IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
PUBLIC INTEREST LITIGATION NO. 91 OF 2021

1. Prashant s/o Achyutrao Lomate
   Age: 35 years, Occu.: Agriculture/Social Work,
   R/o: Near Mahdev mandir,
   Baba Nagar, Kalamb, Tq. Kalamb,
   Dist. Osmanabad.
   Mobile No.9881840723

2. Rajesaheb s/o Sahebrao Patil,
   Age: 50 years, Occu.: Agriculture/Social Work,
   R/o: At. Post. Darfal,
   Tq. & Dist. Osmanabad
   Mobile No.9420203043 .. Petitioners

Versus

1. The Union of India,
   Through Secretary,
   Department of Agriculture, Cooperation &
   Farmers Welfare,
   Ministry of Agriculture & Farmers Welfare,
   Government of India, Krushi Bhavan,
   New Delhi-110 001.

2. The State of Maharashtra,
   Through Secretary,
   Agriculture Department,
   Maharashtra State, Mantralaya,
   Mumbai- 400 032.

3. Principal Secretary,
   Government of Maharashtra,
   Mantralaya, Mumbai.

4. Commissioner for Agriculture,
   Agriculture Commissionrate,
   Shivaji Nagar, Pune-1.

5. District Collector,
   Osmanabad.

6. District Agriculture Officer,
Osmanabad, Tq.& Dist. Osmanabad.

7. M/s. Bajaj Alliance General Insurance Co. Ltd.
having its Registered Office at:
Bajaj Alliance House,
Air Port Road, Yerwada,
Pune-411 006.
Through its Divisional Manager. .. Respondents

Mr. R. D. Raut, Advocate for the Petitioners.
Mr. A. R. Kale, AGP for Respondent Nos. 2 to 6.
Mr. A. G. Talhar, ASG for Respondent No.1.
Mr. S. G. Chapalgaonkar, Advocate for Respondent No.7.

WITH
PUBLIC INTEREST LITIGATION NO. 64 OF 2021

Dnyanraj S/o Dhondiram Chaugule,
Age: 51 years, Occ: Agri & Social Worker,
R/o: Girija Niwas, Gautam Nagar, Umarga,
Tq. Umarga, Dist. Osmanabad
PAN NO. ADUPC2407L
ADHAR CARD :-6102 1018 7456
MOBILE No.9422069943
Annual Income:- Rs.27 Lacs
dnyanrajchougule@gmail.com .. Petitioner

Versus

1. The Union of India,
Through its Chief Secretary,
Ministry of Agriculture & Farmers Welfare,
Krushi Bhavan, Room No.120 first floor,
Dr. Rajendra Prasad Road,
New Delhi-110 001.

2. The State of Maharashtra,
Through its Secretary,
Agriculture & Animal Husbandry & Dairy Development
Department, Mantralaya,
Mumbai- 32.

3. The Commissioner of Agriculture,
Maharashtra State, Central Building,
3rd Floor, Pune-411 001

4. The Collector,
Collector Office, Osmanabad.

5. The District Superintendent of
Agriculture Office, Osmanabad,
Dist. Osmanabad.

6. M/s. Bajaj Alliance General Insurance Co. Ltd.
having its Registered Office at:
Bajaj Alliance House,
Air Port Road, Yerwada,
Pune-411 006. Email ID
onkar.kothari@bajajallianz.co.in
Through its Managing Director. .. Respondents

Mr. S. T. Veer, Advocate for the Petitioner.
Mr. R. R. Bangar, Advocate for Respondent No.1.
Mr. A. R. Kale, AGP for Respondent Nos.2 to 5.

WITH
WRIT PETITION NO. 6859 OF 2021

1. Navnath S/o Ambadas Shinde,
Age: 55 Years, Occu: Agriculture,
R/o. Massa (K), Tq. Kallamb,
Dist. Osmanabad.

2. Pravin S/o Vasantrao Jadhav,
Age: 36 Years, Occu: Agriculture,
R/o. Umra, Tq. Kallamb,
Dist. Osmanabad.

3. Kiran S/o vikram Jadhav,
Age: 30 Years, Occu: Agriculture,
R/o. Umra, Tq. Kallamb,
Dist. Osmanabad.

4. Sajjan S/o Shriram Mate,
Age: 22 Years, Occu: Agriculture,
R/o. Dahiphal, Tq. Kallamb,
Dist. Osmanabad.

5. Samadhan S/o Bibhishan Mate,
Age: 36 Years, Occu: Agriculture,
R/o. Dahiphal, Tq. Kallamb,
Dist. Osmanabad.

6. Sachin S/o Chandrakant Kale,
Age: 32 Years, Occu: Agriculture,
R/o. Diksal, Tq. Kallamb,
Dist. Osmanabad.

7. Ashruba S/o Rambhau Bikkad,
Age: 32 Years, Occu: Agriculture,
R/o. Bahula, Tq. Kallamb,
Dist. Osmanabad.

8. Suryakant S/o vishwanath Deshmukh,
Age: 42 Years, Occu: Agriculture,
R/o. Gaur, Tq. Kallamb,
Dist. Osmanabad.

9. Praful S/o Agatrao Deshmukh
Age: 24 Years, Occu: Agriculture,
R/o. Gaur, Tq. Kallamb,
Dist. Osmanabad.

10. Vikas S/o Goroba Jadhav,
Age: 47 Years, Occu: Agriculture,
R/o. Chikhali,
Tq. & Dist. Osmanabad.

11. Vishwanath S/o Rama Watvade
Age: 51 Years, Occu: Agriculture,
R/o. Chikhali,
Tq. & Dist. Osmanabad.

12. Yogesh S/o Anurath Jadhav,
Age: 24 Years, Occu: Agriculture,
R/o. Chikhali,
Tq. & Dist. Osmanabad.

13. Bapu S/o Maruti Jawle,
Age: 43 Years, Occu: Agriculture,
R/o. Borkheda,
Tq. & Dist. Osmanabad.

14. Vishwanath S/o Bhagwat Jadhavar,
Age: 65 Years, Occu: Agriculture,
R/o. Haglur, Tq. Tuljapur,
Dist. Osmanabad.

15. Balu S/o govindrao Keskar,
Age: 35 Years, Occu: Agriculture,
R/o. Salgara (D), Tq. Tuljapur,
Dist. Osmanabad.

Versus

1. The Union of India,
Through Secretary,
Department of Agriculture
New Delhi.

2. The State of Maharashtra,
Through Principal Secretary,
Department of Agriculture, Animal Husbandry, Dairy Development and Fisheries
Mantralaya, Mumbai- 400 032.

