

Court No. - 40

Case :- WRIT - C No. - 36370 of 2023

Petitioner :- Ram Mani Pandey

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

Counsel for Petitioner :- Prabhakar Dubey, Anup Kumar Shukla

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) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 17.04.2023 passed by respondent no.3.

ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to award the claim to the petitioner, under the Scheme of Chief Minister Farmer Accident Insurance, forthwith."

3. Learned counsel for the petitioner submits that the petitioner is a farmer, who met with an accident and received injuries, thereafter, he was admitted in the hospital and an F.I.R. was also lodged regarding this incident under Sections 279, 337, 338 IPC and Section 184 of MV Act. Due to injuries received in the said accident, the petitioner has become handicapped and the Chief Medical Officer, Basti has also issued a handicapped certificate to the petitioner on 15.04.2022. After receiving the handicapped certificate, the petitioner applied for compensation under "Mukhya Mantri Krishak Durghatana Kalyan Yojana" on 22.04.2022 alongwith all relevant documents but in most arbitrary manner, the Sub-Divisional Magistrate, Harraya, District Basti (respondent no.3) vide order dated 17.04.2023 rejected the petitioner's application on the ground that the claim was time barred as there is a delay of two years in filing of the application. It is submitted that the petitioner is a farmer and is entitled to get the compensation 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 has 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 of two years. The judgement of this Court in the case of **Gautam Yadav (supra)** has been 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 accident took place on 23.04.2020 and the application for compensation was filed on 25.04.2022 i.e. after a period of two years and the same was rejected on 17.04.2023 by the respondent no.3 on the ground of delay. The Policy provides that the application 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. There is no clause in the Policy, which specifically bars 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 "Mukhyamantri 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 Live Law (SC) 303** on the ground that the claim was not filed within a period of one month or extending condonable period of one month and Hon'ble Supreme Court did not find any merit in the said arguments in view of Section 28 of the Indian Contract Act, 1872 and proceeded to dismiss the said 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 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 order dated 17.04.2023 and 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 judgment of Hon'ble Supreme Court in **Sanjesh's** case (supra).

8. The writ petition stands ***disposed of***.

Order Date :- 31.10.2023

S.P.