

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19390 of 2018

=====

VINOD BHAGWAN CHAVDA & 9 other(s)

Versus

THE MANAGER, SBI GENERAL INSURANCE LTD & 5 other(s)

=====

Appearance:

MR GOVINDBHAI M PARMAR(9675) for the Petitioner(s) No.

1,10,2,3,4,5,6,7,8,9

MR SANGRAM CHINNAPA FOR MR SUBODHKANT B PARMAR (10133) for
the Petitioner(s) No. 1,10,2,3,4,5,6,7,8,9

MR MIHIR JOSHI, SR. ADVOCATE WITH MS DISHA N NANAVATY(2957)
for the Respondent(s) No. 1,2

MS MANISHA LAVKUMAR, GOVERNMENT PLEADER(1) WITH MR JK
SHAH for the Respondent(s) No. 4,5

NOTICE SERVED BY DS(5) for the Respondent(s) No. 3,6

=====

CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**

and

HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 07/10/2020

CAV ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. By means of this petition under Article 226 of the Constitution, 10 petitioners have approached this Court praying for appropriate directions to the contesting respondent authorities, i.e. SBI General Insurance Company Limited and the State authorities as also the Ministry of Agriculture and Farmers Welfare, Government of India, to ensure that the

WWW.LIVELAW.IN

petitioners are paid their insurance amount covered for crop losses occurred for the Kharif Season 2017 under the Prime Minister Fasal Bima Yojana (in short “PMFBY”). The reliefs claimed are reproduced below:

“a) This Hon’ble Court may be pleased to issue a writ of Mandamus or any other writ order or directions and direct the Respondent Authorities to ensure that the Petitioners are paid their Insurance Cover for Crop loss occurred under the PMFBY policy for Kharif season 2017 in Surendranagar District, Gujarat State along with appropriate commensurate interest.

b) That during the pendency of the present Writ this Hon’ble Court may direct the Respondent Insurance Agency to pay 25% amount of insurance forthwith to farmers against the assessment to total loss of the each farmer under the PMFBY policy 2017 for the Kharif Season 2017 of Surendranagar District in accordance with the PMFBY policy 2017;

c) This Hon’ble court may direct the Respondents that as interim measures the Respondents shall conclude the procedure and pay the insurance against loss occurred due to flood and excessive rain to farmers of the Surendranagar District;

d) Ad interim relief as per clause (b) above.

e) Your Lordships be pleased to pass such other and further orders as the facts and circumstances of the case may require.”

2. In short, the case of the petitioners is that in July 2017, on account of uncontrolled floods in the State of Gujarat, crops of the petitioners were completely destroyed. All the petitioners are registered under the Prime Minister Fasal Bima Yojana and were entitled to compensation but as the same was not being paid, they made repeated representations which all went in vain. As such, they were compelled to file this petition.
3. This Court vide order dated 13th December 2018 issued notices to the respondents. The parties appeared and filed their response. By order dated 23rd January 2020, after recording the status as indicated by Shri Mihir Joshi, learned Senior Counsel appearing for the respondent Insurance Company, we had granted time to the learned counsel for the petitioner to provide necessary information in order to substantiate his claim. The order dated 23rd January 2020 is reproduced below:

"1. Heard Shri Sangram Chinappa, learned counsel for the petitioners, Shri Mihir Joshi learned Senior Advocate assisted by Ms. Disha

Nanavati, learned counsel for respondent No.1 – Insurance company and Ms. Manisha Lavkumar Shah, learned Government Pleader for the State respondents.

2. Shri Joshi, learned Senior Advocate, upon instructions states that out of 10 petitioners, the following is the present status of their ex-gratia claims:

[a] So far as petitioner Nos.2, 5, 7 & 8 are concerned, their claims have been sanctioned and amounts were sought to be credited in their accounts, but on account of some discrepancy, the amounts have not been credited. He further states that he would produce the bank drafts of the amount due and payable to them as ex-gratia amount for insurance claim within a week.

[b] So far as petitioner Nos.1, 4, 6 and 9 are concerned, according to Shri Joshi, there is discrepancy in the crop insurance and the claim for loss of crop. He also states that there is discrepancy in referring the name of Village where the crop is said to have suffered loss.