3. The State of Maharashtra,
Through its Principal Secretary,
Department of Revenue, Mantralaya,
Mumbai- 400 032.

4. The Commissioner of Agriculture,
Maharashtra State, Pune-1.

5. The District Collector/
Collector Office, Osmanabad,

Dist. Osmanabad.

6. M/s. Bajaj Alliance General Insurance Co. Ltd.
Bajaj Alliance House,
Air Port Road, Yerwada,
Pune-411 006.
Through its Vertical Head Agri Claims. .. Respondents

Mr. S. A. Wakure, Advocate for the Petitioners.
Mr. A. R. Kale, AGP for Respondent Nos. 2 to 5.
Mr. M. A. Golegaonkar, ASG for Respondent No.1.
Mr. S. G. Chapalgaonkar, Advocate for Respondent No.6.

CORAM : R. D. DHANUKA AND
S. G. MEHARE, JJ.

CLOSED FOR JUDGMENT ON : 06.04.2022
JUDGMENT PRONOUNCED ON : 06.05.2022

JUDGMENT (***Per : R. D. Dhanuka, J.***) **:-**

1. The petitioners in Public Interest Litigation No.91/2021 have prayed for Writ of Mandamus against respondents to sanction and grant compensation/claim for post harvesting losses caused to Soyabean Crop in the Kharip Season 2020 to the remaining 3,57,287 agriculturists in Osmanabad District. The petitioners have also prayed for Writ of Mandamus for an order and direction that in case respondent No. 7 (Insurance Company) refuses to pay the claims of 3,57,287 agriculturists, the respondent nos.2 to 6 shall be directed to pay the claim for post harvesting losses to these agriculturists in respect of Soyabean in the Kharip Season 2020 and for other reliefs.

2. The petitioner in Public Interest Litigation No.64 of

2021 has prayed for Writ of Mandamus against respondents to compensate or to pay the sum insured to all the insured agriculturists of Osmanabad District for their all the insured crops of Kharip Season 2020 and for other reliefs.

3. Writ Petition No. 6859 of 2021 is filed by the petitioners inter alia praying for Writ of Mandamus against respondent no.6 Insurance Company to grant and disburse the crop insurance claims of the petitioners and all other entire eligible agriculturists in Osmanabad District as provided in Clause 11.2 E-6 of Government Resolution dated 29.06.2020 and to comply with the directions issued by the State Government by its letter dated 05.03.2021 and all other reliefs.

4. By consent of parties all three proceedings were heard together and are being disposed of by a common order.

5. This Court has heard the parties at length in the petitions. The learned counsel for the Insurance Company has advanced common submissions in all the three petitions.

6. The petitioners in the said Public Interest Litigation No.91/2021 are the social workers from Osmanabad District. The Union of India had floated a scheme namely Pradhan Mantri Fasal Bima Yojana-2020 (hereinafter referred to as ‘PMFBY’) applicable for three years. The State of Maharashtra is implementing the said scheme and accordingly issued Government Resolution dated 29.06.2020 through Department of Agriculture. The said scheme is to be run by the Central Government and State Government. It is the case of the

petitioners that, the State Government has accepted the liability to implement the said scheme and had accordingly issued the said Government Resolution dated 29.06.2020.

7. Clause 2 of the said Scheme provides for risk factor, Clause 3 provides the inclusion of the crops in oil seeds Soyabean, which is the subject matter of this Public Interest Litigation. Clause 7 of the said scheme provides for protected objects and Clause 7.5 specifically provides for post harvest losses. According to the petitioners, the said scheme is applicable to large number of agriculturists in the Osmanabad District. It was thus not possible for every agriculturists to execute Memorandum of Understanding with the Insurance Company. The State Government accordingly being a guardian of the agriculturists has selected the Insurance Company for implementation of the Insurance Scheme floated by the Central Government. The State Government accordingly selected respondent no.7 and executed Memorandum of Understanding on 27.07.2020 with the said Bajaj Alliance General Insurance Company Limited. It is the case of the petitioners that, under the said Memorandum of Understanding, it was made clear that the liabilities were accepted by the State Government on behalf of the agriculturists. The State Government was an agency in the said Memorandum of Understanding on behalf of the agriculturists.

8. There were heavy rainfall in the month of October 2020 in Osmanabad District and as a result thereof, at the time of harvesting of the crops, the crops were badly damaged. The

harvested small hips in the fields decayed, decomposed and there were germination on the spot. Even after harvesting of the crops, the stored hips of the crops were putrefy and there was fungus. Even hips were flown away due to heavy rains and there was huge loss to the Soyabean Crops after post harvesting. The petitioners have annexed news items published in the different newspapers about heavy rainfall in Osmanabad and loss to Soyabean crops.

9. The learned counsel for the petitioners in Public Interest Litigation No.91/2021 invited our attention to some of the Exhibits annexed to the petition and also to the various Clauses of Government Resolution dated 29.06.2020 issued by the State of Maharashtra. It is submitted that, under the said scheme, the State Government has to undertake awareness and publicity as per Clause No.11. The Government had collected the data in respect of crop cutting experiment and had submitted all these details to the Insurance Company through respondent nos.3 to 6. The prayers in these petitions are limited to post harvesting losses to the Soyabin crops in the Kharip Season 2020.

10. It is submitted by the learned counsel for the petitioners that, due to heave rains at the time of harvesting and after harvesting in October 2020, there was huge loss suffered by the agriculturists in the Osmanabad District. The crops were badly damaged. He invited our attention to some of the news items published in the different newspapers annexed at Exhibit-

D to the Public Interest Litigation collectively.

11. It is submitted that, the Collector has prepared data of different crops and submitted to the Divisional Commissioner which indicated that, more than 33% loss was caused. It is submitted that, the Commissioner, Agriculture, Maharashtra State, Pune by his letter dated 05.03.2021 informed to the different Insurance Companies including respondent no.7 and requested to consider post harvesting loss of Soyabin crops. The Government has conducted panchanama which shall be considered by this Court and ought to have been considered by respondent no.7.

