

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1590 OF 2013

M/s.Hem International	}	
501, J. M. chambers, 316, Narsi Natha	}	
Street, Masjid, Mumbai 400 009	}	Petitioner

Versus

1. Maharashtra State Co-operative	}	
Cotton Growers Marketing Federation	}	
Ltd., Gautam Building, Zakaria Bunder	}	
Road Sewree, Mumbai 400 015	}	
2. The Divisional Joint Registrar	}	
Co-operative Societies, Mumbai	}	
Division Mumbai, Malhotra House,	}	
6 th floor, Opp. GPO, Fort,	}	
Mumbai 400 001	}	Respondents

Mr. Sanjay Udeshi and Mr. Netaji Gawde
i/b. M/s. Sanjay Udeshi and Co. for the
petitioner.

Mr. M. H. Belosay for respondent no. 1.

**CORAM :- S. C. DHARMADHIKARI &
G. S. KULKARNI, JJ.**

DATED :- APRIL 15, 2016

ORAL JUDGMENT :-

By this petition, under Article 226 of the Constitution of India, the petitioner is challenging an order dated 5th April, 2013, copy of which is at Annexure 'A' hereto, in the following circumstances:

2) The petitioner has, on the own showing of the parties, executed certain contracts. The details of the said contracts are to be found in a document styled as an application, copy of which is at page 36 of the paper book.

3) The respondents to the writ petition are firstly, a Society registered under the Maharashtra Co-operative Societies Act, 1960 (for short “the MCS Act”) and secondly, the Divisional Joint Registrar exercising the powers of Registrar under the MCS Act. The first respondent is appointed as chief agent to the Government of Maharashtra for procurement of raw cotton grown by the cotton growers in the State of Maharashtra on monopoly basis and for sale of Full Pressed (F. P.) cotton bales and also for purchasing, selling, storing, processing, marketing and carrying on other business in cotton as contemplated under the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 (for short “the Raw Cotton Act”). The respondent no. 1, therefore, can sell F. P. cotton bales on behalf of Government of Maharashtra as part of their business. The case of these respondents is that the present petitioner had agreed to purchase bales of cotton from the federation and entered into various contracts. According to these respondents, these contracts were entered into and executed after approving the

quality of cotton. The amounts or money per cotton bales were also deposited. The delivery period for lifting was also stipulated. The contract, according to the respondents, is in accordance with the provisions of Forward Contract Regulation Act, 1952. There is a condition, according to the respondents, in this contract that it would not be cancelled and that is how they rely upon certain endorsements. 1100 bales of cotton at the rate of Rs.500/- per cotton bale were thus to be lifted. However, the petitioner failed to take delivery of 1000 bales of cotton. It failed to take such delivery within the specified time. That is how the respondent federation claims to be entitled to levy carrying charges at the rate specified in the contract for the defaulted period. Condition no. 7 is relied upon for that purpose. Thus, alleging that there is a breach of the terms and conditions of the contract to lift cotton within the specified period, the petitioner has rendered itself liable to pay the price difference, carrying charges, together with interest at the rate of 24% per annum.

4) The application in that regard was filed by the federation before the Registrar, Co-operative Societies, Pune. It is on such an application that the Divisional Joint Registrar, Co-operative Societies, Maharashtra, passed the impugned order.

5) It is common ground that the Maharashtra Raw cotton (Procurement, Processing and Marketing) Act, 1971 is an Act promulgated by the competent legislature so as to provide for the carrying on, in certain time, all trade in raw cotton by the State of Maharashtra. It was the experience that ginned and pressed cotton has been commanding a high level of prices at the terminal markets in recent years. It has been brought to the notice of the Government of Maharashtra that because of too many intermediaries and also defects in the marketing system, growers of cotton in the State do not get a fair share of the price for their crop. It was also necessary to supply unadulterated cotton to consumers at a reasonable price and to guarantee the purity of cotton and honest trade practices at processing centres. Therefore, the Government of Maharashtra decided that all trade in raw cotton should be carried on by the State for a certain time and for that purpose assume power for acquiring cotton from the growers and other persons having stocks thereof and carry on further processing so that it becomes available.

6) Chapter I contains preliminary provisions including definitions. The terms “bale”, “cotton” and “guaranteed price” are all defined in the Act. It has been the experience that by State’s intervention, the cotton growers would get fair price for their

cotton in the market. The federation operates as an agent of the State and that is how it carries on the defined functions. Chapter III contains provisions relating to prohibition on trading in and transport of cotton and on cotton ginning and pressing factories. We are concerned with Chapter IV, which contains provisions regarding procurement, grading and pooling cotton. In the present case, Chapter V, namely, "Mode of Fixing and Payment of Price for Cotton Tendered at Collection Centres" need not be referred in details given the nature of the contract. Once the contract was understood by the parties as one of lifting of cotton by the petitioner and allowing it to be so lifted by the federation, then, according to the petitioner, relying upon the contract document itself, any dispute touching the same or regarding quality of the goods sold or regarding the price or delivery of such goods or any other matter connected with the sale, unless resolved by settlement, ought to be referred to the East India Cotton Association Ltd. for arbitration. According to the petitioner, the order of the Divisional Joint Registrar proceeds on the footing that the petitioner is admitting the breach or that there is no dispute. This is an incorrect understanding of the matter.

