A.F.R.

Reserved

Court No. - 32

Case :- WRIT - C No. - 15983 of 2020

Petitioner :- Gautam Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ajay Kumar Maurya, Jawahar Lal Maurya

Counsel for Respondent :- C.S.C.

Hon'ble Shashi Kant Gupta,J.

Hon'ble Pankaj Bhatia,J.

(Per: Hon'ble Pankaj Bhatia,J.)

Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

The present petition has been filed challenging the order dated Nil of 2020 (Annexure-9 to the petition), whereby the District Magistrate, Jaunpur has rejected the claim of the petitioner under the Mukhyamantri Kisan Avam Sarvahit Bima on the ground that the claim is time barred.

The facts, in brief, are that on 3.7.2018 the father of the petitioner died in an accident and being a farmer having agricultural holdings was entitled to the grant of compensation under the Mukhyamantri Kisan Avam Sarvahit Bima. The petitioner claims to have applied for grant of compensation on 20th October, 2018 before the Tehsil authorities, which was forwarded to the respondent no. 3, the Insurance Company, for the claim to be processed. No decision was being taken for processing the

claim, as such, after representing the matter, the petitioner approached this Court by filing a writ petition being Writ-C No. 558 of 2020 (Gautam Yadav vs. State of U.P. and 3 Others), which was disposed off vide order dated 14.1.2020, directing the District Magistrate, Jaunpur to hear the grievances and take an appropriate decision after summoning the records within a period of two months. It is stated that the petitioner appeared and apprised about his eligibility for the claim, however, the same was rejected vide order dated Nil, March, 2020 (Annexure-9) solely on the ground that the petitioner did not prefer the claim within the limitation prescribed in the Scheme.

A perusal of the order passed and impugned in the present writ petition shows that the learned counsel for the petitioner had argued that the father of the petitioner died on 03.07.2018, however, as the death certificate was not granted to the petitioner, the claim was filed as soon as the death certificate was granted on 20th October, 2018, thus, there was no delay in filing the claim.

The Insurance Company, on the other hand, contended that the insurance claim has been filed after one month of the accident and, in terms of the Scheme, the District Magistrate, Jaunpur is empowered only to extend the limitation by a period of one month and as Insurance Company had received a claim on 16.1.2019, as such, the petitioner’s claim was barred by limitation and accordingly was not processed.

The District Magistrate, Jaunpur after hearing the

parties held that in terms of the Scheme, the accidents which took place from 14th September, 2017 to 30th September, 2018, the claim should be filed latest by 13th October, 2018 and if the same is delayed, the claim can be filed with a delay condonation application up to 13th November, 2018 before the Insurance Company. He further held that as admittedly the claim was filed on 20.10.2018 before the Tehsildar and not before the Insurance Company, the same is beyond the limitation prescribed and as the District Magistrate cannot condone the delay of more than one month, the claim is liable to be rejected.

Learned counsel for the petitioner has raised two fold submissions. Firstly, he argues that the impugned order is bad in law for the reason that the claim petition was filed within one month of obtaining the death certificate and as there was a delay in providing the death certificate, which is required to be annexed along with the claim, the claim ought to have been considered on its merits.

His second submission is that the Insurance Schemes including the present scheme 'Mukhyamantri Kisan Avam Sarvahit Bima' is a beneficial Scheme and the limitation of three months (and upto one month of the expiry of period of Insurance) as provided under the said Scheme as well as the provision for empowering the District Magistrate to condone the delay only upto one month, is wholly arbitrary, illegal and militates against the whole Scheme.

He argues that in view of the submissions made, the order deserves to be set aside and directions be issued for grant

of compensation to the petitioner, as prayed for.