12. The learned counsel for the petitioners invited our attention to the letter dated 17.03.2021 issued by the Insurance Company to the Commissioner, Agriculture, Maharashtra State, Pune stating that, post harvest loss was under the individual claims category, for which survey and loss assessment for the agriculturists, who had given intimation to the Insurance Company as per scheme could have been considered. However, the claim was not made as per the operational guidelines and therefore rejected the request made by the Commissioner, Agriculture for paying compensation to the agriculturists of the District Osmanabad.

13. The learned counsel for the petitioners submits that, the District Superintendent of Agriculture, Osmanabad collected Taluka wise data and provided to the respondent no.7 Company alongwith chart showing that, there were total 4,57,216 affected

agriculturists and the affected area came to 2,08,756.5 in all 8 Talukas of Osmanabad District. There was loss for more than 33%.

14. It is submitted that, the petitioners had requested the concerned authority to supply the documents about the loss, which were communicated to Insurance Company. The Authorities accordingly provided the copy of the data to the petitioner through letter dated 08.06.2021. It is submitted that, since the data was collected by the Government and was forwarded to the Authorities and also the Insurance Company, the Insurance Company could not have declined to grant benefit on the flimsy ground that as per the guidelines, the complaints would have been raised within 72 hours from the date of alleged loss suffered by the agriculturists.

15. It is submitted by the learned counsel for the petitioners that, some of the educated agriculturists, however, have raised complaints/representations of the post harvesting loss immediately within 2-3 days and have been granted benefits. Near about 13,814 agriculturists have made complaints of post harvesting losses after a period of 72 hours, which complaints were considered by the State Government and the Insurance Company and were granted benefits for post harvesting losses. Such benefits were granted to 11,763 eligible agriculturists.

16. The learned counsel for the petitioners placed reliance on the letter dated 14.12.2020 issued by the District

Agriculture Officer to the Insurance Company. The Insurance Company submitted report dated 03.12.2020 on Whatsapp. On 08.12.2020 meeting of District Level Committee was held, which was also attended by the Insurance Company. It was decided that the reasons shown for entitlement of the claim of several agriculturists should be ignored and the claim should be granted to them.

17. The learned counsel for the petitioners submits that, the Collector being the Chairman of the said Committee directed the Insurance Company to consider the directions issued by the District Level Committee and to pay the losses to the remaining agriculturists. Some of the agriculturists had made complaints after 40 days of the losses suffered due to heavy rain.

18. The learned counsel for the petitioners invited our attention to the chart annexed at Exhibit-J collectively to the Public Interest Litigation to demonstrate the number of such agriculturists who got the benefits of Insurance claim, though the complaint was made after 72 hours. He submits that, remaining agriculturists thus could not have been denied the claims on the ground that, the complaints were not made within 72 hours. He submits that, this action on the part of the Insurance company is totally arbitrary, discriminatory and is in violation of Article 14 of the Constitution of India.

19. It is submitted by the learned counsel for the petitioners that, as per the said Government Resolution dated 29.06.2020 and Memorandum of Understanding executed in between State Government and the Insurance Company, the

State Government was acting as an agency on behalf of agriculturists and thus there was no individual correspondence between the agriculturists and the Insurance Company. No Memorandum of Understanding was executed between individual agriculturist and the Insurance Company. Agriculturists were not informed by the State Government that each of those agriculturists were bound to raise the complaints about the losses suffered and the claim for recovery of such losses personally. Most of the agriculturists accordingly could not notify the losses or made claims within 72 hours from the date of losses suffered by these agriculturists due to heavy rain.

20. The learned counsel for the petitioners invited our attention to the Clause No.11, 12, 18, 24 and 26 and would submit that, the combined effect of Memorandum of Understanding executed between the State of Maharashtra and Insurance Company was that the Government was acting on behalf of the agriculturists and therefore the State Government was bound to report the Insurance Company about the losses like crop cutting experiments etc. for the benefit of the agriculturists. He submits that, even the Insurance Company never informed any of the individual agriculturists that in case of post harvesting losses, they had to make individual complaint personally and that also within 72 hours. The Insurance Company thus could not have rejected the complaints/claims of the agriculturists on the ground that, the same was not made within 72 hours.

21. The learned counsel for the petitioners submits that, several agriculturists had made complaints on 26.06.2021. Some of such complaints are annexed at Exhibit-K to the petition. He submits that, in the meeting of District Level Committee held on 08.12.2020, it was decided to grant such benefits. The Insurance Company thus cannot be allowed to deny the said legitimate claims of the agriculturists for the losses suffered by the agriculturists due to heavy rain. These losses were insured under Insurance Policy issued by respondent no.7.

22. It is submitted by the learned counsel for the petitioners that, the agriculturists had paid premium amount of Rs. 32.49 crores and the State Government had paid their share of Rs. 276.17 crores the Central Government paid their share of Rs. 227.43 crores. The Insurance Company has received total premium of Rs. 436.10 crores and distributed very meager amount of Rs. 84.68 crores to the poor agriculturists. He submits that, even if the post harvesting losses to the tune of Rs. 85 crores are paid to the agriculturists, the Insurance Company would get huge profit out of premium collected by it from the agriculturists to the State Government and the Central Government.

23. It is submitted by the learned counsel for the petitioners that, the Insurance Company has paid compensation to some of the agriculturists even though they had not lodged their claims within 72 hours from the date of losses suffered by them due to heavy rainfall in the Osmanabad District. There was thus discrimination and arbitrariness on the part of the

Insurance Company in not paying the other agriculturists. The Insurance Company cannot be allowed to pick and choose the agriculturists for the purposes of making payment of compensation under the Insurance Policy.

