

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17633 of 2013

=====

Gorakh Prasad Son Of Shri Gorishankar Raut Resident Of Village- Baluwa, P.S. Gounaha, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, the State Government of Bihar, Patna, Old Secretariat, Patna.
2. The Principal Secretary, Cooperative Department, Govt. of Bihar, Patna.
3. The Special Secretary, Co-operative Department, Government of Bihar, Patna.
4. District Statistical Officer, West Champaran, Bettiah.
5. Regional Manager, Agriculture Insurance Company of India Ltd. Regional Officer, IIIrd Floor, Grand Plaza, Frezer Road, Patna.
6. The Managing Director, National Central Co-operative Bank, Bettiah, West-Champaran.
7. The Branch Manager, National Central Co-operative Bank, Narkatiyaganj Branch, Narkatiyaganj, West-Champaran.
8. Motihari Central Cooperative Bank, Kesharia Branch, District- East Champaran.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 8449 of 2014

- =====
1. Shankar Prasad @ Shankar Mahto, son of Mahendra Mahto.
 2. Umesh Prasad, son of late Vishnudhari Mahto.
 3. Sanjay Kumar, son of late Rajeshwar Rajak.
 4. Mithilesh Kumar, son of Ram Sundar Mahto.
 5. Rajendra Kumar, son of late Deoki Mahto.
 6. Shiv Shankar Prasad, son of Kailash Mahto.
 7. Mithilesh Kumar, son of Ram Ashray Mahto.
 8. Dilip Kumar, son of Prakash Mahto.
 9. Ram Nath Prasad, son of Ram Chandra Mahto.
 10. Manoj Kumar, son of late Baikuntha Mahto.
 11. Nawal Kishore Prasad, son of late Ram Swarup Mahto.
 12. Ashok Kumar, son of Charit Mahto.
 13. Mahesh Kumar, son of late Muneshwar Mahto.
 14. Umesh Prasad, son of Ram Awatar Mahto.
 15. Ajay Kumar, son of Shiv Nandan Prasad.
 16. Jitendra Kumar, son of Yogendra Prasad.
 17. Krishna Nandan Mahto, son of late Narayan Mahto.
 18. Brij Nandan Mahto, son of late Narayan Mahto.
 19. Rajiv Ranjan Kumar, son of Vijay Prasad.
 20. Rabindra Kumar, son of Ram Sundar Mahto.

All (1 to 20) are residents of village - Chak Nawada, Block, P.S. Barh, District- Patna.

21. Jaydrath Prasad, son of Jhapas Mahto.
22. Pramod Kumar, son of Shital Prasad @ Shital Mahto.
23. Dharmavir Kumar @ Dharmavir Prasad son of Kailash Mahto.
24. Arvind Kumar @ Arvind Prasad, son of Arjun Prasad Singh.

25. Arvind Das son of late Ram Jatan Das.

All (21 to 25) residents of village - Nawada, Block / P.S. Barh, Distt.
Patna

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Cooperative Department, Bihar, Patna.
2. The Agriculture Director, Bihar, Patna.
3. The D.M. - cum - Collector, Patna.
4. The District Agriculture Officer, Patna.
5. The Block Agriculture Officer, Barh, District – Patna.
6. Agriculture Insurance Company of India Limited 3rd Floor, Grand Plaza, Near Dak Bunglow Crossing, Fraser Road, Patna - 800 001 through it's Regional Manager.
7. The Branch Manager, Agriculture Development Branch, State Bank of India, Barh, P.S. Barh, District – Patna.

.... Respondent/s

=====

Appearance :

(In CWJC No. 17633 of 2013)

For the Petitioner/s	:	Mr. Suman Kumar Jha
For the Respondent/s	:	Mr. Rajiv Roy, GP-5
For the Insurance Company	:	Mr. Rajen Sahay

(In CWJC No. 8449 of 2014)

For the Petitioner/s	:	Mr. Sidhendra Narayan Singh
For the Respondent/s	:	Mr. Nirbhay K. Singh, GP-26
For the Insurance Company	:	Mr. Rajen Sahay

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 11-04-2016

Heard Mr. Suman Kumar Jha, learned counsel appearing on behalf of the petitioners, learned counsel for the State, Mr. Rajen Sahay, learned counsel for the insurance company and learned counsel for the Bank.

In each of the two writ petitions, the petitioners pray for payment of crop insurance which according to them is being delayed at the hands of the respondent-insurance company and the State. While the writ petitioners in CWJC No.17633 of 2013 espouse the grievance of the member-farmers of the 'Manjhariya

PACS', Gounaha block in the district of West Champaran, the petitioners in CWJC No.8449 of 2014 represent the farmers of Barh Block, District- Patna.

Re: **CWJC No.17633 of 2013:**

The writ petition has been filed seeking a direction to the authorities of the insurance company to make payment of the crop loss insurance in relation to the insured farmers who were members of the Manjhariya Primary Agriculture Credit Co-operative Society (hereinafter referred to as 'Manjhariya PACS'), under Gounaha Block in the district of West Champaran.

In so far as the completion of formality is concerned it is noted that there is no dispute rather it is an admitted position that the premium in respect of the farmers under the Gounaha block did reach the insurance company as is manifest from paragraph 1 to 7 of counter affidavit of respondent no. 6 and 7 i.e. the National Central Co-operative Bank, Bettiah, West Champaran.

