(2012) 11 OHC CK 0007

In the Orissa High Court

Case No : Writ Petition (C) No. 11404 of 2004

Giridhari Mishra and Others — APPELLANT

Vs

State of Odisha and Others — RESPONDENT

Date of Decision : 16-11-2012

Acts Referred:

Citation : (2013) 1 OLR 136

Hon'ble Judges : V. Gopala Gowda, C.J;B.N. Mahapatra, J

Bench : Division Bench

Advocate : Jateswar Nayak, M.K. Das, S. Mallick, L. Dash and Mrs. M. Das, for the Appellant; R.K. Mohapatra, Government Advocate, Mr. P.K. Muduli, A.S.C., Mr. S.D. Das, A.S.G. for O.P. No. 3, S.S. Rao, B.K. Mohanty and N.C. Nayak for O.P. No. 6, N. Sahani and K. Pradhan for O.P. No. 7, for the Respondent

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—The present writ petition has been filed in the nature of a Public Interest Litigation with the prayers to (i) direct/ order that each Grama Panchayat shall be taken as a unit for the purpose of assessment of crop yield or loss caused to the farmers due to natural calamities, (ii) direct/order that an independent enquiry shall be conducted to assess the loss sustained by the petitioners'' village due to natural calamities from the year 1999 till date, (iii) direct/order that the petitioners shall be paid compensation by settling their insurance claims either individually or as a unit on Grama Panchayat basis to compensate the loss caused to their crops due to natural calamities, and (iv) pass such other orders/ direction as this Court may deem fit and proper in the interest of justice. Petitioners'' case in a nut-shell is that they are the residents of the villages of Barasara and Govindpur of Govindpur Grama Panchayat of Tihidi Block in the district of Bhadrak. They have challenged the illegal action of the opposite parties in not settling their claims and not paying them the compensation for loss of crops grown by them on account of natural calamities. The petitioners had grown paddy by obtaining agricultural loan as per the

National Agricultural Insurance Scheme. The crops grown by them were insured compulsorily and the petitioners had paid insurance premium through their Bankers, i.e. the Central Co-operative Bank Ltd., Balasore. However, their insurance claims have not been settled though they have incurred loss in yielding their crops. Hence, the present writ petition.

2. Mr. J. Nayak, learned counsel appearing on behalf of the petitioners submitted that the petitioners are small farmers and they maintain their livelihood mostly by growing paddy. The agricultural fields in the aforesaid villages are rain fed as no irrigation facility is provided to them. In case of heavy rain fall, their agricultural fields are flooded out and in case of low rain fall they will be subjected to loss on account of drought. In the year 1999 as Scheme namely, National Agricultural Insurance Scheme was introduced by the Government of India through the concerned State Governments for insuring the crops grown by the farmers. Both loanee and non-loanee are eligible to avail the benefits under the aforesaid scheme. Under the said Scheme, comprehensive risk insurance is provided to cover yield losses arisen due to non-preventable risks, such as flood, drought, cyclone and typhoon. It was decided to operate the Scheme on the basis of "Area approach" for wide spread calamities and on an individual basis for localized calamities. The petitioners are growing paddy by obtaining agricultural loan from the Balasore District Central Co-operative Bank Ltd. and Credit Cards have been issued in their favour for the purpose. While obtaining their loans, they are compelled to insure the crops and to pay the insurance premium. From the year 1999, till date the petitioners have been losing about 50% to 75% of their crops each year due to natural calamities. However, they have not been compensated for the losses they have suffered though they have insured the crop and paid the insurance premium. As per the National Agricultural Insurance Scheme, defined area of notified crops for widespread calamities was taken as a unit for deciding the insurance claim of that area. In the State of Odisha, each Block has been taken as a Unit i.e. as the "Defined Area" for paddy crops. In view of such area approach, if any individual farmer or any independent villager suffers loss due to any wide-spread calamity such as drought, flood, etc. such individual farmer or individual villager will not be entitled to get the insurance claim. For enabling the farmers to get the insurance claim, the State Government have to declare the entire Block area as affected area, so that all the farmers in that defined area will be eligible to get the insurance claim. In view of such wrong area approach, the petitioners are not able to get their legitimate insurance claims though actually they have suffered loss of about 5.0% to 75% of their crops on account of widespread calamities. In Tihidi Block of Bhadrak District, most of the agricultural lands are covered by irrigation facilities. Such irrigation facilities have not been extended to the petitioners'' villagers. In case of drought in the entire area, most of the agricultural fields are provided with irrigation facilities except some few villages like that of the petitioners in the Block. The State Government, therefore, are not declaring the entire Block, i.e. the "defined area" under the Scheme as the drought affected areas. However,

the petitioners reliably learn and verily believe that the revenue authorities on proper verification have declared the villages of the petitioners as drought affected areas and they have measured the loss to the extent of 50% to 75%, but on account of non-declaration of the affected area as ''defined area'', the petitioners are unable to get their legitimate rights of insurance claims.

