

(2015) 01 BOM CK 0251
In the Bombay High Court
Case No : Writ Petition No. 1668 of 2005

Libaraj

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Citation : (2015) 01 BOM CK 0251

Hon'ble Judges : R.M. Borde, J;P.R. Bora, J

Bench : Division Bench

Advocate : V.D. Salunke, for the Appellant; S.D. Shelke, A.G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.R. Bora, J.

1. The petitioner has filed the present petition seeking Writ of Mandamus against respondent nos. 1 to 3 for payment of the Crop Insurance claims for Kharip season of 2003 for Osmanabad Taluka in respect of Udid, Moong, Soyabean, groundnut, etc. Petitioner has also sought declaration to the effect that the Random System adopted by respondents to decide actual yield for a particular season and crop, to decide liability of Crop Insurance claim is arbitrary and improper. The petitioner has, therefore, also sought direction against the respondents to grant insurance claims considering the loss of the particular crop of the particular agriculturist as insured.

2. At the outset, it has to be stated that in paragraph no. 2 of the petition, though the petitioner has raised contention that the present petition be treated as a public interest litigation since it espouses the cause of thousands of farmers who had actually participated in the National Agricultural Insurance Scheme (hereinafter referred as "NAI Scheme"), the same does not seem to have been accepted as public interest litigation and has been heard as the writ filed by the petitioner.

3. It is the contention of the petitioner that 79,7,057 farmers from Osmanabad taluka had insured their crops under NAI Scheme. The total area insured, as stated in the petition was 58,895 hectares and the total sum insured was Rs. 3,223.47 lacs. As further provided, the farmers had paid Rs. 83.54 lacs as premium. It is further contention of the petitioner that though the premium as aforesaid was paid by the farmers towards insurance for twelve notified crops, the compensation was granted only for three notified crops i.e. Hybrid jowar, Tur and paddy and for remaining nine crops, the respondents refused to grant any compensation. It is the further contention of the petitioner that though the geographical situation, rainfall and other natural conditions for the crops in Osmanabad taluka were worst, compared to other talukas, the claims were sanctioned in the said talukas for the notified crops i.e. Moong, Udit, Soyabean and groundnut; but the Osmanabad taluka was excluded from grant of any such claim. It is the further contention of the petitioner that the Insurance claims were decided based on the data collected and submitted by respondent nos. 5 and 7 i.e. the Commissioner of Agriculture, Maharashtra State, Pune, and the District Superintending Agricultural Officer, Osmanabad, without giving any representation to the farmers or their association who had insured the crops. The petitioner has alleged that the basis for granting claims itself is arbitrary and against principles of natural justice.

4. It is the further contention of the petitioner that the Paisewari declared by the Collector, Osmanabad, for the year 2003, is less than 50 per cent in each taluka of Osmanabad. The petitioner has also stated that the Collector, Osmanabad, has issued certificates in that regard to farmers in Osmanabad taluka certifying that Paisewari of Osmanabad taluka is 39 Paise. In such circumstances, according to the petitioner, all the farmers in Osmanabad taluka were entitled for grant of Insurance claims in the aforesaid insurance scheme. The petitioner has alleged that the claims of the farmers in the Osmanabad taluka have been refused arbitrarily and for invalid reasons. It is the further contention of the petitioner that the respondents have not conducted the required number of Crop Cutting Experiments (in short, "C.C.E.") by actually visiting the field. The petitioner has further contended that the total procedure made applicable for deciding the insurance claims under NAI Scheme is unjust and improper. The petitioner has contended that the system based on C.C.E. method on random basis has caused severe injustice and prejudice to the farmers in Osmanabad taluka. According to petitioner, while deciding the insurance claim of the crops insured, the direct damages or loss caused to the particular crop in particular survey number of the particular farmer must have been taken into consideration.

In the aforesaid background, the petitioner has sought mandamus and declaration as mentioned hereinbefore.

5. Respondent nos.1, 5, 6 and 7 have submitted a joint reply whereas respondent nos. 3 and 4 have independently submitted the reply on their behalf. The respondents have justified the system being adopted while deciding the crop

insurance claim. According to the respondents, the said system is time tested and flawless. It is the further contention of the respondents that the Insurance Scheme nowhere envisages deciding the insurance claim of a particular farmer, considering the loss caused to the said farmer. The respondents have also denied that declaration of Paisewari can be a basis for deciding and granting insurance claims.

