

Court No. - 40

Case :- WRIT - C No. - 29068 of 2023

Petitioner :- Shanti Devi

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rajnath Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. By means of present writ petition, the petitioner has sought following reliefs:-

"(I) A writ, order or direction in the nature of certiorari quashing the impugned orders dated 2.9.2021 & 9.9.2021, passed by respondent no.5 and 3, respectively, whereby they have illegally rejected/ withheld the claim of the petitioner, under the scheme of Mukhyamantri Kisan Avam Sarvhit bima Yojana (मुख्यमंत्री किसान एवं सर्वहित बीमा योजना).

(II) A writ, order or direction in the nature of mandamus directing the respondents authorities to provide the benefit to the petitioner under the scheme of Mukhyamantri Kisan Avam Sarvhit Bima Yojana (मुख्यमंत्री किसान एवं सर्वहित बीमा योजना), in the light of judgment of Hon'ble Apex Court dated 11.3.2022 passed in Special Leave to Appeal (C) No.3978 of 2022."

3. Learned counsel for the petitioner submits that husband of the petitioner died on 24.8.2018 due to drowning in the pond. The petitioner applied for compensation under the "*Mukhyamantri Kisan Avam Sarvhit Bima Yojana*" (in short "the Scheme in question") on 6.11.2018 alongwith all relevant documents but in most arbitrary manner, the claim of the petitioner was rejected by the order impugned on the ground that the claim received on 26.12.2018 and as such the same was time barred. It is submitted that the petitioner being widow and nominee of insured person (deceased) is entitled to get a sum of Rs.5 lacs towards the insurance claim under the aforesaid Scheme. In support of his submission, he has placed reliance on the judgement of this Court in Writ C No.15983 of 2020 (**Gautam Yadav vs. State of UP and 3 others**), 2020(11) ADJ 321, wherein a Division Bench of this Court has considered the period of limitation for the purpose of filing claim and it was held that, "*limitation provided under the said scheme is unreasonable and arbitrary and have substituted the said period by a period of three years*". Relevant portion of the

judgement is reproduced hereinafter:-

"We have no hesitation in holding that the limitation prescribed under the Scheme is wholly unreasonable and arbitrary and is liable to be struck out as it is well settled that even while testing the validity of an administrative action, the same can be tested on the touch stone of the Article 14 of the Constitution of India. A 'socio-beneficial' Scheme has to be interpreted in a manner so as to advance the purpose for which the Scheme is formulated and not in a manner so as to defeat the entire purpose of the Scheme.

Thus, we set aside the order dated Nil March, 2020 (Annexure-9), whereby the claim of the petitioner has been rejected on the ground of limitation on both grounds as raised and discussed in this Judgment.

We further direct that in place of Limitation Prescribed under the Scheme, it should be read that the claims made within three years of the date of the death or within three years from the date of the rejection, either wholly or partly by the Insurance Company, to be a reasonable period for filing a claim under the 'Mukhyamantri Kisan Avam Sarvahit Bima Scheme' and the similar schemes which were in force prior thereto on behalf of beneficiaries of the Scheme.

As innumerable cases are filed seeking compensation under the schemes across the State, we direct that all the claims filed within a period of three years from the date of the death or within a period of three years from the date of rejection of claim, either partly or wholly by the Insurance Company, should be treated to be filed within limitation and should be processed on their merits.

As we have held that the limitation provided under the said Scheme is unreasonable and arbitrary and have substituted the said period by a period of three years, as recorded above, we direct the Registrar General of this Court to transmit a copy of this order to The Chief Secretary State of Uttar Pradesh and Director Institutional Finance, State of Uttar Pradesh, for its communication to all the District Magistrates in the State and the District Magistrates in turn are directed to entertain and process the claims filed under the Scheme within limitation as prescribed above by this Court treating them to be within limitation and the same should be processed on their merits.

We have directed and provided for the limitation of three years, till the time the State Government takes an appropriate decision and amends limitation clauses of the Scheme to make them more reasonable taking into account the socio economic condition of the society as well the laws of India.

The writ petition is allowed in terms of the said order.

The District Magistrate, Jaunpur shall now process the claim of the petitioner in accordance with law on its merits treating the same to be within limitation and the same shall be processed expeditiously preferably within a period of three months from the date of filing of the copy of this order."

4. Learned Standing Counsel vehemently opposed the writ petition and submits that rightful order has been passed by the Authority concerned as admittedly the claim is set up by the petitioner with delay. The decision passed in Gautam Yadav (supra) is stayed by the Apex Court in Special Leave Petition (Civil) No.7647/2021 by order dated 12.08.2021, though the payment was made by the Insurance Company and as such, no interference is required in the matter.

5. We have occasion to peruse the record in question and find that

husband of the petitioner died on 24.8.2018 and the claim petition was filed on 6.11.2018 and the same was rejected by the order impugned on the ground of delay. Clause-10 of the policy provides that the claim petition may be filed in the concerned Tehsil within a period of 45 days. In exceptional circumstances, the District Magistrate has powers to extend the period upto one month and no application shall be considered after a delay of 75 days. Policy itself provides condonation of delay upto one month even after the limitation came to an end. There is no clause in the Policy, which specifically bar the consideration of claim by Court concerned even beyond the period of 75 days.

6. We have also occasion to peruse the judgment and order of this Court dated 22.9.2021 passed in Writ C No.19071 of 2020 (The Oriental Insurance Company Limited, Muzaffarnagar vs. Smt. Sanjesh and 2 others), wherein, the Insurance Company had challenged the order dated January 4, 2020 passed by Permanent Lok Adalat, Muzaffarnagar, whereby the claim of Smt. Sanjesh, was allowed and Insurance Company was directed to pay Rs.5 lacs to Smt Sanjesh under the "Mukhyamanti Kisan Evam Sarvhit Bima Yojna" and the aforesaid writ petition was dismissed by this Court on 22.9.2021. The Oriental Insurance Company Limited had assailed the said judgement dated 22.09.2021 in Special Leave to Appeal (C) No(s).3978/2022 (the Oriental Insurance Company Limited vs. Sanjesh & another) 2022 LiveLaw (SC)303 and Hon'ble Supreme Court had proceeded to dismiss the SLP on 11.03.2022 on the ground that the condition of lodging claim within a period of one month, extendable by another one month is contrary to Section 28 of the the Indian Contract Act, 1872 and thus void. Relevant part of the order is reproduced herein below:-

"The sole arguments raised by learned counsel for the petitioner is that the claim was not filed within a period of one month or extending condonable period of one month.

We do not find any merit in the said arguments in view of Section 28 of the Indian Contract Act, 1872 (for short, the Act) which reads as under:-

28. Agreements in restraint of legal proceedings, void. [Every agreement, (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.]

In view of the aforesaid Section, the condition of lodging claim within a period of one month, extendable by another one month is contrary to Section 28 of the Act and thus void.

In view of the said fact, we do not find any ground to interfere with the order passed by the High Court.

The special leave petition is, accordingly, dismissed."

7. Considering the facts and circumstances, we set aside the orders impugned. The matter is remitted back to the competent authority to consider the application of the petitioner in accordance with law and in the light of judgments in Gautam Yadav's case (supra) and Sanjesh's case (supra).

8. The writ petition stands **partly allowed** accordingly.

Order Date :- 13.10.2023

SP/