

COMPETITION COMMISSION OF INDIA

Case No. 15 of 2023

In re:

Shrikant Ishwar Mendke

BUDA Scheme 27, Plot No.11

Opp. Sambhaji Udyan

Mahadwar Road, Belgaum

Karnataka - 590001

Informant

And

Insurance Regulatory and Development Authority of India

Sy No. 115/1 Financial District

Nanakramguda Gachibowli

Hyderabad-500032

Opposite Party No. 1

Indian Institute of Insurance Surveyors and Loss Assessors

6-1-73, Off No. 104 and 106

First Floor, Saeed Plaza, Lakdikapool

Hyderabad- 500004

Opposite Party No. 2

CORAM:

Ms. Ravneet Kaur

Chairperson

Ms. Sangeeta Verma

Member

Mr. Bhagwant Singh Bishnoi

Member

Order under Section 26(2) of the Competition Act, 2002

1. The present Information has been filed by Shri Shrikant Ishwar Mendke under Section 19(1)(a) of the Competition Act, 2002 ('the Act') against Insurance Regulatory and Development Authority of India ('IRDAI'/ 'OP-1') and Indian Institute of Insurance Surveyors and Loss Assessors ('IISLA'/'OP-2') alleging contravention of the provisions of Sections 3 and 4 of the Act.

2. The Informant is stated to be the holder of a license to act as a Surveyor and Loss Assessor bearing No. IRDAI/IND/SLA-9711 (**'license'**) since 06.12.1984. The said license is said to be renewed every 5 years by the Informant till 05.12. 2019. IRDAI/ OP-1 is a statutory body set up under Section 3 of the Insurance Regulatory and Development Authority of India Act, 1999 (**'IRDAI Act'**) for *inter alia* protecting the interests of the policyholders and regulating, promoting, and ensuring orderly growth of the insurance industry in India. As per the Informant, IISLA/ OP-2 was established and incorporated on 04.10.2005 under Section 14(2) (f) of the IRDAI Act and Section 25 of the Companies Act, 1956 to promote and regulate Surveyors and Loss Assessors.
3. The Informant has submitted that it had applied for renewal of the license on 18.11.2019 which has been allegedly withheld by IRDAI for the sole reason that the Informant is not a member of IISLA. As per the Informant, IRDAI has mandated membership with the IISLA as an eligibility criterion for grant of renewal by notification published in official gazette on 22.03.2013. The Informant has stated that it had taken membership of IISLA initially, but stopped paying subscription fee/ annual membership fee since the financial year 2008-09, as, in his opinion, within three years of its establishment, IISLA failed to make any noteworthy progress in attaining the objects of its establishment.
4. The Informant further stated that to comply with the statutory requirement of being a member of IISLA, it attempted to become a member again by way of an online application bearing No. 10001841 dated 09.08.2021. But, IISLA had not taken any action on the application despite the statutory requirement that it shall grant membership to the person eligible within 15 days from the date of receipt of membership application. Thereafter, Informant preferred an appeal before IRDAI, which was closed unilaterally and it was intimated to the Informant by an e-mail sent on 06.01.2022 by IRDAI that the membership application is blocked due to non-payment of subscription fee for three years.
5. The Informant has further averred that subsequently, IRDAI closed even application for renewal of the license of the Informant and informed him *vide* email dated 11.01.2022. It has been also submitted by the Informant that *vide* email dated 09.04.2022, IISLA raised additional requirements in a piecemeal manner requiring the Informant to submit FORM 26AS from 2019 to till date as well as the Informant's current employment status. The

Informant states that it fulfilled such requirement *vide* email dated 19.04.2022, under protest, since the disposal of the membership application was already delayed considerably.