3. It was incumbent upon the State Government to declare any area as a Unit. Clause 9 of the Scheme is crystal clear that the "Defined Area" or a Unit may be a Grama Panchayat/Mandal/Circle/Block or Taluk. In the instant case, had the unit or defined area been a Grama Panchayat or a particular circle, the petitioners would have been able to get their insurance claim. However, as the entire Block area has been taken as a single unit, the petitioners have been deprived of getting their legitimate insurance claims only the petitioners'' villages have been affected while other places in the Block to which irrigation facilities are provided have not been affected. Therefore, the right approach would be to settle the claim on an individual basis instead of deciding the claim on "Area approach" specifically when premiums have been collected by the insurance company on an individual basis while advancing agricultural loans on each Kisan Credit Card.

4. Mr. Nayak, further submitted that the petitioners reliably learnt that till the year 2000, each G.P. was taken as a unit for settling the insurance claim of any loss to the farmers on account of such wide-spread calamities. After the year 2000, the State Government instructed to take the Block as a Single Unit. However, the State Government lost sight of the fact that there are certain Blocks specifically in Bhadrak district in which more than 50% of the area have been provided with irrigation facilities and the farmers of that area will not be affected or at a loss anything in spite of the wide-spread calamities. On the other hand, the farmers of the rest of the area will definitely be affected in the event of such wide-spread calamities. The State Government, however, are not declaring the entire area as affected area as a result of which, the affected farmers have been deprived of settling their insurance claims. The petitioners are the small farmers of villages Barasara and Govindpur under Tihidi Block of Bhadrak district. The petitioners'' villages have not been provided with any irrigation facilities while other areas approaching the main road, have been provided with irrigation facilities. For the last five years, they have been suffering being affected by natural calamities mostly by drought in view of untimely rainfall in the State. Being aggrieved by the inaction of the authorities in not settling their insurance claims the petitioners submitted a representation to the Collector, Bhadrak to compensate their loss caused due to such natural calamities. The petitioners reliably learnt that the local Tahasildar though reported that such villages have been affected by drought, no such report was communicated to the State Government by the Collector as more than 50% area of the Block to which irrigation facilities have been provided have not suffered such loss. Reports were submitted by taking samples from the irrigated areas. The non-irrigated areas have been left out though the local Tahasildar in his report had submitted

individual village-wise report in which the petitioners'' villages have been shown as affected areas. The petitioners are paying insurance premium on their crops and such insurance was made compulsory. While extending agricultural loans, they are entitled for compensation from the Insurance Company individually on the assessment of loss to their crops. The petitioners'' villages though affected by natural calamities repeatedly each year since 2000, no such investigation has been made in the petitioners'' villages and no reports have been submitted. Concluding his argument, Mr. Nayak, requested this Court to direct the State Government to conduct independent inquiry regarding loss sustained by the petitioners-farmers due to natural calamities from the year 1999 till 2004.

5. Mr. S.S. Rab, learned counsel appearing on behalf of the opposite party No. 6-Insurance Company submitted that the contentions raised in the writ petition are the outcome of misconception of fact and law. The Agricultural Insurance Company of India Ltd., (for short, "AICIL") is merely an implementing agency of National Agricultural Insurance Scheme (for short, "NAIS") on behalf of both Central and State Government, As an implementing agency, the AICIL is bound to follow the notifications and resolutions issued by the State Government and the Central Government in this regard from time to time. The Scheme NAIS has been introduced by the Government of India and has been accepted by the Government of Odisha and that has been implemented in Odisha since 1999-2000 Rabi Season. Initially the Government of India started a scheme called "Comprehensive Crop Insurance Scheme" covering the farmers who availed loan from different banks as per the scheme. The Central Government thereafter introduced NAIS in which even non-loanee farmers can opt for crop insurance, if they so desire. As per the salient features of the scheme, it would operate on the basis of ''area approach'' inasmuch as it defines areas, as may be notified by the Government and in respect of notified crops and for wide spread calamities like cyclone, flood etc. Under the Scheme, if any loss is found in a unit by calculating the difference between the actual crop grown otherwise known as ''actual yield'' and the ''threshold yield'' that is taken to be the factor for considering whether there was any loss. The AICIL (IA). in respect of notified areas basing on crop cutting experiments calculated the threshold yield for paddy crop applying specified indemnity level to the moving average of last three years yield data. At the end of the season, actual yield, crop cutting experiment was done in the area will be ascertained basing on CCE by DES (Directorate of Economics & Statistics). If the actual yield is less than the threshold yield, the difference shall be treated to be the loss sustained in the area. If the actual yield is more than the threshold yield it would be taken that there is no loss in the area. These experiments and conclusions are arrived at in respect of the defined areas irrespective of the fact whether a particular farmer individually is benefited or not. Thus, even if, a particular farmer was not put to any loss due to any calamity, if on the basis of the area approach loss is found he will also be entitled for the benefit under the Scheme. Similarly, if a particular farmer sustains loss and in the area there is no loss then he will not be entitled to the benefits. This

