(2004) 08 PAT CK 0078

In the Patna High Court

Case No : C.W.J.C. No. 12445 of 2002

Kunti Devi and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 3 PLJR 818

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Chitranjan Sinha and Mukesh Kant, for the Appellant; J.C. to AAG-I for State and Ramchander Lal Das, for General Insurance Corporation and Uday Chand Prasad, for Co-operative Bank, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of mandamus commanding the Respondents to pay to the Petitioner the insured amount under comprehensive Crop Insurance Scheme for the period 2001-2002 with interest thereon.

2. Notwithstanding voluminous pleadings, facts lie in a narrow compass.

3. The Central Government introduced a countrywide Crop Insurance Scheme commencing from Khariff 1985. The objective of the Scheme was to provide a measure of financial support to the Farmers in the event of crop failure as a result of drought, flood etc. The management of the Scheme was entrusted to the General Insurance Corporation. The scheme further provided that the Insurance charge shall be included as additionality in the scale of finance and shall at the time of disbursement be deducted from all crop loan. Thus under the scheme Crop Loan is given and out of the loan amount premium required for insurance of the crop is deducted by the financing Bank.

4. It is not in dispute that the Petitioner besides other farmers took loan from the

Central Cooperative Bank and the said Bank has deposited the premium for insurance of the crop with the General Insurance Company against crop failure. To assess failure of crop, under the scheme, the functionary of the State Government is to submit 16 crop cuttings experiment reports within the time stipulated. The Farmers had no role to play in sending the crop cutting experiment report. Petitioners claim insurance amount on the ground of the failure of the crop but the same is sought to be denied on the ground that under the scheme the functionary of the State Government was to submit 16 crop cutting experiment reports within the stipulated time which were not sent and as such the amount covered under the insurance is not fit to be given to the Petitioners.

5. When the aforesaid fact was brought to my notice, by order dated 10.3.2004, I directed the Secretary, Planning and Development Department to hold an enquiry in regard to the person/persons responsible for not carrying out their obligations in not sending the reports. In pursuance of the said order the Secretary had submitted his report in which he had found the then Block Statistical Officer, Block Agriculture Officer and the Block Development Officer, Goria Kothi to be responsible for not sending report within time.

6. Mr. Chitranjan Sinha, Senior Advocate appearing on behalf of the Petitioners submits that the Petitioners cannot be permitted to suffer on account of failure on part of the fauntionary of the State Government to submit the crop cutting experiment report and hence the benefit flowing from the scheme is fit to be granted to the Petitioners.

7. J.C. to AAG-I appearing on behalf of the State, however, submits that the later on the crop cutting experiment reports have already been furnished to the General Insurance Company and as such nothing prevents it from paying to the Petitioners the insured amount. Mr. Ramchander Lal Das, however, appearing on behalf of the General Insurance Company contends that the matter is in regard to the payment of the amount insured and direction to that effect cannot be given by this Court in exercise of its writ jurisdiction. In this connection he has referred to the order dated 10.7.2003 passed by a Division Bench of this Court in CWJC No. 12227 of 1999 Primary Co-operative Society v. The State of Bihar and Ors. In the said case if has been observed as follows:

This matter has been filed as a public interest litigation. The contention is that the compensation to be paid under Agriculture Crop Insurance Scheme in lieu of the crops, which were damaged in the year 1996 due to flood, has not been paid to the farmers.

Insurance is a contract between the two parties. This cannot be made a subject matter of a public interest litigation. If the contract is breached then there is a civil remedy which the law provides. This petition is misconceived.

Dismissed.

8. My attention has also been drawn to the order dated 2.2.1994 passed in CWJC No. 582 of 1993 Parsauni Primary Agriculture Co-operative Society and Ors. v. The State of Bihar and Ors. wherein it has been observed as follows:

The claim of the Petitioners is based on disputed question of facts, which is not possible to adjudicate in a writ jurisdiction.

If so advised, they can file a suit for redressal of their claim.

With the aforesaid, this writ application is disposed of.

9. Reliance has also been placed on an order dated 15.1.1999 passed in CWJC No. 7363 of 1988 and analogous cases. In the said case it has been observed as follows:

Mr. Parbat, learned Counsel appearing for the Petitioners in all the three writ applications after realising that the grievance can Only be agitated before the authority concerned sought permission to withdraw the writ petitions with a liberty to move the appropriate authority. The writ petitions are, accordingly permitted to be withdrawn with a liberty to the Petitioners to approach the authority for the redressal of their grievance. It is needless to say that if the Petitioners file representation, the authority will consider the same in accordance with law without being prejudiced by this order.

10. Having appreciated the rival submission, I find substance in the submission of Mr. Sinha and I am constrained to observe that neither the State Government nor the General Insurance Comply had taken the grievance of the farmers seriously. May be because farmers of this State seem contented and do not commit suicide. In the present case, crops insurance loan has been given to 308 farmers. While giving them the loan the premiums for insurance of the crops were deducted and in fact deposited with the General Insurance Company (hereinafter referred to the Company). The fact that the premium was deducted and deposited has not been controverted but the company seek to deny the Petitioners'' claim on the ground that required number of crop-cutting experiment report were not sent. It is nobody''s case that the Petitioners are responsible for the same. It is well settled that a person cannot be permitted to suffer on account failure of some body else. Here in the present case the premiums having been deposited the insurance company was under an obligation to pay the insured amount according to the Scheme under which they are covered.

11. So far as the plea of the insurance company that such a relief cannot be granted in exercise of jurisdiction under Article 226 of the Constitution of India, I am of the opinion that the same is absolutely misconceived. The order of this Court dated 10.7.2003 passed in CWJC No. 12227 of 1999 (supra) is in relation to a case, claimed to have been filed as Public Interest Litigation and according to the Division Bench same cannot be made a subject matter of a public interest litigation. So far as the order of this Court in CWJC No. 582 of 1993 (supra), it

seems that the Petitioner was denied relief on the ground that the claim of the Petitioner in the said case was based on disputed questions of fact. Here in the present case, as stated earlier, there is no dispute that the premium amount was deposited with the Company and only reason to deny the insurance amount is purported failure on part of the functionary of the State to submit the report. So far as the order of this Court dated 15.1.1999 passed in CWJC No. 7363 of 1998 (supra) is concerned, nothing has been adjudicated and the said writ application was permitted to be withdrawn with liberty to the Petitioner to raise its grievance before the appropriate authority. Hence the aforesaid decisions in my opinion do not stand in the way of the Petitioner in getting the relief.

12. At the same time I hasten to add that generally speaking, this Court in exercise of writ jurisdiction does not grant money-claim concerning the insurance but this principle is not absolute in terms. Here in the present case Petitioners are farmers who have taken loan for crop and under the scheme, amount required for payment of the premium for the insurance of the crop were deducted, such premiums were paid, still on account of non-submission of certain report by the functionary of the State, the insurance amount is not being paid to them. As the writ application pertains to the grant of loan to the farmers and there being no disputed question of fact, I am of the opinion that it is a fit case in which relief sought for deserves to be granted.

13. In order to avoid multiplicity of litigation, direction given in this case shall not only apply in cases of the Petitioners but all such other farmers who have taken the loan along with the Petitioners under the scheme and the loan amount was given after deducting the insurance amount. Accordingly I direct that the Petitioners and such other farmers as indicated above are paid the benefits as provided under the scheme and same shall not be withheld on the ground that required number of crop cutting report were not submitted by the State Government, to the Company. However Company shall be free to bring an appropriate action for recovery of the amount from the State Government.

14. In the result, the application is allowed with the direction and observation aforesaid. No cost.