6. The Informant has also stated that it had lodged a complaint against IISLA before the IRDAI *vide* email dated 25.05.2022 for causing undue delay and exercising arbitrary discretion in dealing with its membership application. However, IRDAI did not resolve the complaint. The Informant thereafter sent reminders on 15.06.2022 and 03.08.2022 but in vain as IRDAI did not take cognizance on the complaint.
7. The Informant has alleged that IISLA has abused its dominant position, conferred by the statute by IRDAI, by resorting to unfair and restrictive trade practices as mentioned hereinabove, which are in contravention of the provisions of Section 4(2)(a)(ii), Section 4(2)(b)(i), Section 4(2)(b)(ii) and Section 4(2)(c) of the Act. As per the Informant, IRDAI has created a monopoly in favour of IISLA by making membership with it a statutory requirement for grant of licence by IRDAI. It is alleged that IISLA is not dealing with the application of the Informant for membership and is further raising irrelevant queries, seeking recovery of subscription dues of INR 31,860/-, threatening to initiate disciplinary proceedings, *etc.*, and has thereby abused its dominant position.
8. In addition to the above, the Informant has also alleged that to strengthen the IISLA to serve its purposes, IRDAI empowered its status by mandating membership of IISLA as an eligibility criterion for grant of a valid licence to act as a Surveyor and Loss Assessor and further, the period of license was brought down to 3 years from 5 years by way of IRDAI (Insurance Surveyors and Loss Assessors) Regulations 2015. As per the Informant, such action, being in concert, are in contravention of sub-section (2) and 3(b) of Section 3 of the Act.
9. The Informant has also sought an interim relief under Section 33 of the Act seeking a direction to IRDAI to approve the applications of the Informant for renewal of licence to act as Surveyor and Loss Assessor.
10. Having considered the averments and allegations made in the Information, the Commission notes that the Informant primarily appears to be aggrieved by the alleged anti-competitive

arrangement between IRDAI and IISLA, which resulted in non-renewal of his license to act as Surveyor and Loss Assessor by IRDAI, as detailed in the Information. As per the Informant, IRDAI has created a statutory monopoly in favour of IISLA by mandating its membership as an eligibility criterion for grant and renewal of licences and IISLA has abused its dominant position by withholding the grant of membership due to non-payment of past dues of annual subscription fee to IISLA.

11. The Commission notes that IRDAI has been set up under the Insurance Regulatory and Development Authority Act, 1999 to provide *inter alia* for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto. Further, IISLA has been established and promoted by IRDAI under Section 14(2)(f) of the Insurance Regulatory and Development Authority of India Act, 1999 which empowers it to promote and regulate professional organisations connected with the insurance and re-insurance business. IISLA's Memorandum of Association provides that its main objects are as follows:

1. *To promote quality in profession of Surveyors and Loss Assessors through education and training, facilitate the introduction of best practices amongst its members, and disseminate technical information amongst its members to upgrade their skill and knowledge.*
2. *To conduct Professional examinations relating to the profession of Surveyors and Loss Assessors.*
3. *To promote research and studies in loss control and minimization techniques and measures and share the same with Insurance Industry and the general public and to update its members on application of new technologies for improving service to the users and consumers.*
4. *To bring out guidance notes, instruction manuals, and periodicals for the use and benefit of members and others connected with the profession of surveyors and loss assessors.*
5. *To develop and administer code of conduct and ethics from time to time with the concurrence of the IRDA and ensure compliance of the same by its members and also ensure that the members maintain/adhere to high*

standards of integrity, transparency, discipline, and professional conduct.

12. As per the Informant, IRDAI has by way of notification dated 22.03.2013 in official gazette mandated membership with IIISLA for grant/ renewal of license to practise as a Surveyor and Loss Assessor. On perusal of the same, it appears that the said notification was issued by IRDAI in exercise of powers conferred by Section 42D, 64UM and 114A of the Insurance Act, 1938 read with Sections 14 and 26 of the Insurance Regulatory and Development Authority Act, 1999 to amend the Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct) Regulations, 2000. The relevant provisions, germane to the issue at hand, of the said notification, are as under:

In Regulation 2, the following new clauses shall be inserted:

(ea) "Institute" means the Indian Institute of Insurance Surveyors and Loss Assessors (IIILSA) promoted by IRDAI under Section 14 of the IRDA Act, 1999 and incorporated under Section 25 of the Companies Act, 1956.

(fc) "Surveyor and Loss Assessor" means a person who is a member of the Institute and licensed by the Authority to act as Surveyor and Loss Assessor.

