

Court No. - 40

Case :- WRIT - C No. - 31640 of 2023

Petitioner :- Smt. Radha Devi

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pradeep Kumar, Juned Alam

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 Additional Chief Standing Counsel for the State respondents.

2. Present writ petition is preferred inter-alia with following reliefs:-

"1. To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 21.04.2022 (Annexure No.9) passed by respondent no.2/District Magistrate, Kaushambi.

2. To issue a writ, order or direction in the nature of mandamus commanding the respondent no.2 to grant Rs.5 lacs to the petitioner under the Scheme known as "Mukhyamantri Kisan Evam Sarhit Beema Yojna" in the light of Government Order dated 02.03.2020."

3. It transpires from the record that petitioner, who is wife of late Ram Naresh, had approached to this Court with a grievance that in most arbitrary manner, the rightful claim of petitioner under the Mukhyamantri Kisan Evam Sarhit Beema Yojna had been denied by the order impugned dated 21.04.2022. It is submitted that petitioner's husband died on 11.09.2021 in the hospital due to injuries, which were received by him on account of fall of heavy branch of tree upon him while cutting the grass at the field. In support of her claim, the petitioner has appended death certificate issued on 12.11.2022. The postmortem was also conducted on 12.09.2021.

4. Learned counsel for the petitioner submits that undisputedly the petitioner's husband died due to an accident and being a widow, she had applied under the aforesaid scheme. In most arbitrary manner, the claim of the petitioner was denied based on the report of Naib Tehsildar dated 08.04.2022. While rejecting the claim of the petitioner two objections were taken by the respondents. Firstly, the application was not moved well within reasonable time and secondly as per Government Order dated 28.02.2020, the

deceased was neither recorded as Khatedar or Sah Khatedar and his earning in toto was not based upon agricultural activity. He submits that it is admitted situation that petitioner's husband was the elder son of Ram Lallan and father of late Ram Naresh is having agricultural holding. It is also not disputed that at the time of occurrence of unfortunate incident, the petitioner's husband was cutting grass in the field. He vehemently submits that petitioner's husband used to work at the field of his father, carry out agricultural activity at 'Batayee' and there was no other livelihood except the agriculture activities, therefore, the petitioner's claim in arbitrary manner had been denied. 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."

5. Counsel for the petitioner also drawn the attention of the Court on 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."

6. In this backdrop, he submits that even on the ground of delay the claim of petitioner is liable to be entertained and as such, this Court may come to the rescue and reprieve of the petitioner, otherwise the petitioner would suffer irreparable loss and injury.

7. Per contra, learned Additional Chief Standing Counsel submits that rightful order has been passed based on the record available as well as the relevant Government Order, which holds the field, as such, no interference is required in the matter.

8. Heard rival submissions and perused the record. Admittedly the husband of the petitioner died on 11.09.2021 and the claim was filed on 24.12.2021, with delay of 75 days, as is reflected from the order impugned dated 21.04.2022. 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 and therefore, the delay is just more than one month. There is no clause in the Policy, which specifically bar the consideration of claim by Court concerned even beyond the period of 75 days. We have gone through the judgement and order passed in Gautam Yadav (supra) and Smt. Sanjesh (supra). We are of the considered opinion that objection taken by the respondents while rejecting the claim of petitioner on the ground of delay taken would not sustain. We have also gone through the Government Order dated 24.02.2020 based on which the order impugned is passed. Clause 2 provide eligibility criteria. The same reads as under:-

"2- पात्रता (कृषक की परिभाषा)

यह योजना उत्तर प्रदेश के निवासी ऐसे कृषकों के लिए है, जो दुर्घटनावश मृत/दिव्यांग हो जाते हैं | कृषक का तात्पर्य निम्नलिखित से है:-

(1) राजस्व अभिलेखों अर्थात खतौनी में दर्ज खातेदार/सहखातेदार |
अथवा

(2) खातेदार/सहखातेदार के परिवार के ऐसे कमाऊ सदस्य (*Bread winner*) जिनकी आजीविका का मुख्य स्रोत खातेदार/सहखातेदार के नाम दर्ज भूमि से होने वाली कृषि आय है |
अथवा

(3) ऐसे भूमिहीन व्यक्ति जो पट्टे से प्राप्त भूमि पर अथवा बटाई पर कृषि कार्य करते हैं तथा जिनकी जीविका का मुख्या साधन ऐसे पट्टे अथवा बटाई पर ली गयी भूमि पर कृषि कार्य है | पट्टेदार के अंतर्गत असामी पट्टेदार, सरकारी पट्टेदार, तथा निजी पट्टेदार सम्मिलित होंगे |"

9. Admittedly the petitioner is sole bread earner of his family. While negating the application of petitioner, the respondents have not denied that late Ram Naresh used to work at the field of his father and earns therefrom and as such, the petitioner's claim is

considerable as per Clause 2 of the Government Order dated 28.04.2020.

10. Considering the facts and circumstances, we are of the considered opinion that the claim set up by the petitioner is liable to be processed. We remit back the matter to the District Level Committee to revisit matter as per above discussion. The said exercise is to be done within three weeks from the date of production of certified copy of this order.

11. Consequently, the writ petition is *partly allowed*.

Order Date :- 17.10.2023

A. Pandey