6. We have heard learned Counsel for the parties and perused the documents on record. We would like to note down here-in-below the object of the NAI Scheme which reads thus:

(a) 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.

(b) To encourage the farmers to adopt progressive farming practices, high value in-puts and higher technology in Agriculture.

(c) To help stabilize farm incomes, particularly in disaster years.

The crops covered under the scheme are:

(a) Food crops (Cereals, Millets and Pulses)

(b) Oilseeds.

(c) Sugarcane, Cotton and Potato (Annual Commercial / Annual Horticultural crops)

The crops, in respect of which, (i) the past yield data based on Crop Cutting Experiments (CCEs) is available for adequate number of years: and (ii) requisite number of CCEs are conducted for estimating the yield during the proposed season.

The State Department will plan and conduct requisite number of Crop Cutting Experiments (CCEs) for all notified crops in the notified insurance units in order to assess crop yield. The number of CCEs required to be conducted in Taluka, Tahsil, Mandal or Gram Panchayat area are also noted in the scheme. The claims are settled on the basis of yield data received from the State Government on the basis of CCEs. The damages are required to be worked out on consideration of data received in respect of CCEs and threshold yield in respect of a particular crop.

7. It is the contention of petitioner that there was failure of crop in the area and as such, the State Government, through the Revenue Department, had declared "annewari" and issued directions in respect of exemption from revenue recoveries. It is the further contention of the petitioner, that the "annewari" declared by the State through the Revenue Department in respective areas is below fifty paise, which is an indication of the fact that there is failure of the crop. The petitioners, thus, contend that although there is a failure of crop and

even though the State Government, through Agricultural Department, recognized that the percentage of crops in the area is below 50% and even if the revenue recoveries by the department has been relaxed, the Insurance Corporation / Respondents herein have failed to compensate the farmers.

8. The petitioner has questioned the refusal to grant of insurance claim on the basis of threshold crop yield to the farmers in Osmanabad taluka. It is the contention of the petitioner that since Collector, Osmanabad, has declared Paisewari in respect of the notified crops in said taluka to the extent of 39 Paise i.e. less than 50 Paise; each and every farmer insured in the scheme must have been paid the insurance claim. It is further contention of the petitioner that the claims of each farmer must have been adjudged independently and accordingly each farmer must have been independently paid the insurance claim.

In so far as Annewari aspect is concerned, the said issue has been elaborately dealt with by the Division Bench of this Court to which one of us (R.M. Borde, J.) was the party. We would like to reproduce hereinbelow paragraph nos. 6 to 10 of the said judgment:

"6. It is the contention of petitioners that there was failure of crop in the area and as such, the State Government, through the Revenue Department, had declared "anewari"" and issued directions in respect of exemption from revenue recoveries. It is uniform contention of all the petitioners, in the petitions, that the "annewari"" declared by the State through the Revenue Department in respective areas is below fifty paise, which is an indicative of the fact that there is failure of the crop. The petitioners, thus, contend that although there is a failure of crop and even though the State Government, through Agricultural Department, recognised that the percentage of crops in the area is below 50% and even if the revenue recoveries by the department has been relaxed, the Insurance Corporation / Respondents herein have failed to compensate the farmers.

7. The Respondent Insurance Corporation has opposed the petitions by presenting an affidavit-in-reply, which has been filed by one Dattatraya Govind Halve, Officer-In-Charge of General Insurance Corporation of India (Maharashtra Crop Insurance Cell). It is contended by the insurer that the National Agricultural Insurance Scheme (NAIS) is operative in defined area as notified by the State Government. According to the Respondent-insurer, the basis for settlement of the claims are, result of Crop Cutting Experiments. The methodology of determination of claim is, if the Actual Average Yield per hectare of the insured crop for defined area determined on the basis of Crop Cutting Experiments in the insured season falls short of the specified Threshold Yield, all the insured farmers growing that crop in the defined areas are deemed to have suffered shortfall in their respective yields and are entitled to the damages. It is contended that for settling the claims in NAIS, actual average yield under Crop Cutting Experiments (CCEs) conducted by State Government machinery is taken into consideration. It is contended that under the scheme, minimum sum insured for loanee farmers is

the amount of loan disbursed, however, on payment of additional premium, the sum insured may be extended to the value of threshold yield. The maximum coverage will be up to the value of 150% of the average yield. It is also stated that the scheme is compulsory for the loanee farmers i.e. the farmers who are availing loan from the banks for raising crops and is optional for non loanee farmers. It is specifically contended by the respondents that the claims are not to be settled on the basis of average "annewari" declared by the revenue department, however, settlement of claims are as per the modalities prescribed in the scheme. It is specifically contended that the average yield data, for the crops under consideration, is received and there is no shortfall recorded and as such, the claims are not payable. The yield data is compiled by the State Government on the basis of results of requisite Crop Cutting Experiments in the concerned notified areas. The farmers would become eligible to get crop insurance claim if average yield of the current year is less than the threshold yield as determined by average of last 5 years of such yield data. It is contended that there is no difference in the average yield and threshold yield and as such, no shortfall is recorded and, therefore, the petitioners are not held entitled to receive the damages.