being the scheme the rule of the insurance company is only to implement the scheme and has no right pr authority to deviate from the same. Therefore, unless there is loss in the area there is no scope for making any claim.

6. Further the assessment of loss or otherwise as per the scheme shall be by the designated authorities under the Scheme. Any declaration by any authority is not acceptable. The opposite parties having disbursed the compensation to all the eligible claims strictly as per Scheme, the writ application against opposite party No. 6 is not maintainable and the same is liable to be dismissed for non-joinder of necessary party like Director of Economics and Statistics who is the authority to provide yield data for each season and for each notified area. The allegations made in the writ petition against opposite party No. 6 are incorrect. Payment of crop insurance premium by the petitioners from the year 1999-2000 to Khariff 2004 are beyond the specific knowledge of opposite party No. 6. It is submitted that opposite party No. 6 deals directly with the designated Nodal Bank. The Nodal Bank submits the month-wise declaration to opposite party No. 6. The declaration contains the month of loaning, crop season, name of the crop grown, notified area (Block), total number of farmers, total area, total sum insured and premium etc. Therefore, opposite party No. 6 cannot confirm the coverage of individual farmers. Except the data provided through the Cooperation Department of the Government of Odisha, no other data furnished either by the Revenue Department or any other Department is acceptable under the Scheme. Claims are calculated for each season by AICIL after receipt of yield data from ''Directorate of Economics and Statistics'', through Department of Cooperation, Government of Odisha. If the actual yield per hectare of the insured crop for the notified area on the basis of requisite number of crop cutting experiments in the insured season, falls short of the specified "Threshold Yield", all the insured farmers growing that crop in the notified area deemed to have suffered short fall in their yield. The scheme seeks to provide coverage against such contingency according to percentage of shortfall in yield. The AICIL (Implementing Agency) calculated the Threshold Yield for paddy crop by applying specified indemnity level, i.e. 80% for Rabi 1999-2000 to Rabi 2003-2004, Khariff 2004 seasons (as per notification and guidelines) to the moving average of last three years yield data. As there was no short fall in yields in Tihidi Block for paddy crop in all the said seasons no claims are payable for the said notified area. In the counter affidavit at paragraph 12 it can be noticed that the short fall for the Tihidi Block for the years 1999 to 2004 being Nil as the actual yield exceeded the Threshold yield no claim is payable. In our State for paddy crop the unit of insurance was Block for all the said seasons as notified by the State Government. As per the Scheme and operational modalities, the Scheme operate on the basis of ''Area Approach'' i.e. defined areas for each notified crop for widespread calamities such as drought. The Implementing Agency has direct contract with the Nodal Bank only for collection of premium, disbursement of claims of any etc. Opposite party No: 6 has no knowledge of individual insured farmers, nor there is any necessity of knowing them as per the scheme provisions. Opposite party No. 6

put forth that Rabi 1999-2000 Block was taken as a unit for settling the claim since the State Government notified Block as the unit of insurance for paddy crop.