13. Further, membership of IIILSA has been made mandatory for acting as a surveyor or loss assessor by way of an amendment¹ to the Insurance Act, 1938. The relevant provisions are quoted below:

"Section 64UM. Surveyors or loss assessors. —(1) Save as otherwise provided in this section, no person shall act as a surveyor or loss assessor in respect of general insurance business after the expiry of a period of one year from the commencement of

¹ Act 5 of 2015, s. 82, for section 64UM (w.e.f. 26-12-2014).

the Insurance Laws (Amendment) Act, 2015 (5 of 2015), unless he—

(a) Possesses such academic qualifications as may be specified by the regulations made under this Act; and

(b) Is a member of a professional body of surveyors and loss assessors, namely, the Indian Institute of Insurance Surveyors and Loss Assessors...

14. In addition, the Insurance Regulatory and Development Authority of India (Insurance Surveyors and Loss Assessors) Regulations, 2015 also provides that membership with IISLA is a mandatory condition for acting as a Surveyor and Loss Assessor. The relevant extracts are as below:

2 Definitions: -

*(9) **“Institute” means the Indian Institute of Insurance Surveyors and Loss Assessors (IISLA) promoted by IRDAI under Section 14(2)(f) of IRDA Act, 1999 and incorporated under Section 8 of the Companies Act, 2013.***

3. Application for, and matters relating to, grant of license to individual Surveyors and Loss Assessors: *(1) Every person who is a Student Member as defined under these Regulations and intending to act as a Surveyor and Loss Assessor in respect of general insurance business shall apply to the Authority for grant of license in the Form as may be specified by the Authority.*

(2) Eligibility Criteria:

(a) Qualifications:

(i) Academic/technical/professional/Insurance Qualifications given in Schedule-I Annexure-1 of these Regulations.

(ii) Other qualifications as may be prescribed by the Authority from time to time.

*(iii) **Shall be a “Member of Institute”***

(b) Examination: Passing of relevant paper(s) of Surveyor and Loss Assessor Examination conducted by the Insurance Institute of India, or such other Institute recognized by the Authority.....”

15. In view of the aforesaid statutory landscape, it is apparent that IRDAI is a statutory body created under the IRDAI Act, 1999 and IISLA is a body promoted by IRDAI in the discharge of its functions under Section 14(2) (k) of the IRDAI Act, 1999. Further, membership of IISLA has been made mandatory by IRDAI for grant and renewal of licences for Surveyors and Loss Assessors. Such functions, being regulatory in nature, are not *per se* amenable within the jurisdiction of the Commission as held by the Hon'ble Delhi High Court in its judgment dated 02.06.2023 in the case of *Institute of Chartered Accountants of India v. Competition Commission of India & Ors.* The relevant extracts of the decision are as follows:

“55..... The statutory authority, which is vested with the regulatory powers can alone exercise such powers. The Competition Act does not contemplate the CCI to act as an appellate court or a grievance redressal forum against such decisions, which are taken by other regulators, in exercise of their statutory powers and are not interfaced with trade or commerce. A statutory body may in course of its functions, also make decisions which involve trade and commerce. As an illustration, the concerned body may purchase equipment and consumables or avail services of professionals. There is no cavil that any decision in this regard may, if it falls foul of the provisions of the Competition Act, be examined by the CCI.”

“62. It is relevant to state that there are several statutory corporations and bodies, which are constituted under legislative enactments and are charged with specific functions. Some of them may also involve providing of services. If those economic activities are not a part of its regulatory functions, the same would obviously be subject to scrutiny by the CCI. However, a

decision in exercise of regulatory powers, is required to be taken by the regulator and its discretion to do so can only be fettered by the provisions of the statute, which clothes the regulator with such powers. The regulatory powers are not subject to review by the CCI.”

“66. It is important to note that the CCI’s power is for regulating of markets; it does not extend to addressing any grievance regarding arbitrary action by any statutory authority....”

16. Resultantly, the Commission is of the opinion that the alleged anti-competitive conduct by the Opposite Parties are outside the ambit of the provisions of the Act and no case of contravention of the provisions of the Act is made out. The Information filed is directed to be closed forthwith in terms of the provisions of Section 26(2) of the Act. Consequently, no case for grant of relief(s) as sought under Section 33 of the Act arises and the prayer for the same is also rejected.

17. The secretary is directed to communicate to the Informant, accordingly.

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(Sangeeta Verma)
Member

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(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 26.07.2023