BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19646 of 2020
and
W.M.P(MD)Nos.16373, 16374 of 2020 &
1866 of 2022

NN 188 Kallal Primary Agricultural
Co-operative Credit Society,
Kallal, Karaikudi Taluk,
Sivagangai District,
Represented by its President,
N.Shanmuga Sundaram. ... Petitioner

Vs.

1.The Director of Agriculture Co-operation
and Farmers Welfare Ministry of Agriculture
and Farmers Welfare,
Krishi Bhavan,
New Delhi – 110 001.

2.The Registrar of Co-operative Societies,
Office of the Registrar of Co-operative Societies,
Chennai.

3.The District Collector,
Office of the District Collector,

Sivagangai,
Sivagangai District.

4.The Joint Director (Agriculture),
Office of the Joint Director of Agriculture,
Sivagangai District.

5.The Joint Registrar of Co-operative Societies,
Office of the Joint Registrar of Co-operative Societies,
Sivagangai.

6.The Deputy Registrar of Co-operatives,
Karaikudi,
Sivagangai District.

7.The Joint Director cum Managing Director,
Sivagangai District Central Co-operative Bank,
Sivagangai.

8.Cholamandalam Ms General Insurance Co.Ltd.,
2nd Floor, Dare House,
No.2, SNC Bose Road,
Chennai – 600 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the 8th respondent in Lr.No.PMFBY/TN/2018-19/72 dated 20.05.2020 and also the consequential order passed by the fourth respondent in Ka.No.T1/2227/2019 dated 24.08.2020 quash the same and consequently directing the 8th respondent to pay the insurance amount as per revenue village (Adangal) within the time stipulated by this Court.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.S.Jeyasingh
Central Government Standing Counsel
for R.1

Mr.K.S.Selvaganesan
Additional Government Pleader
for R.2 to R.6

Mr.D.Shanmugarajasethupathi for R.7

Mrs.K.R.Sivashankari for R.8

ORDER

Heard both sides.

2.The writ petitioner is a Primary Agricultural Co-operative Credit Society. The case on hand involves honouring the insurance claim of the individual farmers for crop loss. The Government of India had introduced an insurance scheme "Pradhan Mantri Fasal Bima Yojana" (PMFBY). As per the terms of the scheme, the individual farmer in the notified area has to remit the premium along with all the relevant details to the jurisdictional Agricultural Co-operative Credit Society. The Co-operative Societies in turn will forward the details to the concerned branch of the District Central Co-operative Bank for uploading all the details in the web portal maintained by the concerned insurance company. In this case, the uploading was not done by the District Central Co-operative Bank but by the petitioner society itself. While so doing, certain errors had crept in. When the insurance claims were considered, the insurance paid amount based on the loss assessment report submitted by the officials. As a result of the misreporting, instead of honoring claims in toto, only 25% of the claim amount was paid. This was because the names of the villages had been wrongly entered. When the petitioner insisted that the claim should be honored as such, the Joint Director of Agriculture as well as the Insurance company declined the request. Challenging the same, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The learned Additional Government Pleader appearing for the fourth respondent as well as the learned counsel appearing for the District Central Co-operative Bank submitted that the petitioner had to take the entire blame and that they cannot now shift the liability. They pressed for dismissal of the writ petition.

5.The learned Standing Counsel appearing for the insurance company submitted that as per the operational guidelines governing the insurance scheme, the concerned Bank should be liable for such misreporting. She drew my attention to the order dated 09.10.2023 made in W.P(MD)No.19437 of 2020 (P.Thangamani Vs The Secretary to Government & Others) and the order dated 11.10.2023 made in W.P(MD)No.2907 of 2021 etc batch (D.Arockiya Punitha Vs The District Collector & Others). She also pressed for dismissal of the writ petition as far as the insurance company is concerned.

6.I carefully considered the rival contentions and went through the materials on record. One of the farmers who was similarly affected filed W.P(MD)No.19437 of 2020. The said writ petition was disposed of on 09.10.2023 in the following terms:

"7. In the considered view of this Court, the petitioner is a farmer and the petitioner cannot be made to run from pillar to post for getting the insurance claim for the loss suffered by him. Even according to the petitioner, the 75% crop insurance amount is only to the tune of Rs.88,475/-. For this amount, the petitioner is struggling from the year 2020 onwards. According to the 6th respondent, already clarification has been given with regard to the wrong mentioning of the village and hence, it must be acted upon by the 7th respondent and the amount must be released in favour of the petitioner. According to the 7th respondent, no correction can be entertained after the cut off date and it is only the 6th respondent, who will have to pay the claim amount. This Court is dealing with the interest of a farmer and the petitioner cannot be allowed to suffer in the crossfire between the 6th and 7th respondents.