8. An affidavit-in-reply is presented by one Ashok Pandurang Kadam, Deputy Director of Agriculture, on behalf of the State Government. It is contended in the affidavit presented on behalf of the State Government that the Agriculture Department plans the required number of Crop Cutting Experiments in notified areas to estimate per hectare yield rates of different crops. It is also stated that the current year's average yield, based on crop cutting experiments, planned under crop estimation survey, is compared with threshold yield and claims are sanctioned in the proportion of shortfall in threshold yield. The settlement of claim is done by AIC as per the prescribed procedure and that the compensation is not decided on the basis of "paisewari". It has also been stated on behalf of the State Government that the threshold yield of each crop in the notified area is fixed separately. The method of underwriting crop insurance is not similar to other classes of non life insurance where coverage is on individual basis. As per the provisions of the scheme, if there is a loss due to insured perils and such losses are reflected in the yield arrived at by conducting CCEs, the farmers become eligible for compensation. The claims are settled for the crop where shortfall in the yield is recorded. It is stated that there is no room for any discrimination or for any fraud and the claim settlement scheme is a full proof system.

9. The contention raised by the petitioners that the State Government has recognised that there is failure of crops and the "annewari" prescribed for the relevant period is less than 50 paise and as such, the farmers are entitled to receive damages on account of failure of crops, is not acceptable for the reason that the procedure for claim settlement prescribed under the scheme is a different one and the parameters prescribed for consideration of claims differs. The petitioners have also contended that in fact there were no crop cutting

experiments conducted and as such in all probabilities, there was no data available for drawing an inference in respect of failure or otherwise of the crops in the notified area. However, the contentions raised in the petitions in that behalf have been specifically controverted on behalf of the State Government and it is contended that the crop cutting experiments were actually conducted and the data, in that regard, was made available for consideration of the claims. It is to be noted that for arriving at the "annewari" statistics by the Revenue Officers, totally different modalities are adopted. The Revenue Officers are required to consider the yield of a normal crop i.e. a crop which is grown in normal condition by cultivators is taken to be a crop equal to 12 annas and the average yield per acre of each kind of crops in a particular tract is ascertained by the Agricultural Department by a series of crop experiments on scientific basis. The process of determination of annewari involves the finding out of the annewari of the crop of a particular season with reference to a normal i.e. 12 anna crop. Thus the annewari prescribed by the revenue officers with reference to normal crops, which may be different and may not be relatable to crops covered by insurance scheme. There may be an instance of scaling down of annewari in a particular area based on the normal crop, however, so far as other crops are concerned, the yield derived by a farmer may be equivalent to average yield. The normal crops prescribed by the Revenue department for assessing the revenue recovery are mostly cereals grown in a particular area.

10. Thus, the argument of the petitioners, based on scaling down of annewari by the State, which according to the petitioners, is less than 50 paise, for consideration of claim towards recovery of insurance claim, cannot be accepted. As stated above, the scheme prescribes different modes of assessing shortfall in the yield. The shortfall in the yield is equivalent to threshold yield and actual yield during relevant period. The Respondents, on the basis of crop cutting experiments, did not find that there is any shortfall in the yield. Thus, the contention raised by the petitioners that they are entitled to be indemnified, as there is scaling down of annewari by the State Government, which itself is indicative of the shortfall of yield, cannot be accepted."

In view of the observations made as above by the Division Bench of this court, the contentions raised in the present petition to decide the Crop Insurance Claims on the basis of Annewari declared for the particular area are liable to be rejected.

9. In so far as other issue raised by the petitioner that while deciding the insurance claim of the crops insured, the direct damages or loss caused to the particular crop in particular survey number of the farmer need to be taken into consideration, is concerned, we find it liable to be rejected at the threshold after having gone through the spirit of NAI Scheme.