24. The learned counsel for the petitioners tendered a copy of the Government Resolution dated 07.08.2019 in support of his contentions. He also placed reliance on the judgment of the Division Bench of this Court in **Public Interest Litigation No.141/2018** in case of **Rajesaheb S/o Sahebrao Patil and another Vs. Union of India and others**. He invited our attention to some of the averments made by the State of Maharashtra in the affidavit-in-reply dated 02.12.2021. He submits that, according to the report submitted by the Commissionerate of Agriculture, Pune to the Government of Maharashtra relating to the crops damaged as per the National Disaster Relief Fund (NDRF), it was opined that due to heavy rains and floods occurred in the months of June to October, 2020 and the area affected due to heavy rains and floods in the Osmanabad District was 259593 hectares. The agriculturists who had suffered losses due to localized disasters, due to unawareness of the provisions of the scheme, lack of communication and failure telecommunication system during the season, agriculturists were unable to give crop loss intimation to the insurance company and were deprived of the benefit of the said insurance scheme.

25. It is submitted by the learned counsel for the petitioners that, the State Government has also admitted in the affidavit that, considering the difficulties faced by the agriculturists,

the Commissioner of Agriculture had issued letter dated 05.03.2021 to the concerned Insurance Companies and directed them to take necessary steps to pay claims based on survey of crop damage prepared as per National Disaster Relief Fund (NDRF) norms and followed up the matter rigorously with Insurance Companies in subsequent meetings and followed by issuance of notices. The Insurance Companies, however, are not sanctioning the claims based on crop damage survey report prepared as per the National Disaster Relief Fund stating that there was no such provisions in the PMFBY guidelines.

26. It is submitted that the State Government has clearly taken a stand in the said affidavit that, the Insurance Companies having received Rs. 639.94 crores as premium, had sanctioned only Rs. 87.83 crores towards claims made by some of the agriculturists. The agriculturists of the Osmanabad District thus shall be compensated by the Insurance Company based on crop damage survey report prepared as per NDRF norms.

27. It is submitted by the learned counsel for the petitioner that, the State Government has clearly admitted that, the provisions had been made for the assessment of the loss on individual farm level to crop losses due to occurrence of localized perils/calamities, hailstorm, landslide, inundation, cloud burst and natural fire due to lightening affecting part of a notified unit or a plots.

28. The learned counsel for the petitioners in P. I. L. No. 64 of

2021 invited our attention to various clauses from Government Resolution dated 29th June, 2020 issued by the Government. He submits that, the petitioner had paid the Crop Insurance premium dated 27th July, 2020. He invited our attention to the letter dated 08th September, 2020, 20th September, 2020, questionaries and debate raised by the petitioner in the State Assembly. He submits that, by the said Government Resolution dated 07th January, 2021 issued by the State Government monetary help to the affected agriculturists of Kharif season 2020 was extended. He also invited our attention to the letter dated 28th May, 2021 and 09th June, 2021 placed on record.

29. It is submitted by the learned counsel that, the State Government by issuing Government Resolution dated 09th November, 2020 and 07th January, 2021 had taken policy decision of providing the help to the affected agriculturists to some extent from their State Disaster Response Fund. The State Government considered that the Marathwada including Osmanabad district was severely affected by excessive retreating and cyclonic rainfall and accordingly extended some compensation from the State Disaster Response Funds. He submits that, the insurance companies however, did not take any constructive steps to actually pay the insured sum to the agriculturists for their insured crops in Osmanabad district.

30. It is submitted that, due to heavy cyclonic retreating rain fall the insured agriculturists were badly affected and the notified insured crop in the said region were totally devastated.

There was agitation by the agriculturists in the Osmanabad district for claiming insurance claim due to the totally devastation in the entire region and affecting their insured crops because of tremendous loss. The insurance companies however, did not consider such agitation and protest by the petitioner and refused to pay their legitimate demand, though the insurance company paid selected agriculturists though had made such claim beyond 72 hours from the date of such loss suffered by each of the agriculturists.

31. The learned counsel for the petitioner in Writ Petition No. 6859 of 2021 adopted submissions made by the learned counsel for petitioners in two public interest litigation. It is submitted that, due to such natural calamities Soyabean crop in the entire district was largely affected causing tremendous loss to the agriculturists as they could not even harvest grown up crop. The Agriculturists could not thresh the crop and get its benefit. He submits that, even according to the authorities, as far as Soyabean crop is concerned, total area of Soyabean crop insured with the insurance company was of 3,61,010 Hectors, whereas affected area as per their report and panchanama itself goes to show that 1,92,603 Hectors which is more than 33%. He relied upon the copy of the report and panchanamas showing such information in regard to the affected area issued by the Committee consisting of Collector, Chief Executive Officer, Zilla Parishad and the District Agriculture Officer.

32. It is submitted that, all the affected agriculturists could not

approach this Court for seeking justice for want of proper knowledge, monetary issues and other related problems. The Insurance company cannot run away from its liability and responsibility and avoiding to pay crop claims made by the agriculturists.

33. It is submitted by the learned counsel that, the State of Maharashtra vide letter dated 05th March, 2021 had directed the Insurance company and various authorities in the State to grant the claims of agriculturists on the basis of reports of losses prepared by the Competent authorities. The insurance company however totally ignored such directions issued by the State Government and did not give any heed to the reports and panchanamas prepared by the authorities in respect of all the affected agriculturists.

34. It is submitted by the learned counsel that, the insurance company is liable to grant claims of eligible agriculturists as per clause 11.2 E – 6 of Government Resolution dated 29.06.2020, as the loss caused was more than 25% of the notified area. It is submitted that, since the loss suffered by the agriculturists was at large scale, agriculturists affected by such heavy rain fall were not expected to lodge of their claim or to intimate the insurance company within 72 hours from the date of such loss suffered by the agriculturists.

35. The learned counsel for the petitioner also invited our attention to some of the averments made by the State

Government in its reply and would submit that, the State Government has not disputed its liability to pay the loss suffered by the petitioners. The said affidavit would also indicate that the State Government had also instructed the insurance company to clear the claims made by the agriculturists under the insurance policies issued by the insurance companies in favour of the State Government acting as an agent on behalf of the large number of agriculturists.

36. Mr. Chapalgaonkar, the learned counsel for the insurance company on the other hand opposed these three petitions and submits that, none of the public interest litigation are maintainable in law. The petitioners are claiming relief beyond the ambit and scope of Pradhan Mantri Fasal Bima Yojana effective from Kharip season 2020 as well as Government Resolution dated 29th June, 2020 issued by the State of Maharashtra thereby implementing the said scheme as per the operational guidelines issued by the Central Government.