7. Mr. R.K. Mohapatra, learned Government Advocate appearing for opposite party No. 1 to 4 submitted that as per the provisions of National Agricultural Insurance Scheme it is compulsory for the loanee farmers growing notified crops in the notified areas to ensure these crops, As the petitioners have availed crop loan for notified crop in the notified area, they have paid the premium under the National Agricultural Insurance Scheme. The claims of the eligible farmers have been settled as per the provisions of the National Agricultural Insurance Scheme. In respect of the State of Odisha, the assessment of loss is being done in area approach basis and not individually. As per the guidelines of the scheme, at the beginning of each crop season the State Government is to notify the crops and define areas which is to be covered during the season in accordance with the decision taken by the State Level Coordination Committee on Crop Insurance. The claim of the petitioner relates to paddy crop. As per notification of the State Government for assessment of loss of paddy crop the unit area was the ''Block'' for the insured period. Estimation of the crop yield was made by conducting minimum 16 nos. of Crop Cutting Experiment in the Block. Under the Scheme, Crop Insurance is compulsory for all loanee farmers growing notified crops in the notified areas. Compensation is made on the basis of the yield data. If the actual data on the basis of Crop Cutting Experiments is less than the Threshold Yield (last three years average yield) of paddy crop of a unit area (Block) in a crop season then all the insured farmers cultivating the notified crop of that Block area are eligible for crop insurance benefits. In the State, the defined unit area for paddy was ''Block'' during Khariff season and ''Block'' or "Cluster of Blocks'' during Rabi Season. But from Rabi 2010-2011 season ''Gram Panchayat'' has been taken as unit of Insurance in our State. The State Government have decided in principle to take Grama Panchayat as unit of Insurance for paddy during Rabi 2010-2011. The crop yield data furnished by the Director of Economics & Statistics after conducting requisite number of Crop Cutting Experiments (CCEs) is considered for crop Insurance purpose and no other data are accepted for this purpose as per the policy.

8. Mr. S.D. Das, learned Assistant Solicitor General appearing on behalf of opposite party No. 3 submitted that the National Agricultural Insurance Scheme (NAIS)/Rashtriya Krishi Bima Yojana as being implemented in the country since Rabi 1999-2000 under the Order No. 13011/15/99/ credit II dated 16.7.1999 issued by the Ministry of Agriculture, Department of Agriculture and Cooperation. The Government of India formulated the above crop insurance scheme to mitigate the hardship of the farmers. The Agriculture Insurance Company of India is the Nodal Implementing Agency of the National Agricultural Scheme, The subject matter of the writ petition is with regard to claims pertaining to the year 1999 onwards which are to be settled as per the provisions under the Scheme and it is for the Agriculture Insurance Company of India to settle all the eligible claims. The State Government is free to notify any unit area of insurance

provided that the State Government has the requisite yield data and has the capacity to conduct the requisite number of CCEs on single series basis in the notified area. The Scheme authorises the State Government to notify the unit. The State Government has the obligation to explain the names and the mode of notifying the unit.

9. On the rival contentions of the parties, the following questions fall for consideration by this Court:

(i) Whether the Block as a unit for purpose of granting insurance benefit is reasonable ?

(ii) Whether the State Government is justified to make an assessment of loss of area approach basis i.e. Block as unit and not Grama Panchayat basis in case of failure of crop due to drought when the crop of the individual farmers are compulsorily insured to indemnify their crop ?

10. Facts which are not in dispute are that in the year 1999 a Scheme namely, National Agricultural Insurance Scheme was introduced by the Government of India through the concerned State Governments for insuring the crops grown by the farmers. Both loanee and non-loanee are eligible to avail the benefits under the aforesaid Scheme. One of the objects of the Scheme is to provide insurance coverage and financial support to the farmers in the event of failure of any of the notified crop as a result of natural calamities, pests and diseases. The Scheme would operate on the basis of ''Area Approach'', i.e. Defined Areas for each notified crop for widespread calamities and on an individual basis for localised calamities. Clause 9 of the Scheme reads as follows:

9. AREA APPROACH AND UNIT OF INSURANCE:

The Scheme would operate on the basis of ''Area Approach'' i.e. Defined Areas for each notified crop for widespread calamities and on an individual basis for localised calamities such as hailstorm, landslide, cyclone and flood. The Defined Area (i.e. unit area of insurance) may be a Gram Panchayat, Mandai, Hobli, Circle, Phirka, Block, Taluka etc. to be decided by the State/UT Govt. However, each participating State/UT, Govt. will be required to reach the level of Gram Panchayat as the unit in a maximum period of three years....

11. In the State of Odisha each ''Block'' has been taken as a unit as the defined area for paddy crops. In view of such area approach, if any individual farmer or independent village suffers loss due to any calamities i.e. drought, flood and cycle etc. such individual farmer would not be entitled to get insurance claim. For enabling the farmers to get the insurance claim, the State Government have to declare the entire Block areas as affected area, so that all the farmers in that defined area will be eligible to get the insurance claim. It is known to everybody that the entire State of Odisha is not provided with irrigated facilities. Thus, in a Block some of the villages are while being provided with irrigation facilities other villages are deprived of such facility and in case of drought the'' village(s) where

there is no irrigation facility suffers loss of the crops on account of drought. Similarly, in case of heavy flood it is not necessary that each and every village of the Block is affected, while some villages are affected, other villages of same Block may not be affected. Thus, in view of such wrong approach to take the ''Block'' as a unit, the farmers in fact whose crops are compulsorily insured for their benefit and they have paid insurance premium will not be benefited though they have suffered loss of their crop on account of drought and flood etc. Since the entire Block area is taken as a single unit, the petitioners have been deprived of getting their legitimate insurance claim.