Dealing with the first argument of the petitioner that the impugned order rejecting the Scheme as being beyond the period prescribed. A perusal of the order impugned shows that the District Magistrate found the claim to be beyond period of limitation from the expiry of date of insurance term and also beyond the condonable powers conferred upon the District Magistrate. The limitation prescribed as under:

> *''द– यदि परिवार के मुखिया/रोटी अर्जक/नामिनी/कानूनी वारिस (जैसा लागू हो) द्व ारा बीमा दावा संबंधित बीमा कम्पनी को प्रस्तुत करने में 03 माह से अधिक (किन्तु बीमा अवधि की समाप्ति के 01 माह पश्चात तक) विलम्ब हो जाता है तो उक्त परिस्थिति में 01 माह तक विलम्ब को क्षमा करने का अधिकार जिलाधिकारी को होगा।''*

On a plain reading of the said provision and the documents on record, it is clear that the petitioner had filed the application for grant of compensation on 20.10.2018 whereas the death had occurred on 03.07.2018. The period of insurance policy expired on 12.9.2018 as such claim could be made by 11.10.2018 with a further condonable limit upto 11.11.2018 as such it was well within the limitation and the condonable limit prescribed in the scheme, by which time the delay in filing could be condoned. The impugned order is clearly wrong on that count and thus liable to be set aside holding that the application for compensation filed was well within the

prescribed condonable period of limitation as provided in the Scheme.

Now coming to the second question agitated that the limitation prescribed in the Scheme is arbitrary and unreasonable. It is relevant to mention the following aspects which led to the framing of the Scheme in question.

We are dealing with the said arguments as a large number of petitions are being filed which are similar in nature and there are grey areas in view of the conflict between the Law and the provisions of the scheme which require clarification.

The State Government intending to extend insurance cover to the marginalised farmers in the State floated e-tenders calling upon the Insurance Companies to participate and bid for the implementation of the 'Samajwadi Kisan and Sarvahit Bima Yojna' in Uttar Pradesh which was subsequently renamed as 'Mukhayamantri Kisan and Sarvahit Bima Yojna' in Uttar Pradesh vide Government Order No. 511b(1)/ka-Ni-6-2017-208(4)/2015 dated 20.6.2017. In terms of the said tender, various insurance companies participated and with the highest bidder an Agreement was entered into in between the Insurance Companies and the State of Uttar Pradesh through the Governor. The relevant portion of one such Agreement is as under:

> *"The name of the Scheme has been changed to Mukhyamantri Kisan & Sarvhit Bima Yojna vide G.O. GoUP511(1)b/Ka.Ni.-6/2017-20B(4)/2015, dated 20*

June, 2017. Vide partially amendment G.O. GOUP424 b/Ka.Ni.-6/2016-20B(4)/2015, dated 31 May, 2016.

All the conditions stated in this agreements signed by the parties dated 14 Sep, 2016 as comprising of Request for Proposal (RFP), Prebid Response sheet and the Corrigendum Documents (as attached herewith) and letter of undertaking regarding renewal of insurance policy dated 6 Sep, 2017 shall form part and parcel of this Agreement for next policy period (i.e. from the midnight of 13 Sep, 2018 to the midnight of 13 Sep, 2019)".

"2. The following documents attached hereto shall be the integral part of the Agreement:

"a. Request for proposal.

b. Agreement dated 14. Sep, 2005 with all attachments.

c. Corrigendum documents as Amendment in the Scheme. (Annx-X)

d. Letter of undertaking regarding renewal of insurance policy by the insurance company. (Annx-Z)

e. The payment Terms (Annx.-A)"

3. Detail Scheme : Mukhyamantri Kisan & Sarvhit Bima Yojna as amended as below:"

In the document appended in this Agreement, a copy of the Scheme was also appended and was a part of the Agreement. The relevant provision, in the said Scheme with regard to limitation, was as under:

''(2) यदि परिवार के मुखिया/रोटी अर्जक/नामिनी/कानूनी वारिस (जैसा लागू

हो) द्वारा बीमा अवधि की समाप्ति के 01 माह पश्चात् तक बीमा दावा संबंधित बीमा कम्पनी को प्रस्तुत करने में विलम्ब हो जाता है तो उक्त परिस्थिति में 01 माह तक विलम्ब को क्षमा करने का अधिकार जिलाधिकारी को होगा।''

In other terms and conditions of the Agreement (relevant for the purposes of this case), the following was incorporated:

"10. The Insurance Company shall perform the services shall perform the services and carry out its obligation under this Agreement with the diligence efficiency and economy in accordance with generally accepted professional standards and practices. ***The Insurance Company shall abide by all the provision/Acts/Rules etc. prevalent in the country.*** *The Insurance Company shall conform to the standards laid down in the RFP in totality.*

11. Applicable Law means the laws and any other instrument having the force of law in India as may be issued and in force from time to time. This Agreement shall be interpreted in accordance with the laws of the Union of India and the State of Uttar Pradesh.