37. It is submitted by the learned counsel that, the Department of the Agriculture, Co-operation and Farmers Welfare under Ministry of Agriculture and Farmers Welfare New Delhi had issued operational guidelines for implementation of the PMFBY. The object of the said scheme was for supporting sustainable production in agriculture sector by way of providing financial support to the agriculturists suffering crop loss due to unforseen events, stabilizing the income of agriculturists, ensuring flow of credit to agriculture sector and protecting agriculturists from

production risk. The said scheme provided for coverage of risk at four stages such as (a) prevented sowing, (b) standing crop, (c) post harvest losses and (d) localized calamities. The coverage under said scheme was provided under clause No. 3 of the said scheme. The agriculturists availing Kisan Credit Card/Crop Loan/Loanee agriculturists as well as other agriculturists, non loanee agriculturists are extended the insurance cover.

38. The learned counsel relied upon clause 5 of the said scheme and would submit that under the said clause basic cover is provided under the scheme for risk of loss of yield to standing crop (sowing to harvesting). The comprehensive risk is provided to cover yield losses on an area based approach basis due to non preventable risks like drought, dry spells, flood inundation, wide spread pest and disease attack, landslides, natural fire due to lightening, storm, hailstorm and cyclone.

39. The learned counsel for the insurance company placed reliance on clause No. 5.5 of the scheme which provides that the loss/damage for localised calamities and post harvest losses will be assessed at the level of the individual insured farm. It is submitted that lodging of loss intimation by the farmer/designated agencies is thus essential. The learned counsel placed reliance on clause No. 21.6 of the said scheme and would submit that said clause provides for guidelines in respect of post harvest losses. The provision has been made for assessment of loss on individual plot basis in the case of concurrence of hailstorm, cyclone, cyclonic rains and unseasonal

rains resulting in damage to harvested crop lying in the field in "cut and spread'/small bundled condition depending on nature of the crop in that area kept solely to dry upto a maximum period of two weeks from harvesting.

40. It is submitted by the learned counsel that, the State/Union Territories have to compulsorily notify the crops to be included under post harvest losses along with the harvesting window in the bid document/notification and on the National Crop Insurance Portal. The crops not falling under the aforesaid categories/not included in the tender shall not be included later for post-harvest loss cover. The learned counsel for the insurance company placed reliance on clause 21.6.3 of the said scheme which deals with loss assessment procedure. Clause 21.6.3.1 provides for time and method of reporting the loss/claims.

41. The learned counsel relied upon clause A of the said clause No. 21.6.3.1 and would submit that, under the said clause, the State Government was under obligation to notify crop-wise and agro-climatic zone or district or district wise normal harvesting dates/harvesting period during which the said provision could be invoked. He submits that, since none of these conditions were satisfied, the insurance company was not liable to make payment of any compensation to the agriculturists who have not been paid till date. The learned counsel placed reliance on Clause B of clause No. 21.6.3.1 and would submit that, said clause specifically provides immediate intimation within 72 hours by

the insured agriculturist to the insurance company through “Crop Insurance app” or any available channel of reporting as detailed in para 21.6.3.2 was mandatory. Such intimation must contain details of insured agriculturists, affecting survey number, insured crop, etc.

42. It is submitted that, the concerned agriculturist was at liberty to use crop insurance application and Centralized Toll Free number as a primary mode. Such intimation also could be given through the concerned bank branch or Government officials or the officials of the insurance company, etc. He also placed reliance on clause 21.6.3.5 of the scheme and would submit that under said clause intimation of crop losses was compulsory for individual insured agriculturists through various channels in case of losses due to specified post harvest calamities. The learned counsel for the insurance company also placed reliance on clause 21.6.4, which provides for documentary evidence required to be submitted by the agriculturists for claim assessment.

43. The learned counsel also placed reliance on clause 21.6.4.1 of the scheme and would submit that, under said clause agriculturists who wanted to make any claim for the loss suffered by him if any was required to fill intimation form along with all relevant documents for intimation of loss assessment and payment of claims. The insurance company had also granted liberty to the individual agriculturists to submit semi filled form to the insurance company and complete further details within seven days. Such cover was available only for 40

days from the date of harvest as notified by the State Government.

44. The learned counsel for the insurance company placed reliance on clause 21.6.7.1 of the operational guidelines which provides for detailed procedure and timeline for payment of post harvest loss mentioned in the table format. He submits that, the action required to be taken by the individual agriculturists of the time schedule is clearly specified in the said clause. He submits that, since the information of these farmers/agriculturists who have not been paid any amount by the insurance company could not claim reimbursement of post harvest loss available on individual loss basis in absence of intimation as required under the said scheme. The insurance company could have assessed the loss only after receipt of intimation from the agriculturist/farmer by appointment of loss assessor and jointly by the loss assessor block level agricultural officer and affected agriculturist. He submits that, admittedly these agriculturists/farmers did not lodge any claim or loss of intimation within the period of 72 hours as contemplated under clause 21.6.3.1. The insurance company thus rightly refused to pay the claim amount to these agriculturists/farmers.

45. It is submitted by the learned counsel for the insurance company that, at the beginning of the scheme publications were made in various news papers, news channels, financial institutions, etc. The Government Resolutions were available for perusal of all the stakeholders. The premium was paid by the farmers knowing well nature, object and scope of said scheme.

The petitioners thus cannot be now allowed to argue that these agriculturists or agriculturists were not aware of the timeline prescribed under the scheme for submission of loss intimation to the insurance company.

46. It is submitted by the learned counsel for the insurance company that about 72000 agriculturists had reported loss, out of which 60,000 agriculturists had reported loss within 72 hours. The agriculturists were fully aware of the scheme annexed by the State Government. Learned counsel submits that, said scheme contemplates a remedy of approaching grievance redressal mechanism and under clause 30.4 of the scheme by approaching State Level Grievance Committee. Under clause 30.5 of the scheme grievance can be made before the National Level Centralized Grievance Redressal Committee. None of the petitioners have availed of any such alternate remedy under the said provision of the scheme. The writ petitions and public interest litigation, thus are not maintainable.