8. In view of the above, there shall be a direction to the 7th respondent to settle the 75% crop insurance in favour of the petitioner within a period of four weeks from the date of receipt of a copy of this order. If according to the 7th respondent, it is only the 6th respondent, who will have to pay this amount, it is left open to the 7th respondent to make the claim from the 6th respondent."

The Hon'ble Judge had invoked the principle of pay and recovery. With utmost respect to the learned Judge, I am not inclined to adopt the said approach. In cases arising under the Motor Vehicles Act, 1988 such an approach is adopted. But it has a clear statutory basis in Section 149(2) of the Motor Vehicles Act, 1988. When there is no corresponding provision in the operational guidelines governing PMFBY scheme, I fail to understand as to how the said principle can be invoked as against the insurer. If I disagree with the view expressed by another learned Judge in similar circumstances, judicial discipline demands that reference is made to a larger Bench. But such course of action would have to be adopted only if there is any underlying ratio. In W.P(MD)No.19437 of 2020, only relief has been granted to the petitioner concerned and there is no legally discernible ratio as such in the said decision. In any event, the very same learned Judge took a contra view two days later in W.P(MD)No.29070 of 2021etc batch. While dealing with a similar case, the following order was passed:

> *"**7.** There is no dispute with regard to the fact that the agricultural lands belonging to the petitioners are situated at Paganoor Revenue Village. Unfortunately, the*

fifth respondent while uploading the details, had shown the lands as if they are located at Panichagudi, Sirugambaiyur, Chittamangalam and Kookudi Villages. In view of the same, a lesser insurance claim was paid to the petitioners.

8. *The operational guidelines governs the payment of the insurance amount and for proper appreciation, the relevant guideline is extracted hereunder:-*

"24.2. In case of any substantial misreporting by nodal bank/branch with respect to loanee farmers coverage which may include incorrect insured and sown acreage and survey details, bank account details and IU details etc., the concerned bank only shall be liable for such misreporting."

9. *In view of the above, the second respondent Insurance Company cannot be made liable for the payment of the difference in the insurance claim to the petitioners. For the mistake committed by the fifth respondent, it is only the fifth respondent, who must be directed to pay the difference in the amount to the petitioners. Ultimately, it is left open to the fifth respondent to make their claim before the second respondent Insurance company, if they are otherwise entitled to make such a claim. The petitioners, who are agriculturists/farmers cannot be made to suffer* *for the mistake committed by the fifth respondent and they will be entitled for the difference of the insurance claim.*

***10.** In the light of the above discussion, there shall be a direction to the petitioners to make a representation to the fifth respondent, seeking for the payment of the difference of the amount payable as insurance claim [Rs. 21,500 – Rs.5,600 = Rs.15,900/- per acre]. On receipt of the representation, the fifth respondent shall settle the balance of the insurance claim to the petitioners, within a period of six weeks from the date of receipt of a copy of representation from the petitioners. "*

Clause 24.2 of guidelines reads as follows:

"24.2. In case of any substantial misreporting by nodal bank/branch with respect to loanee farmers coverage which may include incorrect insured and sown acreage and survey details, bank account details and IU details etc., the concerned bank only shall be liable for such misreporting."

Therefore, the insurance company has to be necessarily exonerated from liability.

7.The learned counsel appearing for the petitioner would point out that the Registrar of Co-operative Societies had issued circular dated

08.11.2017 stating that it is only the District Co-operative Central Bank that must upload the details and that this responsibility should not be passed on to the Primary Agricultural Co-operative Credit Society.

8.Therefore, the only question that calls for consideration is whether the Primary Agricultural Co-operative Credit Society or the District Central Co-operative Bank should take the blame. Clause 30 of the operational guidelines is as follows:

> *"**30 Grievance Redressal Mechanism:***
>
> ***30.1** Each implementing State/UTs and empanelled ICs are required to compulsorily set up a stratified and a robust grievance mechanism with requisite infrastructure upto the level of block/taluka to address grievance of all stakeholders particularly insured farmers.*
>
> ***30.2** At the initial level, for grievance redressal, each district shall designate taluka and district level grievance officer preferably **Tehsil/Taluk or District Agrioculture / Horticulture Officer** to record & respond to the grievances of Farmers, Banks, ICs etc, within 7 days of receipt of grievance. In case of dissatisfaction, the matter may be brought before*

District Level Grievance Redressal Committee (DGRC)."

I therefore permit the petitioner to file a representation before the third respondent. The third respondent will place the said representation before the District Level Grievance Redressal Committee. After hearing the petitioner and the seventh respondent, the said committee will pass an appropriate order on merits and in accordance with law. Order fixing the liability will be passed within a period of eight weeks after receipt of representation of the petitioner. The individual farmers can proceed against the petitioner or the seventh respondent herein based on the order to be passed by the Committee. The concerned farmers will also accordingly informed by the third respondent.

9.This writ petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

13.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

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G.R.SWAMINATHAN, J.

MGA

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