12. If, after the date of issuance of LOI, there is any change in the Applicable Laws of India with respect to taxes and

duties, then the same shall be borne by the Insurance Company.

13. Arbitration.....”

As the scheme (which contains period of limitation), is also made part of Agreement, the limitation is said to be prescribed for raising a claim.

We are informed that from 04.03.2020, the Scheme has been further amended. The Scheme is renamed as 'Mukhayamantri Kisan and Sarvahit Bima Yojna and the limitation in terms of the Scheme as applicable w.e.f. 14.9.2019 is as under:

> “*10–* आवेदन पत्र प्रस्तुत करने की अवधि –
>
> कृषक की दुर्घटनावश मृत्यु अथवा दिव्यांगता होने पर, कृषक/विधिक वारिस/वारिसों को आवेदन पत्र निर्धारित प्रमाण पत्रों/प्रपत्रों को पूर्ण कराकर, दो प्रतियों में (मूल प्रति एवं छाय प्रति) अधिकतम डेढ़ माह (45 दिन) की अवधि में सम्बन्धित तहसील कार्यालय में जमा करना होगा। अपरिहार्य परिस्थित में आवेदन पत्र प्रस्तुत करने की अवधि को 01 माह तक बढ़ाने का अधिकार जिलाधिकारी में निहित होगा। किसी भी दशा में ढाई माह (75 दिन) के पश्चात आवेदन पत्र पर विचार नहीं किया जायेगा।"

Thus, what is to be considered of this Court, is whether the prescription of limitation in the Scheme is '*unreasonable*' and *'arbitrary*' and upto what extent this court can interfere with the Scheme especially with regard to limitation.

A perusal of the Scheme shows that the Scheme was formulated with an intent of granting benefits to the poor farmers and marginalised sections of the society in the contingency of the them suffering death or permanent disablement on account of the reasons so enumerated in the Scheme.

The Scheme was formulated by the State as a Welfare State and the insurance premium is paid by the State to the Insurance Company, who in turn issue the policies. Thus, it is clearly an insurance contract wherein the policy is issued by the Insurance Company and the premium is paid by the State in discharging its obligation as a welfare State. The Scheme is clearly a ***'socio-beneficial scheme'*** for the benefit of marginalised sections of the society.

Insurance by its very nature is a contingent contract and the benefits of the insurance policy depend on the contingencies as indicated in the policy. Insurance in India is governed under the provisions of the Insurance Act, 1938 which authorizes and regulates the business of insurance in India. Essentially, the breach of terms of insurance policy is a 'tortuous liability' and but for any specific statutory enactment, (like M.V. Act, Employees Compensation Act, etc) gives a cause of action for filing a suit, in the event of breach of condition of policy. The Schedule appended to the 'Limitation Act' governs the period of limitation for filing a suit on account of breach of an insurance policy and Article 44 (a) of the said Schedule provides for a period of three years' limitation for filing a suit from the date of the death of the deceased, or from the date when the claim is partly or wholly denied. It is well settled that the provisions of the Limitation Act are applicable to the suits, appeals and the applications as enumerated and before the Courts only.

It is relevant to refer to the provisions of Insurance Act which are relevant for the purposes of adjudication of the present case. Section 46 of the Insurance Act, 1938 provides as under:

"46. Application of the law in force in

> ***India to policies issued in India.***—*The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in [India] after the commencement of this Act* ***shall have the right, notwithstanding anything to the contrary contained in the policy or in any Agreement relating thereto****, to receive payment in [India], of any sum secured thereby and to sue for any relief in respect of the policy in any court of competent jurisdiction in 1[India];* ***and if the suit is brought in [India] any question of law arising in connection with any such policy shall be determined according to the law in force in [India]:***
>
> *[Provided that nothing in this section shall apply to a policy of marine insurance.]"*

A plain reading of the mandate of Section 46 makes it clear that the statutory right as contained in Section 46 to sue for relief in respect of the policy in a court and the questions of law in connection with any such policy are to be determined in accordance with the law in force in India. Thus, the term 'law in force' has been made specifically applicable to all the policies irrespective of the terms of the policy or Agreement. The mandate of Section 46 is also reflected in the Agreement signed in between the Insurance Companies and the State wherein Clauses 10, 11 and 12 (quoted above), it has been specifically agreed that the Applicable Laws with regard to the policies shall

be the law as prevalent in the country.