7) Mr. Udeshi appearing for the petitioner submits that instead of taking recourse to section 38, particularly after a breach was alleged by the federation, it could not have resorted to the Chapter, which sets out a procedure for recovery of sale proceeds from purchases of ginned cotton, cotton bales and cotton seeds. For appreciating this contention of Mr. Udeshi, we would have to refer to section 40. Section 40 of the Raw Cotton Act reads as under:-

“40. (1) Notwithstanding anything contained in any law for the time being in force, when ginned cotton, cotton bales or cotton seeds are supplied or sold to any person by or on behalf of the State Government, and there is a default in payment of the amount payable for a purchase of such cotton, bales or seeds, then on an application by an officer or person authorized by the State Government made in the prescribed manner, the Registrar may, after holding such inquiry as he deems fit, and after giving the party concerned a reasonable opportunity of being heard grant a certificate for the recovery of the whole or any part of the amount stated in the application to be due as arrears.

(2) A certificate by the Registrar under sub-section (1) shall be final and conclusive as to the arrears due. Without prejudice to any other mode of recovery, the arrears stated to be due in such certificate shall be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land revenue.”

8) Thus, this provision gives the Raw Cotton Act an overriding effect and when either cotton or cotton bales or cotton seeds are supplied or sold to any person on behalf of the State Government and there is default in payment of the amount payable as purchase price, then, on an application made by person authorized by the State and after giving parties concerned

reasonable opportunity of being heard, the Registrar may grant a certificate for recovery of amount payable.

9) It is after the amount is crystallized and the certificate is issued within the meaning of sub-section (1) of section 40 that the execution of the same is permissible by section 41.

10) If one peruses the order passed and copy of which is at Annexure 'A', it is apparent that the same refers to the contents of the application and surprisingly, the stand of the petitioner is spelt out. It specifically is to the effect that the claims of the federation are misconceived and are not maintainable in law, they are time barred, there is an agreement and in writing which contains an arbitration clause, that reference is made to section 38, which we have adverted above.

11) Then, there is a specific allegation that there is correspondence between the parties. The dispute is regarding quality of bales of cotton, which were substandard, according to the petitioner. Thus, section 38 and mechanism provided therein cannot be displaced when the claims are contested and debatable. The petitioner has also taken a stand that it is not liable to pay for any inferior quality of goods supplied. There is security deposit which is wrongly retained and it denied the claim of the federation.

12) The Divisional Joint Registrar surprisingly refers to section 40 and in relation to the version of the federation, he records a finding of fact that the petitioner entered into a contract and partly executed it by lifting 250 bales out of 1250 bales. He records a finding of fact that the petitioner has failed to perform its part of the contract and the ground specifically raised by the petitioner that what it was shown as sample and what was offered for lifting was inferior in quality is merely set out but not at all considered.

13) We do not see how and in what circumstances the determination by the Divisional Joint Registrar can be said to be binding and conclusive. Beyond setting out the rival claims, there is no reference to the pleadings, the documents produced, the terms and conditions of contract and the specific breach. If the burden was on the federation to establish and prove the breach, then, in what manner the same has been discharged has not been clarified at all. Secondly, some documents have been taken on record and from that a conclusion is reached that the petitioner was buyer and has accepted the terms and conditions as per the contract. It may be so, but in what circumstances they have been breached and whether there is any material on record to substantiate the plea that quality of the goods is inferior and

poor, has not been discussed, much less at length. We do not see how the Divisional Joint Registrar, therefore, in the facts and circumstances, could have displaced the contractual mechanism of arbitration. The summary inquiry under section 40(1) of the Raw Cotton Act thus is not the remedy for the federation in this case.

14) On the two occasions, on which we heard this matter, we indicated to Mr. Belosay appearing for the federation to take proper instructions and then it would not have been necessary for us had the federation agreed to refer the matter to arbitration to pass such detailed order. However, once we find that there is no readiness and willingness to refer the matter to arbitration under the Arbitration and Conciliation Act, 1996 and this court is called upon to go into the merits of claim and by considering the rival contentions, then, we have no alternative but to set out the nature of the dispute. We have sufficiently outlined it in the foregoing paragraphs. We do not wish to comment more for that would affect and adversely the cause of both sides in the arbitration. We see that the Act contains a specific provision to refer such dispute and as presently raised to arbitration. The agency also has been named in the contract document between the parties. We find that there is a clause and which refers to bye-laws of East India Cotton Association Ltd., Bombay. At page 46

and which is a copy of the letter dated 25th January, 1999, the federation itself refers to this arrangement in the contract in the following words:-

“We have this day sold to you Full Pressed Cotton Bales as per the Description given below Subject to bye-laws of the East India Cotton Association Ltd., Bombay which contain amongst other things, provisions for the settlement of disputes by Arbitration on account of quality.”

15) In the above circumstances, the stand of the federation as indicated by Mr. Belosay in writing today is perplexing and surprising. It could not have assumed to itself any adjudicatory powers nor it could have then sought the intervention of the Divisional Joint Registrar in terms of section 40 of the Raw Cotton Act. All this means that there is a one sided and pre-determined adjudication of a contractual dispute. We do not find that, that would be a permissible course in the present case bearing in mind the claim of the federation and the counter thereto by the petitioner.

16) As a result of the above discussion, we have no alternative but to quash and set aside the impugned order. It is accordingly quashed and set aside. Rule is made absolute in terms of prayer clause (a).

17) We direct that the dispute shall be referred to the East India Cotton Association, at the instance of the respondent

federation, if they are so desirous, in terms of what we have reproduced above. The federation can file the necessary claim and pleadings before that Association and the Association then can initiate the process in terms of the Arbitration and Conciliation Act, 1996. We grant liberty to the federation in that behalf and dispose of the petition.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)