

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

32 WRIT PETITION NO.3757 OF 2015

MATESHWARI AGRO CHEMICALS, NANDED
VERSUS
SHARAD MIXED FERTILIZER SAHAKARI SANSTHA, HINGOLI
AND OTHERS

...

Advocate for Petitioners : Mr. Godhamgaonkar P.G.
Mr. SJ Salunke, Adv. For Resp. Nos. 1 & 5;
Mrs. AV Gondhalekar, AGP for Resp.Nos. 2 & 4.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 8th September, 2015.

PER COURT :

1) Heard. The petitioner is praying for a writ of certiorari or any other writ in like nature, seeking quashment of the terms of reference and manufacturing contract. The petitioner also prays for issuance of a writ of mandamus or any other writ in like nature to the Commissioner of Co-operation and Registrar of Co-operative Societies, MS, to adjudicate the arbitration afresh by holding *de-novo* inquiry in strict adherence to the terms of reference and the manufacturing contract and permission and sanction granted by the State and disobedience

thereof qua the manufacturing contract. The petitioner is also seeking directions to the Commissioner of Agriculture/ Respondent No.4 herein to consider the application tendered by the petitioner for renewal of license of fertilizers and renew the same.

2) The petitioner-firm entered into manufacturing contract for production of mix fertilizer with Respondent No.1 on 7th July, 2009. It is not necessary to go into the details of the terms and conditions set out in the agreement between the parties. Respondent No.1 is a co-operative society and had agreed to permit the petitioner-firm to carry out manufacturing activities and set up plant and machinery required for manufacturing of mix fertilizers. Under the agreement the petitioner firm is authorized to conduct manufacturing activities of mix fertilizers with option to extend the period of contract for further three years. The petitioner submits that pursuant to the

agreement, the petitioner has invested huge amount for the purpose of establishment of fertilizer unit. However, the respondents did not take steps for renewing the manufacturing license issued by the authorities concerned. It is the contention of the petitioner that under the terms of the agreement, the responsibility of renewing the manufacturing license rests on Respondent No.1 and it shall be presumed that it would be the liability of the concerned respondent under the terms of agreement. It is also not a matter of dispute that as a result of the differences between the contracting parties, a dispute was raised before an Arbitrator by the petitioner in view of clause 5(3) of the terms of agreement, the Arbitrator has decided the arbitration proceedings and turned down the application tendered by the petitioner. It is also not a matter of dispute that the application under the provisions of Section 34 of The Arbitration and Conciliation Act, 1996, has been tendered to the District Court at Parbhani,

raising challenge to the Award passed by the Arbitrator and the said proceedings are pending. The petitioner contends that although the dispute arose between the two parties and based upon the terms of agreement, since the State Government has invested its funds through Respondent No.1-society, the writ petition deserves to be entertained.

3) The petitioner places reliance on the judgment in the matter of Tata Celluler Vs. Union of India - 1994 (6) SCC 651 to substantiate its claim that writ jurisdiction can be invoked even in the matter of dispute between the private parties. On perusal of the judgment, we are of the view that the ratio laid down in the said said judgment is not attracted to the instant matter.

4) Even assuming that the State Government has invested funds through Respondent No.1-society, so far as petitioner is concerned, it

stepped in only on the basis of the manufacturing contract with Respondent No.1 and any deviation or breach of the terms of the contract or any grievance in that regard is liable to be taken up before the Arbitrator in view of Clause 5(3) of the agreement. The petitioner has already adopted the remedy available under the terms of contract / agreement and having failed before the Arbitrator, has approached the appellate forum. In our view, it is open for the petitioner to stake its claim arising out of the manufacturing contract, including the claim in respect of damages, before the appropriate forum and in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India, the directions, as requested by the petitioner, in the instant petition, need not be issued.

5) The writ petition is devoid of substance and stands dismissed.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/