12. Petitioners'' specific case is that in Tihidi Block in the district of Bhadrak most of the agricultural fields are provided with irrigation facilities except some few villages like that of the petitioners in the Block. The State government, therefore, are not declaring the entire block as drought affected area. This assertion of the petitioners has not been denied by the opposite parties.

13. The case of opposite parties is that under the Scheme the State Government has taken the ''Block'' as unit for the purpose of awarding compensation under the Insurance Policy and the block of the petitioners has not been declared as affected area for which no compensation has been paid to the petitioners. Therefore, it is only because the State Government has decided to take the ''Block'' as a unit for the purpose of granting compensation under the Insurance Policy, the petitioners are not getting any compensation for the crop loss suffered by them.

14. Further, in the writ petition the petitioners have stated that they reliably learn and verily believed that the revenue authorities on proper verification have declared the villages of the petitioners as drought affected area and they have measured the loss to the extent of 50% to 75%, but on account of non-declaration of the ''defined area'' as Grama Panchayat'' or ''village''; the petitioners are unable to get their legitimate right for insurance claims.

15. In the facts situation, the right approach would have been to settle the claim on an individual basis or taking ''Grama Panchayat'' as defined area for the purpose of awarding insurance claim to the drought affected persons; more particularly, when premiums have been collected by the Insurance company on an individual basis while advancing agricultural loans to individual farmers. Further case of the State-opposite party is that from 2010-2011 each Grama Panchayat has been taken as a ''Unit'' for settling the insurance claim towards any loss due to farmers on account of wide spread calamities.

16. In the counter affidavit, it is admitted that under the provisions of the Scheme, it is compulsory for the loanee farmers growing notified crops in the notified areas to insure those crops. As the petitioners have availed crop loan for notified crop in the notified area, they have paid the premium under the National Agricultural Insurance Scheme. The stand of the Sate Government is that compensation is made on the basis of the yield data furnished by the Director in

respect of paddy crop. If the actual yield on the basis of Crop Cutting Experiments (CCEs) is less than the threshold yield (last three years average yield) of paddy crop of a Unit area (Block) in a crop season, then all the insured farmers cultivating the notified crop of that Block area are eligible for crop insurance benefit. It is not stated that actual yield was calculated on the basis of the Crop Cutting Experiments (CCEs) and also the threshold yield was determined. If the same would be calculated on the basis of the yield of the villages which are affected by drought, the result will certainly be different from the calculation of yield made taking into consideration the yield of crop of the villages coming under the same block which are not affected by drought.

17. In paragraph 10 of the said counter affidavit it is stated that the State Government have decided in principle to take ''Grama Panchayat'' as a unit of insurance for paddy during Rabi 2010-2011.

18. The table showing threshold and actual yield furnished by opposite party No. 6 on the Block basis for paddy crop cannot be a determining factor where the villagers are entitled to get insurance claim and there is no denial that they have sustained loss of paddy crops.

19. As per Clause 9 of the Scheme extracted above, the defined area may be a ''Grama Panchayat''.

20. In view of the above, the claim of the villagers, who have suffered crop loss due to drought, cannot be denied to such farmers for the reasons stated above.

21. In the facts situation, we direct the State Government to consider the claim of the petitioners declaring the "Defined Area" under the Scheme to take Grama Panchayat as a unit and not the Block for the purpose of granting insurance claim.

22. There is no quarrel over the principle decided by the Hon''ble Supreme Court in the case of Union of India (UOI) and Another Vs. Manu Dev Arya, and by the Andhra Pradesh High Court in the case of Andhra Pradesh Rythu Sangham Vs. Union of India (UOI) and Others, . In the writ petition, the legality and validity of the scheme is not challenged. On the other hand, the challenge is for not implementing the scheme in its proper perspective and considering the ground realities with regard to sustaining of loss by the farmers of Grama Panchayat-wise as a result of which they are deprived of their legitimate claim available under the Scheme.

23. With the aforesaid observation and direction, the writ petition is allowed, but without any order as to costs. The insurance amount shall be computed and paid to the farmers who have insured under the Scheme within eight weeks from the date of receipt of this judgment.

V. GOPALA GOWDA, C.J.

I agree.