Shri Sangram Chinappa, learned counsel for the petitioners, states that he would get the relevant records within a week and place it before the Court so that the discrepancy, if any, is corrected.

[c] So far as petitioner Nos.3 and 10 are concerned, according to Shri Joshi, learned Senior Advocate, their names are not available in the records with the Insurance Company. On the other hand, Shri Sangram Chinappa, states that both these petitioners have also paid the insurance premium. He, however, submits that within a week he will get insurance policies from the concerned bank.

WWW.LIVELAW.IN

3. Shri Joshi further states that the above facts recorded on his statement may remain without prejudice to the rights of the Insurance Company to raise all its objections. Let it be so.

4. We accordingly direct this matter to come up on 03.02.2020."

4. Thereafter, on 3rd February 2020, Shri Joshi, learned Senior Counsel appearing for the respondent-Insurance Company handed over 4 Demand Drafts with respect to ex-gratia claim of petitioner Nos. 2, 5, 7 and 8. With regard to the others, learned counsel for the petitioner had filed additional affidavit which was taken on record. Shri Joshi had prayed for some time to examine the facts stated in the additional affidavit. Thereafter, the matter was heard on 20th February 2020.

5. In this matter, the concern noticed by the Court is that farmers who had lost their crops on account of floods in July 2017 and who claimed to be covered under the PMFBY had not been paid their due compensation till 2020. Further in case they were not covered under the Scheme or not entitled to any

compensation for any reason they ought to have been informed. It is of concern that these poor farmers who suffered loss of their crops whether or not were entitled to compensation were compelled to approach this Court for an adjudication whether they are entitled or not.

6. Soon after, we reserved the orders, lock-down had crippled the entire working in all sectors. However, since May 2020, gradually things had started opening up. Now, at present, we are governed by Unlock-4 issued by the Ministry of Home Affairs, Government of India.
7. As substantial time has elapsed in the meantime and we are not aware as to what developments had taken place with regard to payment of compensation to all the petitioners, we mention all the petitioners because the amount paid to some of the petitioners is only ex-gratia amount and not the entire amount to which the petitioners may be entitled under the insurance cover. We are not saying that all the petitioners are entitled but what troubles us is that

compensation is to be paid to farmer who has suffered crop losses in 2017 and is covered under the PMFBY, is not paid even after about 3 years. On one hand, the State has paid huge premium to the Insurance Company and has signed Memorandum of Understanding with the Insurance Company and on the other hand, the farmers despite claiming to have having suffered crop losses being covered under PMFBY are not paid compensation and their representations are not heeded to and replied.

8. There is huge correspondence between the State, the Insurance Companies and the representatives of the Central Government. However, things have not been sorted out so far.
9. We had heard learned counsel for the parties on 20th February 2020. After hearing the learned counsels, we had reserved the orders.
10. On that day, although in the beginning Shri Mihir Joshi, learned Senior Counsel had raised preliminary objection that the petition itself would not be maintainable and requested the Court to hear

him on the said preliminary objection, but we had deferred the same in order to find out as to whether the petitioners are entitled under the Scheme / insurance cover or not for any compensation, whether ex-gratia, interim or otherwise. The preliminary objection would be dealt with at a later stage.

11. At this stage, we only request the State authorities, Secretary, Agriculture and Cooperation Department (respondent No.5) to carry out an exercise and ensure as to whether not only the petitioners who are poor farmers but the other farmers covered under the Scheme have or have not been paid their due compensation and any such issue which may arise *inter se* the insurance company, the State and the farmers, may be resolved at the earliest. We may record here that according to Shri Joshi, learned Senior Counsel, substantial amount of compensation had already been released. However, the officers of the Insurance Company would also extend all cooperation in the

exercise that may be taken to sort out the issues.

12. For the aforesaid purpose, we grant three months time to respondent No.5 to get the entire exercise carried out and ensure that the farmers do not suffer if they are otherwise entitled. We may make it clear that we have not examined the claim on merits.

13. Let this petition be listed on 11-01-2021.

(VIKRAM NATH, CJ)

(ASHUTOSH J. SHASTRI, J)

A. B. VAGHELA/A.M. PIRZADA