10. In Rashtriya Krishi Bima Yojana (NAI Scheme), the unit of implementation is a revenue circle. As has been stated in the affidavit in reply filed by respondent nos. 1, 5, 6 and 7, the Scheme is implemented on area basis i.e. at the circle

level. The average yield of notified circle in the particular season is submitted to agricultural insurance company. The average yield is based on Crop Cutting experiment planned under Crop Estimation Survey Scheme. The field work of crop cutting experiment is carried out by the Circle Inspector of the Revenue Department, Gram Sevak of Zilla Parishad and Agricultural Assistant of Agricultural Department. On the basis of the circle-wise yield rates, the threshold yield is fixed. The compensation is granted to those crops whose average yield is less than the threshold yield.

11. As has been submitted by respondent nos. 3 and 4, the Crop Cutting Experiments are conducted by the State Government machinery and average yield data is furnished by them and the claims are settled on the basis of shortfall in the yield recorded on the Area Approach basis in the notified areas for the notified crops. As stated by respondent Nos. 1, 5, 6 and 7 the system of assessing loss on the basis of Crop Cutting Experiment, is in vogue in Maharashtra since 1944-1945. It is developed by National Sample Survey Organization, New Delhi. As submitted by these respondents, the said methodology of crop estimation is time tested and well established. According to the said method, minimum ten samples are considered per circle and 16 per Taluka. The number of crop cutting experiments are planned in proportion of the area under crop and the number may be higher where substantial area under crop is available and where area under crop is minimal, only six samples are being taken. The selection of the villages, survey number and the composition of the plot in the field is decided by using random tables to obtain unbiased estimates of average yield. As further stated by these respondents in their affidavit in reply, the plot selected is harvested in presence of village committee comprising of Agricultural Extension Officer, Revenue Circle Inspector or Gram Sewak, Sarpanch and Police Patil of the village concerned and the representatives of the farmers are also included so as to maintain transparency. In addition to the above, supervision of two villages each at the harvesting stage is allotted to the responsible officers like Deputy Collector, Tehsildar, Agricultural Development Officer, Block Development Officer, etc. and based on this, the average yield is being assessed and if it is found to be less than the threshold yield, the compensation is being awarded to the farmers in the said area. The respondents have clarified that the method of awarding the crop insurance claim cannot be equated with other classes of non life insurance where individual is the basis. The respondents have stated that the National Agricultural Insurance Scheme is aimed at protecting interests of large Section of the notified area where the losses occur due to natural perils and such losses are reflected in the yield arrived at by conducting crop cutting experiments. The respondents have further clarified that if an individual farmer has suffered crop loss but the circle insurance unit as a whole does not reveal such losses and such losses are not reflected in the yield data then such farmer cannot be said to be entitled to the crop insurance claim whereas if any such farmer harvests a good crop but the circle as a whole in which he is situated suffers a loss and such losses are

reflected in the yield data, such farmer also gets compensation and / or insurance claim even though he has not actually suffered loss. In nutshell, the claims are settled for the crop on area approach basis where shortfall in the yield is recorded on the basis of crop cutting experiment method.

12. After having gone through the spirit of the Scheme and the explanation provided in the affidavits filed by the respondents, it does not appear to us that there is any flaw in the Insurance Scheme. Looking to the magnitude and volume of the Insurance Scheme, it appears practically impossible to accept the contention of the petitioner that the loss of each farmer in respect of the loss individually suffered by him pertaining to his individual field may be assessed. The Scheme also does not envisage the same. In the Scheme, it has been made amply clear that it would operate on the basis of Area Approach. It has also been clarified in the Scheme that individual based assessment would be implemented on experimental basis only in the case of localized calamities such as hailstorm, landslide, cyclones and flood. Admittedly, such is not the case in the present petition. It is not the case of the petitioner that the average yield figures provided by the State Government on the basis of which Crop Insurance claims were refused by the Insurance Company were wrong or incorrect. It is not in dispute that the insurance claims are being granted on the basis of average yield figures provided by the State Government. It is further not in dispute that the average yield is derived by the State Government through various crop cutting experiments conducted by the State Government machinery. It is clearly spelt out from the text of the Scheme that the defined area is treated as Insurance unit and claims are made only if there is shortfall in the yield in the said particular insurance unit. The insurance under NAI Scheme, thus, does not contemplate individual assessment of the crop loss.

13. In view of the above, we do not find substance in the petition so filed. The petition is, therefore, liable to be rejected and it is accordingly rejected. Rule discharged. No order as to costs.