The objection comes from insurance company who have filed an exhaustive counter affidavit questioning the maintainability of the writ petition as well as on the merits of the claim. The stand taken by the insurance company at paragraph 6 of the counter affidavit by itself is sufficient to persuade this Court to refrain from exercising the discretionary jurisdiction under Article 226 of the Constitution of India inasmuch as it is stated that the eligibility to



claim crop loss insurance under the policy in question which was invoked in the Kharif Season, 2010-11, rested on certain qualifications and covered such member-farmers whose actual yield fell below the threshold yield but since the actual yield of the farmers belonging to the Gaunaha block was 1312 Kg/hectare which is above the threshold yield fixed at 1089 kilograms per hectare hence they were not found entitled to the insurance. In other words, the claim of the member-farmers of the co-operative society in question is being contested *inter alia* on grounds of not coming within the purview of the scheme.

Re: CWJC No.8449 of 2014

Mr. Sidhendra Narayan Singh, learned counsel appearing for the petitioners has submitted that it is in circumstances where the insurance company did not proceed to redress the grievance of the petitioner that a legal notice was served on them and when the Area Manager vide his letter dated 21.11.2013 impugned at Annexure-8 simply informed the learned counsel for the petitioners that the farmers of Barh block in the district of Patna were not found eligible for payment of insurance claimed during the Rabi Season, 2011-12. Mr. Singh has also invited the attention of this Court to a letter dated 17.4.2013 of the insurance company and in reference thereto it is stated that the insurance claim of the petitioners has not been rejected on merits rather the letter reflects

that it was only awaiting the deposit of premium by the State Government. He thus submits that the insurance company cannot be permitted to shift from their stand.

Even in the present case there is no issue on payment of premium as manifest from paragraph-5 of the counter affidavit of the Bank filed in present proceedings. There is no objection from the State either rather the objection has come from the Insurance Company who have stated that the farmers of the Barh Block did not come within the eligibility criteria fixed under the Weather Based Crop Insurance Scheme under which they were insured and hence they were not found entitled to crop insurance.

Mr. Rajen Sahay, while contesting the claim in the two writ petitions has submitted that there are two kinds of schemes governing the issue of crop insurance namely the yield based crop insurance scheme and the weather based crop insurance scheme. It is the argument of Mr. Sahay that whereas the farmers in CWJC No.17633 of 2013 were covered under the yield based crop insurance scheme the farmers in CWJC 8449 of 2013 are covered under the weather based crop insurance scheme. It is the argument of Mr. Sahay that there are certain parameters fixed under either of the policies aforementioned and it is only such of the farmers who come within the parameters of the two policies were found entitled to the payment of crop insurance. It is the argument of Mr. Sahay



in reference to the counter affidavit filed by insurance company in the two writ petitions that whereas in the case of the farmers of Gounaha block, District- West Champaran it was found that their actual yield was much above the threshold yield which made them ineligible for payment of crop insurance, in so far as the case of Barh farmers are concerned, it is in reference to the Weather Data present at Annexure-D to the counter affidavit filed in the said proceedings that it is stated that the weather based insurance is payable to only such farmers where the loss suffered is covered under the three instances given in the prime sheet and since none of the farmers come under either of these categories hence they were not found entitled to any insurance scheme. It is the contention of Mr. Sahay that neither the farmers of the Gounaha block, district West Champaran were entitled to their claim under the yield based crop insurance scheme nor the farmers of the Barh block, district Patna were found entitled under the weather based crop insurance scheme. According to Mr. Sahay, these are issues of fact which has to be established by the farmers by leading evidence and hence in view of the law laid down by this Court in the case of **Rubi Kumari vs. State reported in 2011 (1) PLJR 646** and the unreported judgment in **Premshila Devi vs. Union** arising from CWJC No.13443 of 2012, the forum for the petitioners would be elsewhere and not in a writ proceedings.

I have heard learned counsel for the parties on the contest and have perused the records.

The facts are not in dispute nor the coverage of the petitioners under the two scheme is in dispute. The dispute is whether the claims raised are capable of being upheld on merits and whether the circumstances accompanying the claims, entitles the farmers to the insurance.

The claims in question have been rejected by the Insurance Company on grounds that the farmers did not fulfill the eligibility criteria for payment of the crop insurance and that whereas in the case of the farmers of Gaunaha Block, their actual yield was found to be above the threshold yield on the other hand the claims of the farmers of the Barh Block has been rejected on grounds that the weather stipulations present in the scheme did not cover their cases. It would thus require the farmers of the two Blocks in question to contest this position with supporting facts and figures as well as documents which are authentic enough to contest the opinion of the insurance company. Since the foundation of the contest rests on facts available which needs to be proved by admissible and authentic evidences, the forum would be otherwise and in view of the law laid down by this Court in the judgment reported in **Rubi Kumari** (Supra) and **Premshila Devi** (Supra), the member-farmers of 'Manjhariya PACS' in Gaunaha Block in

district of West Champaran as well as the farmers of Barh Block in the district of Patna, if so advised would be at liberty to raise their grievance before the appropriate forum including the remedy provided under the Consumer Protection Act, 1986 (hereinafter referred to as ‘the Act’). However, in the disputed nature of the contest raised herein this Court is not persuaded for granting indulgence to the grievance raised under Article 226 of the Constitution of India.

I would deem it necessary to clarify here that this Court has not expressed its opinion as regarding the merits of the two cases.

The two writ petitions are accordingly disposed of.

(Jyoti Saran, J)

deepika/-

U			
---	--	--	--