
Counsel along with Mr. Abhishek
Khanna, Advocate for R-1.
Mr. Dipak K. Nag, Advocate for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **20.08.2020**

1. This hearing has been done by video conferencing.
2. The present writ petition has been filed by the Indian Institute of Insurance Surveyors and Loss Assessors (*hereinafter*, "IISLA") - a Section 8 company under the Companies Act. The Petitioner is, an association of registered insurance surveyors and loss assessors. The challenge raised in the present writ petition is to the decision taken in the board meeting held on 13th August, 2020 by which the Insurance Regulatory and Development Authority of India (Insurance Surveyors and Loss Assessors) (Amendment) Regulations, 2020 was approved by the Board. By the said Regulations, the earlier regulations of 2015 are sought to be amended.
3. The challenges raised by the Petitioner are multi-fold. Broadly, the Petitioner's stand is that the amendments proposed are arbitrary, unjust and illegal. It is also their stand that the Petitioner made detailed representations

to the Insurance Regulatory and Development Authority of India (*hereinafter, "IRDAI"*). Vide the board meeting held on 13th August, 2020 the regulations have been passed without giving serious consideration to the suggestions made by the Petitioner. The prayer is that the decision of the Board Meeting held on 13th August, 2020 be quashed and the Regulations not be given effect to.

4. Mr. Ashish Dholakia, Id. counsel for the Petitioner submits that the copy of the Minutes of the Board Meeting dated 13th August, 2020 is not available with the Petitioner and hence, the same could not be placed on record. He further submits that the Regulations are arbitrary and ought not to come into force.

5. On a query raised by the Court as to whether the petition is premature, Mr. Dipak K. Nag, Id. counsel appearing for the IRDAI submits that as per Section 27 of the Insurance Regulatory and Development Authority Act, 1999 (*hereinafter, "IRDA Act"*), the rules and regulations have to be laid before the Parliament. Under instructions, he submits that the draft regulations would not be given effect until and unless the same are duly notified and passed by Parliament.

6. Section 27 of the IRDA Act reads as under:

"27. Rules And Regulations To Be Laid Before Parliament.- Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any

modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”

7. As per Section 27, when the regulations are placed before Parliament, the same may be modified and only the modified regulations would take effect. The statement made by Mr. Dipak K. Nag, Id. counsel that the regulations are currently not being given effect to is accepted and taken on record.

8. Considering the fact that the regulations which are sought to be challenged are still in a draft form, and the stand of the IRDAI that the same would not be given effect to until they are notified and passed by Parliament, in the opinion of this Court, the challenge is premature. Accordingly, the writ petition is disposed of as premature, leaving open the rights of the Petitioner to avail its remedies in accordance with law once the regulations are duly notified and placed before the Parliament. All pending applications are also disposed of. In the meantime, in order to maintain transparency, IRDAI is directed to supply the minutes of the board meeting dated 13th August, 2020 to Id. counsel for the Petitioner within a period of one week from today.

PRATHIBA M. SINGH, J.

AUGUST 20, 2020

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

+ **W.P.(C) 5486/2020, REVIEW PET. 134/2020**

INDIAN INSTITUTE OF INSURANCE SURVEYORS AND LOSS
ASSESSORS Petitioner

Through: Mr. Ashish Dholakia and Mr. Ankit
Mongla, Advocates. (M:9899948838)

versus

UNION OF INDIA & ORS Respondent

Through: Mr. Sanjeev Sabharwal, Sr. Panel
Counsel along with Mr. Abhishek
Khanna, Advocate for R-1.
Mr. Dipak K. Nag and Mr. H
Ananthakrishnan, CGM (Legal),
Advocates for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **15.09.2020**

1. This hearing has been held through video conferencing.

REVIEW PET. 134/2020

2. The present Review Application seeks review of order dated 20th August, 2020, on the ground that the ld. counsel appearing for the Insurance Regulatory and Development Authority of India (*hereinafter*, "IRDAI") had erroneously submitted as to the legal position discussed therein.

3. As per the Review Application, the submission of the Applicant/ Respondent No. 2 is that Regulations made by IRDAI are notified under Section 26(1) of the Insurance Regulatory and Development Authority Act, 1999 (*hereinafter*, "IRDA Act") and thereafter placed before the Parliament under Section 27 of the said Act. However, the Regulations come into effect

and become operative, immediately upon notification in the Official Gazette under Section 26.

4. It is also stated that the notification for the Insurance Regulatory and Development Authority of India (Insurance Surveyors and Loss Assessors) (Amendment) Regulations, 2020 has not yet been issued by the IRDAI, and once the notification is issued, they will take effect.

5. It is further submitted that the order dated 20th August, 2020 ought to be clarified to the effect that as per Section 26 of the IRDA Act, the power to make Regulations, vests with the IRDAI. The notification would be issued in the Official Gazette when the Regulations are made and upon notification, the same would take effect immediately. Thereafter, in accordance with Section 27 of the IRDA Act, the Regulations would be laid before the Parliament. If any modification is made, after being laid before the Parliament, the Regulations in the modified form shall take effect.

6. On merits it is stated by Mr. Ananthkrishnan, Chief General Manager, IRDAI that the IRDAI has considered various submissions made in the representation of the Petitioner. The said submissions of the Petitioner may also be considered prior to notifying the Regulations.

7. Accordingly, let a complete chart be furnished by Mr. Ananthkrishnan, Chief General Manager, IRDAI through the Id. counsel Mr. Dipak K. Nag, to the Id. counsel for the Petitioner, giving a tabulation of the representations and suggestions made by the Petitioner and the consideration afforded thereto by the IRDAI, within a period of two weeks from today.

8. The statements made on behalf of IRDAI today are taken on record. It is further directed that after notification of the regulations under Section 26

of the Act, the Petitioner's rights and remedies, in respect of the notified Regulations, are left open. After notification of the Regulations, the same would be placed before Parliament as per the provisions of the Act.

9. The review application is disposed of, in the above terms. The writ petition stands disposed of vide order dated 20th August, 2020. Needless to add that the merits of the challenge raised by the Petitioner to the draft Regulations has not been examined by this Court as the same are not yet notified and the writ is pre-mature. The present order be uploaded as corrigendum to order dated 20th August 2020.

PRATHIBA M. SINGH, J.

SEPTEMBER 15, 2020

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