47. The learned counsel for the insurance company invited our attention to the Government Resolution dated 29th Jun2, 2020 and would submit that, as per the guidelines of the Central Government, Insurance Company is appointed as implementing agency. He relied upon clause 21.6 of the scheme and would submit that, post harvest loss on individual assessment of loss basis on panchanama is contemplated. Time prescribed is 14 days for claiming loss after harvesting. Identical provision is made in clause 21.6.3 of the scheme in case of post harvesting

losses. It is submitted that, in case of any ambiguity between the scheme and the guidelines, guidelines would prevail.

48. The learned counsel for the insurance company tendered a compilation of judgments. He relied upon judgment of this Court in a case of **Osmanabad Districts Central Co-operative Bank Vs. Union of India** reported in ***AIR 2006 Bom 8*** and more particularly paragraph Nos. 18 to 20, another judgment of this Court in a case of **Vividh Karyakari Seva Sahkari Society Ltd. Vs. Union of India** reported in ***2017 (3) Mh. L. J. 939*** and another judgment in a case of **Limbraj Tulshiram Tikle Vs. State of Maharashtra** reported in ***2015 SCC Online Bom 3349***. The learned counsel also relied upon the judgment of the Supreme Court in case of **Ajitsinh Malubhai Ghummad Vs. Union of India** in **Civil Appeal No. 6040-6041 of 2011** delivered on 11th August, 2011 in support of his submissions. He submits that, claims of about 13500 agriculturists were sanctioned before intimation of loss was made and forms were filled up though belatedly.

49. The learned counsel for the petitioners in rejoinder submits that, merely because claims were not intimated to the insurance company within the time prescribed cannot be a ground for dismissal of claims. He relied upon Section 28 of the Contract Act. He submits that, the insurance company has admitted that there was heavy rain fall in the Osmanabad district during the relevant period and loss was suffered by more than 33% agriculturists. The Government had directed the insurance company to pay the claims of the agriculturists. The insurance

company paid compensation to some of the agriculturists as directed by the State Government. The State Government was nodal agency between the agriculturists and the insurance company. All the agriculturists were affected due to heavy rains during the relevant period. He relied upon the judgment of this Court in ***P. I. L. No. 141 of 2018 delivered on 15th July, 2019*** in case of **Rajesaheb Sahebrao Patil and other Vs. Union of India and others**. He submits that, the State Government has accepted the liability and thus if insurance company does not pay to the agriculturists who have suffered loss, the State Government shall be directed to pay such loss to the agriculturists. The insurance company has accepted the delay of more than two months in several cases. The petitioners had routed their claims to the State Government being nodal agency.

50. Mr. Kale, the learned A. G. P. for the State submits that, there are no allegations made against the State Government in the writ petition that the State Government has failed to do its duties. No intimation was given by the petitioners.

51. The learned counsel for the petitioner in writ petition submits that, there was wide spread calamity and thus no intimation was required to be issued within 72 hours of such incident. The claims of agriculturists cannot be denied on technical ground. The petitioners individually did not intimate the insurance company about losses suffered by each of them, but various authorities of Government had carried out survey, panchanamas and had informed the insurance company for

payment of such loss suffered by the agriculturists. He submits that, even otherwise it was not possible to intimate the insurance company within 72 hours from the date of such heavy rain fall causing loss and damage to the petitioners and in view of server being down of the telephone company during the relevant period. The agriculturists did not have any android phones. The State Government came out with the Government Resolution for providing assistance to the agriculturists on 09th November, 2020 and 07th January, 2021.

52. The learned counsel for the insurance company could not distinguish the judgment delivered by the Division Bench of this Court relied upon by the learned counsel for the petitioner in P. I. L. No. 64 of 2021.

Reasons and Conclusions :

53. It is not in dispute that the Union of India had floated a scheme namely Pradhan Mantri Fasal Bima Yojana 2020 which was applicable for three years. The State of Maharashtra was implementing the said scheme and had issued Government Resolution dated 29th June, 2020 through the department of Agriculture. Clause 7 of the said scheme provided for the protected object of the said scheme. Clause 7.5 provided for post harvest losses. The said scheme was applicable to large number of agriculturists in the district. The State Government had executed memorandum of understanding with the insurance company for implementation of the insurance scheme. The State Government was a nodal agency between the agriculturists and

the insurance company.

54. The petitioners/agriculturists had paid the insurance premium for such insurance coverage. The State Government had also contributed part of the insurance premium on behalf of the agriculturists. During the month of October 2020 there was heavy rain fall in Osmanabad district at the time of harvesting of the crops. The crops were badly damaged. The harvested small hips in the field decayed and decomposed. It is the case of petitioners that, there were germination on the spot. Even after harvesting of the crops stored hips of the crops were putrefied and there was fungus and hips were flown away due to heavy rains and there was huge loss to the Soyabean crop after post harvesting.

55. A perusal of the record indicates that the Government had collected total data through Collector and prepared data of different crops and submitted to the Divisional Commissioner. The said report submitted by the Collector would indicate that there was more than 33% loss caused.

56. A perusal of the record further indicates that the Commissioner of Agriculture, Maharashtra vide various letters had informed the different insurance companies and requested to consider post harvesting loss of Soyabean crop and to pay loss suffered by the petitioners. The State Government had also conducted the panchanama and had submitted the report to the Commissioner of Agriculture and District Collector.

57. There were about 457216 affected agriculturists and the affected area was 208756.5 in all eight talukas of Osmanabad district causing loss of more than 33%. The insurance company did not dispute that there was a post harvesting loss for Soyabean crop in Kharip season 2020 due to heavy rain during the month of October 2020. The insurance company however, has though cleared claims of large number of agriculturists, though made after 72 hours of the incident, did not pay the claims of large number of agriculturists including these petitioners on the ground that there was no intimation or complaint made by the agriculturists within 72 hours and thus they were not entitled for such benefit under the said scheme.

58. The insurance company also has not disputed that due to such heavy rain fall during the relevant period, the phone lines of the agriculturists were affected and it was not feasible to intimate the insurance company within a period of 72 hours. The said heavy rain fall continued for number of days.