The Scheme as formulated and a part of the Agreement in between State and Insurance Company has essentially two basic parts, first being the endeavour of the State to provide for compensation to the farmers in the event of happening of particular incidence and thus clearly is a beneficial provision for the benefit of farmers in general, the second limb of the Scheme is the ***'machinery/procedural provision'*** with regard to the manner of claim and which also includes the limitation as contained in the Scheme.

The prescription of limitation in Scheme of the nature which is under consideration by this Court has to be interpreted in a manner so as to achieve the object for which the Scheme is made and any prescription or provision/s which is/are for contrary to the statutory provisions has to be repelled more so in view of specific mandate of Section 46 of the Insurance Act as well as the specific Agreement in between the Insurance Companies and the State agreeing to the applicability of the laws as prevalent in India.

The Court cannot also ignore the social facts in the State of Uttar Pradesh, wherein the post death rituals extend for a reasonably long time and collection of documents required to be filed with claim (detailed in the scheme) take a long time and to expect the family of the bereaved, that too illiterate to file a claim within a period of 45 days (maximum upto 75 days) as prescribed under the new Scheme and three months in the erstwhile

schemes prima facie is wholly arbitrary and has the potential of frustrating the entire purpose of the Scheme which is to benefit the poor farmers.

Thus what is to be considered by this Court is whether the "***machinery/procedural provision"*** providing the limitation for preferring the claim is '*arbitrary*' and '*unreasonable*' *moreso* in view of the specific provisions of laws in force in India and whether this Court can interfere in the policy matters of the State.

The Supreme Court in the case of **Brij Mohan Lal vs. Union of India and others, (2012) 6 SCC 502** while considering the policy of Union of India known as 'FTCC Scheme" laid down the following with regard to the scope of interference in policy matters by the Court:

> *"**100**. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:*
>
> *(I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.*
>
> *(II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.*
>
> *(III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.*
>
> *(IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.*
>
> *(V) It is dehors the provisions of the Act or*

legislations.

(VI) If the delegate has acted beyond its power of delegation.

101. *Cases of this nature can be classified into two main classes: one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the courts will step in to interfere with government policy.*

102. In Mohd. Abdul Kadir v. DG of Police [(2009) 6 SCC 611 : (2009) 2 SCC (L&S) 227] *this Court, while declining regularisation of the persons employed in a particular project under a temporary Scheme, though the same had been continued for a long time, commented upon the scope of interference in the policy relating to the Prevention of Infiltration of Foreigners Additional Scheme, 1987 and considered it appropriate to draw the attention of the authorities to the issues involved in the case by directing as under: (SCC p. 618, para 22).*

> *"22. We are conscious of the fact that the issue is a matter of policy having financial and other implications. But where an issue*

> *involving public interest has not engaged the attention of those concerned with policy, or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interest, courts will be failing in their duty if they do not draw attention of the authorities concerned to the issue involved in appropriate cases. While courts cannot be and should not be makers of policy, they can certainly be catalysts, when there is a need for a policy or a change in policy."*
>
> ***103.*** *The correct approach in relation to the scope of judicial review of policy decisions of the State can hardly be stated in absolute terms. It will always depend upon the facts and circumstances of a given case. Furthermore, the court would have to examine any elements of arbitrariness, unreasonableness and other constitutional facets in the policy decision of the State before it can step in to interfere and pass effective orders in such cases.*
>
> ***104.*** *A challenge to the formation of a State policy or its subsequent alterations may be raised on very limited grounds. Again, the scope of judicial review in such matters is a very limited one. One of the most important aspects in adjudicating such a matter is that the State policy should not be opposed to basic rule of law or the statutory law in force. This is what has been termed by the courts as the philosophy of law, which must be adhered to by valid policy decisions."*

Thus, in view of the law laid down, it is clear that any policy decision which is against any statute, or can be faulted on the ground of *arbitrariness* and *unfairness* and if the same is *dehors* the provisions of the acts or legislation can be interfered with by the Court.

