(2016) 04 PAT CK 0180

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17633 of 2013

Gorakh Prasad APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 3 BBCJ 255 : (2016) 4 PLJR 11

Hon'ble Judges : Mr. Jyoti Saran, J.

Bench : Single Bench

Advocate : Mr. Suman Kumar Jha, Advocate, for the Petitioners; Mr. Rajiv Roy, GP - 5, for the Respondents; Mr. Rajen Sahay, Advocate, for the Insurance Company; Mr. Sidhendra Narayan Singh, Advocate, for the Petitioners; Mr. Nirbhay K. Singh, GP - 26, for the Respon

Final Decision : Disposed Off

Judgement

Mr. Jyoti Saran, J. (Oral)—Heard Mr. Suman Kumar Jha, learned counsel appearing on behalf of the petitioners, learned counsel for the State, Mr. Rajen Sahay, learned counsel for the insurance company and learned counsel for the Bank.

2. In each of the two writ petitions, the petitioners pray for payment of crop insurance which according to them is being delayed at the hands of the respondent-insurance company and the State. While the writ petitioners in CWJC No. 17633 of 2013 espouse the grievance of the member-farmers of the ''Manjhariya PACS'', Gounaha block in the district of West Champaran, the petitioners in CWJC No. 8449 of 2014 represent the farmers of Barh Block, District-Patna.

Re : CWJC No. 17633 of 2013 :

3. The writ petition has been filed seeking a direction to the authorities of the insurance company to make payment of the crop loss insurance in relation to the

insured farmers who were members of the Manjhariya Primary Agriculture Credit Co-operative Society (hereinafter referred to as ''Manjhariya PACS''), under Gounaha Block in the district of West Champaran.

4. In so far as the completion of formality is concerned it is noted that there is no dispute rather it is an admitted position that the premium in respect of the farmers under the Gounaha block did reach the insurance company as is manifest from paragraph 1 to 7 of counter affidavit of respondent no. 6 and 7 i.e. the National Central Co-operative Bank, Bettiah, West Champaran.

5. The objection comes from insurance company who have filed an exhaustive counter affidavit questioning the maintainability of the writ petition as well as on the merits of the claim. The stand taken by the insurance company at paragraph 6 of the counter affidavit by itself is sufficient to persuade this Court to refrain from exercising the discretionary jurisdiction under Article 226 of the Constitution of India inasmuch as it is stated that the eligibility to claim crop loss insurance under the policy in question which was invoked in the Kharif Season, 2010-11, rested on certain qualifications and covered such member-farmers whose actual yield fell below the threshold yield but since the actual yield of the farmers belonging to the Gaunaha block was 1312 Kg/hectare which is above the threshold yield fixed at 1089 kilograms per hectare hence they were not found entitled to the insurance. In other words, the claim of the member-farmers of the co-operative society in question is being contested inter alia on grounds of not coming within the purview of the scheme.

Re : CWJC No. 8449 of 2014

6. Mr. Sidhendra Narayan Singh, learned counsel appearing for the petitioners has submitted that it is in circumstances where the insurance company did not proceed to redress the grievance of the petitioner that a legal notice was served on them and when the Area Manager vide his letter dated 21.11.2013 impugned at Annexure-8 simply informed the learned counsel for the petitioners that the farmers of Barh block in the district of Patna were not found eligible for payment of insurance claimed during the Rabi Season, 2011-12 . Mr. Singh has also invited the attention of this Court to a letter dated 17.4.2013 of the insurance company and in reference thereto it is stated that the insurance claim of the petitioners has not been rejected on merits rather the letter reflects that it was only awaiting the deposit of premium by the State Government. He thus submits that the insurance company cannot be permitted to shift from their stand.

7. Even in the present case there is no issue on payment of premium as manifest from paragraph - 5 of the counter affidavit of the Bank filed in present proceedings. There is no objection from the State either rather the objection has come from the Insurance Company who have stated that the farmers of the Barh Block did not come within the eligibility criteria fixed under the Weather Based Crop Insurance Scheme under which they were insured and hence they were not found entitled to crop insurance.

8. Mr. Rajen Sahay, while contesting the claim in the two writ petitions has submitted that there are two kinds of schemes governing the issue of crop insurance namely the yield based crop insurance scheme and the weather based crop insurance scheme. It is the argument of Mr. Sahay that whereas the farmers in CWJC No. 17633 of 2013 were covered under the yield based crop insurance scheme the farmers in CWJC 8449 of 2013 are covered under the weather based crop insurance scheme. It is the argument of Mr. Sahay that there are certain parameters fixed under either of the policies aforementioned and it is only such of the farmers who come within the parameters of the two policies were found entitled to the payment of crop insurance. It is the argument of Mr. Sahay in reference to the counter affidavit filed by insurance company in the two writ petitions that whereas in the case of the farmers of Gounaha block, District-West Champaran it was found that their actual yield was much above the threshold yield which made them ineligible for payment of crop insurance, in so far as the case of Barh farmers are concerned, it is in reference to the Weather Data present at Annexure-D to the counter affidavit filed in the said proceedings that it is stated that the weather based insurance is payable to only such farmers where the loss suffered is covered under the three instances given in the prime sheet and since none of the farmers come under either of these categories hence they were not found entitled to any insurance scheme. It is the contention of Mr. Sahay that neither the farmers of the Gounaha block, district West Champaran were entitled to their claim under the yield based crop insurance scheme nor the farmers of the Barh block, district Patna were found entitled under the weather based crop insurance scheme. According to Mr. Sahay, these are issues of fact which has to be established by the farmers by leading evidence and hence in view of the law laid down by this Court in the case of Rubi Kumari v. State reported in 2011 (1) PLJR 646 and the unreported judgment in Premshila Devi v. Union arising from CWJC No. 13443 of 2012, the forum for the petitioners would be elsewhere and not in a writ proceedings.

9. I have heard learned counsel for the parties on the contest and have perused the records.

10. The facts are not in dispute nor the coverage of the petitioners under the two scheme is in dispute. The dispute is whether the claims raised are capable of being upheld on merits and whether the circumstances accompanying the claims, entitles the farmers to the insurance.

11. The claims in question have been rejected by the Insurance Company on grounds that the farmers did not fulfil the eligibility criteria for payment of the crop insurance and that whereas in the case of the farmers of Gaunaha Block, their actual yield was found to be above the threshold yield on the other hand the claims of the farmers of the Barh Block has been rejected on grounds that the weather stipulations present in the scheme did not cover their cases. It would thus require the farmers of the two Blocks in question to contest this position with supporting facts and figures as well as documents which are

authentic enough to contest the opinion of the insurance company. Since the foundation of the contest rests on facts available which needs to be proved by admissible and authentic evidences, the forum would be otherwise and in view of the law laid down by this Court in the judgement reported in Rubi Kumari (Supra) and Premshila Devi (Supra), the member-farmers of ''Manjhariya PACS'' in Gaunaha Block in district of West Champaran as well as the farmers of Barh Block in the district of Patna, if so advised would be at liberty to raise their grievance before the appropriate forum including the remedy provided under the Consumer Protection Act, 1986 (hereinafter referred to as ''the Act''). However, in the disputed nature of the contest raised herein this Court is not persuaded for granting indulgence to the grievance raised under Article 226 of the Constitution of India.

12. I would deem it necessary to clarify here that this Court has not expressed its opinion as regarding the merits of the two cases.

13. The two writ petitions are accordingly disposed of.