59. Be that as it may, the insurance company has not disputed that loss was suffered by more than 33% and accordingly State Government directed the insurance company to pay the claims of the agriculturists. The agriculturists had approached the State Government collectively in view of the fact that the State Government was nodal agency between the agriculturists and insurance company. All the agriculturists in the Osmanabad district were severely affected and thus there was no question of any individual claim.

61. There was wide-spread calamity in the Osmanabad district due to such heavy rain fall and thus no intimation within the period of 72 hours was thus required to be issued by individual agriculturists, nor it was feasible. The agriculturists could not go to their respective farms. We are inclined to accept the statement made by the learned counsel for the petitioners in writ petition and also in the public interest litigation that server of phone company was down. Considering these facts, the State Government had issued Government Resolution dated 09th November, 2020 and 07th January, 2021 for providing assistance to the agriculturists.

62. In the additional affidavit filed on behalf of the insurance company in P. I. L. No. 91 of 2021, the insurance company has admitted in paragraph No. 2 that, the insurance company has considered all the claims towards post harvesting losses/localized calamities which were belatedly intimated to the insurance company. Out of the total intimated claims 72235 claims were approved as per merit. According to the insurance company, there was average delay upto 9 days in such intimation.

63. In paragraph No. 3 of the additional affidavit in reply, it is admitted that, for the purpose of settlement of belated claims, the survey was carried out through the authorized surveyors and the data/material which was made available through the Government Agencies or collected during the survey at adjoining lands were considered along with weather reports. This exercise

was undertaken in view of special instructions from the Government to entertain all the intimations of losses irrespective of breach of timeline under the scheme. In paragraph No. 4 of the additional affidavit it is contended that the latitude given to the insured agriculturists who could not intimate losses within timeline as per guidelines could not be extended to the insured agriculturists who failed to intimate the loss during the insured season.

64. Thus, it is an admitted position that, though in large number of cases intimation was not given by the agriculturists individually within 72 hours of the losses, the insurance company has paid those large number of agriculturists and waived their rights under the said scheme. On one hand, it is the case of the insurance company that the payments were made by the insurance company on the basis of data/material made available through the government agencies or collected during the survey at adjoining lands were considered along with weather report and payment of compensation was made in view of the special instructions from the Government to entertain all the intimations of losses irrespective of breach of timeline under the scheme. On the other hand in respect of these agriculturists who are the petitioners in the writ petition and large number of other agriculturists are denied payment on the ground of these agriculturists not having individually intimated the loss within 72 hours from the date of incident. In our view, the action on the part of the insurance company not to release the payment of compensation is discriminatory, arbitrary and without any

reasonable basis. The impugned action on the part of the insurance company is in violation of Article 14 of the Constitution of India.

65. Additional affidavit would also indicate that, the insurance company has accepted the data/material intimating such loss to the insurance company and based on such data, the insurance company has acted upon such data and/or instructions of the State Government and had paid large number of agriculturists towards losses suffered by them. Reliance placed on various clauses of the scheme to justify the rejection of claim of the petitioners is misplaced.

66. The insurance company has not denied the submissions made by the petitioners in Writ Petition and in the Public Interest Litigation that the insurance premium collected by the insurance company from the State government for insuring claims of the agriculturists was much more than premium amount of Rs. 32.49 crores paid by the agriculturists, the State Government at Rs. 276.17 crores and the Central Government at Rs. 227.43 crores to insure the losses if any suffered by these agriculturists due to various eventualities covered under the insurance policies issued by the insurance companies. The insurance company has not disputed that, though the insurance company has received total premium of Rs. 436.10 crores, has distributed very meager amount of Rs. 84.68 crores to the selected agriculturists.

67. Averments made in the affidavit in reply filed by the State Government on 02nd December, 2021 clearly indicates that, according to the Commissionerate of Agriculture, Pune to the Government of Maharashtra relating to the crops damaged as per the National Disaster Relief Fund (for short 'NDRF') that, due to heavy rains and floods occurred in the months of June to October, 2020 and in view of the area affected due to heavy rains and floods in the Osmanabad district was 259593 hector.

68. The learned counsel for the insurance company could not dispute that under the said scheme provision had been made for the assessment of loss of individual farm level to crop losses due to occurrence of localized perils/calamities, hailstorm, landslide, inundation, cloud burst and natural fire due to lightening affecting part of a notified unit or a plots. There was agitation and protest by large number of agriculturists against the insurance company and the State government for not paying their legitimate demand to these petitioners and large number of other agriculturists, though the insurance company has paid selected agriculturists for having made such claim beyond 72 hours from the date of such loss suffered by each of the agriculturists.

69. We are inclined to accept the submissions made by the learned counsel for petitioners that, the insurance company is liable to grant claims of eligible agriculturists as per clause11.2E-6 of the G. R. dated 29.06.2020, as the loss caused was more than 25% of the notified area. The individual

agriculturist was not required to intimate the insurance company of his loss within 72 hours from the date of such loss suffered by the agriculturist.

70. There is no substance in the submissions made by the learned counsel for the insurance company that the petitioners have claimed relief beyond the ambit and scope of Pradhan Mantri Fasal Bima Yojana effective from Kharip season 2020 as well as G. R. dated 29th June, 2020 issued by the State of Maharashtra. It is not case of the insurance company that the claims for losses made by the agriculturists were not covered by any events covered under the insurance policy issued by the insurance company. The provisions of the claim pressed in service by the insurance company for denying the claims of these agriculturists providing for intimation of individual loss within a period of 72 hours and consequences thereof would not apply to the facts of these cases on various grounds referred to aforesaid.

71. In so far as judgment of this Court in case of **Osmanabad Districts Central Co-operative Bank Vs. Union of India** (supra) relied upon by the learned counsel for the insurance company is concerned, the said judgment would not apply to the facts of this case. The facts before this Court in the said judgment were totally different. The provisions of the scheme considered by this Court in the said judgment were different.

72. In so far as judgment of this Court in case of **Osmanabad Districts Central Co-operative Bank Vs. Union of India** (supra) relied by the learned counsel for the insurance company is concerned, the

Division Bench of this Court in the said judgment had considered National Agricultural Insurance Scheme. The petition was filed by a village level society engaged in providing loan facility to its members/agriculturists. In our view, the said judgment also would not assist the case of the insurance company. The said judgment would not apply even remotely to the facts of this case.