In the light of the above dictum of Supreme Court, we have to see whether such a short period of limitation militates against the object of the Scheme and can be interfered with on it being unreasonable and opposed to basic rule of law and whether the period of limitation prescribed in the Scheme is clearly violative of 'law of the land' and thus is contrary to the provisions of 46 of the Insurance Act as well as contrary to the own Agreement of the State with the Insurance Companies.

It is no doubt true that the Limitation Act is not applicable in proceedings other than the suits and appeals and the proceedings before the Court, however, the Schedule attached to the Limitation Act clearly lays down the period within which a suit can be instituted in the event of non-payment of compensation.

Article 44-(a) & (b) of the Schedule to the Limitation Act, 1963 is quoted as under:

"(a) On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers;	Three years	The date of the death of the deceased, or where the claim on the policy is denied, either partly or wholly, the date of such denial.
(b) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers;"	Three years	The date of the occurrence causing the loss, or where the claim on the policy is denied either partly or wholly, the date of such denial.

Thus, the 'law of the land' which is binding on all insurance contracts by virtue of Section 46 providing three years' of limitation in the event of a suit being filed has to be accepted as a reasonable period within which a claim for insurance and a claim against the wrongful rejection of

the insurance can be preferred. We take a 'que' from the schedule appended to the Limitation Act to hold that the limitation of three years from the date of the death or the date of rejection of the claim, partly or wholly, would be a reasonable time for filing a claim under the Mukhyamantri Kisan Avam Sarvahit Bima Scheme and the similar schemes which were in force prior thereto on behalf of beneficiaries of the Scheme. We hold so also keeping in mind that the procedure for raising a claim in the manner as provided in the Scheme by implication may bar remedy of filing suit by virtue of Section 9 of Civil Procedure Code.

We have no hesitation in holding that the limitation prescribed under the Scheme is wholly unreasonable and arbitrary and is liable to be struck out as it is well settled that even while testing the validity of an administrative action, the same can be tested on the touch stone of the Article 14 of the Constitution of India. A 'socio-beneficial' Scheme has to be interpreted in a manner so as to advance the purpose for which the Scheme is formulated and not in a manner so as to defeat the entire purpose of the Scheme.

Thus, we set aside the order dated Nil March, 2020 (Annexure-9), whereby the claim of the petitioner has been rejected on the ground of limitation on both grounds as raised and discussed in this Judgment.

We further direct that in place of Limitation Prescribed under the Scheme, it should be read that the claims made within three years of the date of the death or within three years from the date of the rejection, either

wholly or partly by the Insurance Company, to be a reasonable period for filing a claim under the 'Mukhyamantri Kisan Avam Sarvahit Bima Scheme' and the similar schemes which were in force prior thereto on behalf of beneficiaries of the Scheme.

As innumerable cases are filed seeking compensation under the schemes across the State, we direct that all the claims filed within a period of three years from the date of the death or within a period of three years from the date of rejection of claim, either partly or wholly by the Insurance Company, should be treated to be filed within limitation and should be processed on their merits .

As we have held that the limitation provided under the said Scheme is unreasonable and arbitrary and have substituted the said period by a period of three years, as recorded above, we direct the Registrar General of this Court to transmit a copy of this order to The Chief Secretary State of Uttar Pradesh and Director Institutional Finance,State of Uttar Pradesh ,for its communication to all the District Magistrates in the State and the District Magistrates in turn are directed to entertain and process the claims filed under the Scheme within limitation as prescribed above by this Court treating them to be within limitation and the same should be processed on their merits.

We have directed and provided for the limitation of three years, till the time the State Government takes an appropriate decision and amends limitation clauses of the Scheme to make them more reasonable taking into

account the socio economic condition of the society as well the laws of India.

The writ petition is allowed in terms of the said order.

The District Magistrate, Jaunpur shall now process the claim of the petitioner in accordance with law on its merits treating the same to be within limitation and the same shall be processed expeditiously preferably within a period of three months from the date of filing of the copy of this order.

Copy of this judgment downloaded from the official website of this Court shall be treated/accepted as certified copy of this judgment.

Order Date :- 11.11.2020
SR/Puspendra