73. In far as the judgment in case of **Limbraj Tulshiram Tikle Vs. State of Maharashtra** (supra) relied upon by the learned counsel for the insurance company is concerned, provisions of the scheme considered by this Court in the said judgment were totally different. There was no case of payment of loss suffered by large number of agriculturists made by the insurance company selectively. The said judgment relied by the learned counsel for the insurance company, thus would not assist the case of the insurance company.

74. In so far as order passed by the Supreme Court in case of **Ajitsinh Malubhai Ghummad Vs. Union of India** (supra) is concerned, an order passed by the National Consumer Dispute Redressal Commission was impugned before the Supreme Court. The clause providing for intimation in case of localized risk on individual basis was considered by the Supreme Court. The said clause was totally different. The appellant therein could not refer to any clause in the scheme that if yield is less due to insufficient rains, the deficiency would be covered under the scheme of insurance. In the facts of that case the Supreme Court did not interfere with the order passed by the National Consumer Dispute Redressal Commission. The said judgment

would not assist the case of the insurance company and is clearly distinguishable on facts.

75. The said Pradhan Mantri Fasal Bima Yojana was being implemented in the State with an object to provide financial support to agriculturists suffering crop loss/damage arising out of unforeseen events, stabilizing the income of agriculturists to ensure their continuance in farming, ensuring flow of credit to the agricultural sector. The State Government has acknowledged the payment of premium paid by the agriculturists and that total 520175 Hector area had been covered under the said scheme. In para No. 7 of its affidavit it is admitted by the State Government that agriculturists who intimated their loss through agriculture department and even after 72 hours of natural calamity were also honoured and compensated. The insurance company was also instructed to determine the compensation based on the loss intimation received in offline mode through Agriculture Department after 72 hours of the calamity. A total of 72325 agriculturists were compensated by the insurance company by paying aggregate amount of Rs. 87.87 crores.

76. It is case of the State Government that though agriculturists who had suffered loss due to localized disaster due to unawareness of the provisions of the scheme, lack of communication and telecommunication equipment during the season, could not give crop loss intimations to the insurance company and were thus deprived from the benefit of the said insurance policy. The State Government, however, after

considering these difficulties faced by the agriculturists, through the Commissioner of Agriculture issued letter dated 05th March, 2021 to the concerned insurance companies directed to take necessary steps to pay claims based on survey of crop damage prepared as per National Disaster Relief Fund norms and followed up the matter rigorously with insurance companies in subsequent meetings and notices.

77. In para No. 9 of the said affidavit it is clearly stated that considering huge amount saved at the insurance companys end, it is the stand of Department of Agriculture, Government of Maharashtra that agriculturists should be compensated by insurance companies based on crop damage survey report prepared as per NDRF norms. The procedure for survey of damage under NDRF survey to decide claims under said scheme is one and the same. The State Government decided that the agriculturists who had participated in the crop insurance scheme and were deprived of benefited of said scheme were treated as special case and shall be benefited of the said scheme on the basis of panchanama conducted by the Department of Revenue, Agriculture and Zilla Parishad for the area affected more than 33%.

78. It is the stand of the State Government that agriculturists should be compensated by the insurance companies based on crop damage survey report prepared as per NDRF norms. We are inclined to accept the stand taken by the State Government in the affidavit in reply. The State Government has already issued specific directions in this regard vide letters dated 29th

September, 2020, 14th October, 2020 and 04th March, 2021 to determine compensation for the localized calamity and post harvest loss and to take steps expeditiously to pay the compensation to who had not given crop loss intimation as per the scheme guidelines.

79. The additional affidavit in reply filed by the insurance company clearly indicates that they have implemented the directions issued by the State Government partly and in respect of large number of selective claims and have taken unreasonable stand in respect of balance agriculturists. The insurance company cannot be allowed to discriminate two sets of agriculturists similarly situated.

80. In so far as submission of the learned counsel for the insurance company that these petitions are not maintainable on the ground of alternate remedy not having been availed of by the petitioners is concerned, in our view there is no merit in the submissions of the learned counsel for the insurance company. The insurance company has acted illegally and arbitrarily. The Insurance company has already paid large number of similarly situated agriculturists without those agriculturists availing any alternate remedy pursuant to the directions issued by the State Government or otherwise. Two of the petitioners have filed public interest litigation considering he huge loss and trauma suffered by large number of agriculturists of Osmanabad district. The alternate remedy in this situation would not be an efficatious alternate remedy.

81. In our view, the petitioners have thus made out case for reliefs claimed. We accordingly pass the following order.

O R D E R

A. In P. I. L. No. 91 of 2021 respondent No. 7 and in P. I. L. No. 64 of 2021 the respondent No. 6 are directed to sanction and grant compensation/claim for post harvest loss caused to the soyabean crop in Kharip season 2020 to the remaining 357287 agriculturists in Osmanabad district. If the said amount is not paid by the insurance company within a period of six (06) weeks from today, the State Government is directed to pay such claim for compensation for post harvest loss caused to the Soyabean crop in Kharip season 2020 to remaining 357287 agriculturists of Osmanabad district within a period of six (06) weeks thereafter. The insurance company is further directed to comply with the directions of the State Government issued by its letter dated 05th March, 2021.

B. In Writ Petition No. 6859 of 2021, the respondent No. 6/insurance company is directed to grant and disburse the crop insurance claims of the petitioners and all other entire eligible agriculturists in Osmanabad district as provided in Clause 11.2E-6 of the Government Resolution dated 29th June, 2020 within the time prescribed in the G. R. dated 29.06.2020.

C. P. I. L. No. 91 of 2021, P. I. L. No. 64 of 2021 and Writ Petition No. 6859 of 2021 are allowed in aforesaid terms.

D. Parties to act on the authenticate copy of this judgment.

E. The petitioner in P. I. L. No. 64 of 2021, who has deposited Rs. 4,00,000/- (Rs. Four Lacs only) pursuant to interim order dated 09.09.2021 passed by this Court, the office is directed to refund the said amount to the petitioner in P. I. L. No. 64 of 2021 within a period of four (04) weeks from today.

[S. G. MEHARE, J.] **[R. D. DHANUKA, J.]**

Devendra/May 2022