CASE NO.:
Appeal (civil) 4934 of 2006

PETITIONER:
State of Karnataka and Ors

RESPONDENT:
M/s Sri Chamundeswari Sugar Ltd

DATE OF JUDGMENT: 08/04/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM & AFTAB ALAM

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 4934 OF 2006

Dr. ARIJIT PASAYAT, J.

1. Noticing that there was slight controversy on principle in the decisions of this Court in State of T.N. and Ors. v Kothari Sugars & Chemicals Ltd. and Ors. (1996 (7) SCC 751), E.I.D. Parry (I) Ltd. v. Assistant Commisioner of Commercial Taxes and Anr. (2000 (2) SCC 321) on one hand and Ponni Sugars (Erode) Ltd. v. Dy. Commercial Tax Officer (2005 (13) SCC 102) the matter was referred to a larger Bench and that is how the matter was placed before us. The controversy lies within a very narrow compass and is essentially as follows:

2. The respondent company is a dealer registered under the provisions of the Karnataka Sales Tax Act, 1957 (in short the 'Act') and Central Sales Tax Act, 1956 (in short the 'Central Act') and is engaged in the manufacture of sugar and is liable to pay tax on purchase of sugarcane. The price payable for purchase of sugarcane by a sugar factory is fixed by the Government of India in exercise of its powers under clause 3 of the Sugarcane (Control) Order, 1966 (in short 'Control Order'). The price so fixed is called the Statutory Minimum Price. In addition to statutory price so fixed, the Government of Karnataka also fixes the price payable to sugarcane growers by the sugar factories as State Advised Price ('SAP' for short). The price paid by sugar factories to sugarcane growers also comprises harvesting subsidy, transportation subsidy, plantation subsidy and the advance payment towards these subsidies.

3. The assessing authority for the assessment years 1990-1991, 1991-1992, 1992-93 and 1993-94 had passed assessment orders taking into consideration the statutory minimum price fixed by the Central Government, SAP fixed by the State of Karnataka and all other amounts paid to sugarcane growers by the respondent-company as the purchase price paid to sugarcane growers and had levied purchase tax under the Act.

4. The orders of assessment passed by the Assessing Officer were questioned by the respondent-company by filing a Writ Petition before the High Court. Grievance of the respondent-company was that the Assessing Authority was not justified in

levying purchase tax on the amount paid by the factory to the sugarcane growers over and above the statutory minimum price fixed by the Central Government. The High Court rejected the Writ Petition and held that the amount paid under the different nomenclatures required to be considered as purchase price paid by the purchaser of sugarcane to the cane growers. The respondent-company approached this Court questioning correctness or otherwise of the order passed by the High Court by filing a Special Leave Petition. The appeal was disposed of alongwith other appeals involving similar issues by order dated 8.2.1996 i.e. State of Tamil Nadu and Ors. v. Kothari Sugars and Chemicals Ltd. (1996 (101) STC 197). It was inter-alia observed as follows:

"On a perusal of the Sugarcane (Control) Order, 1966, it is clear that the total price of Sugarcane fixed thereunder is the aggregate of the minimum cane price fixed under clause 3 and the additional price fixed under clause 5-A. Unless there be an agreement between the grower and purchaser for purchase of the sugarcane at a higher price, the obligation of the purchaser is to pay the grower only the aggregate of the amounts fixed under clauses 3 and 5-A. In other words, under the statute there is no liability of the purchaser to pay the grower any amount in excess of this aggregate amount. Where, without any contractual or statutory basis the sale price of sugarcane is fixed at an amount higher than the minimum cane price fixed under clause 3 and the additional cane price fixed under clause 5-A, any sum paid by the purchaser to the grower as advance prior to fixation of the additional cane price under clause 5-A, to the extent that it is in excess of the additional cane price fixed later, cannot form part of the price of cane sugar. It must be proved as a fact that the higher price including the excess amount was paid as the price of the sugarcane under an agreement between the grower and purchaser irrespective of the lower amount being fixed as the aggregate of the price fixation under clauses 3 and 5-A of the Control Order. Unless a clear finding to that effect is recorded, the amount paid-by the purchaser in excess of the aggregate of the minimum price fixed under clause 3 and the additional price fixed under clause 5-A, as a part of the-amount paid as advance prior to the fixation of the additional price under clause 5-A, cannot be automatically treated as a part of total price of sugarcane".

5. So far as the decision of Karnataka High Court in Tungabhadra Sugar Works and Anr. v. State of Karnataka and Ors., this Court remitted the matter for a fresh consideration in the light of certain observations and directions given. After remand by order dated 9.7.1996 in Writ Petition No.4583/93 and connected matters, the High Court remanded the matter to the Assessing officer with certain observations, the relevant portion of which reads as under:

"We also think that the proper course to be adopted in these cases is to remit the matter to

the assessing Authority for fresh consideration in the light of what has been stated by the Supreme Court in its order in Civil Appeal No.11605-608/1995. Hence, we quash the assessment orders or the orders made in appeals arising therefrom or any demands subsisting thereto and direct the assessing authorities concerned to redo the assessments, in the light of the decision of the Supreme Court aforesaid."

6. The Assessing Officer after a detailed verification of the materials made available by the respondent-company came to hold that the State Advised Price paid by the respondent forms part of the purchase price paid to the sugarcane growers and, therefore, that required to be included in the turnover of the dealer for the purpose of computation of tax. The appeal filed by the respondent-company was dismissed by the First Appellate Authority, but in Second Appeal the Karnataka Appellate Tribunal (in short the 'Tribunal') decided in favour of the respondent-company.

7. Aggrieved by the findings, the State and its functionaries filed Sales Tax Revision Case Nos.59-62 of 2001 before the High Court. Question of law raised was as follows:

"Whether the Tribunal was justified in holding that the advance towards SAP cannot be subjected to tax even though the other incentive subsidies were to be treated as part of purchase price in view of the decision of the Supreme Court in EID Parry (I) Limited' case?"

8. Referring to the decisions of this Court in EID Parry's and Kothari Sugars cases (supra), the High Court held that the matter was concluded by para 9 in Kothari's case (supra). The High Court further held that in the absence of agreement between sugarcane purchasers and sugarcane growers, the payment of excess amount fixed by the State/Central Government was not to be reckoned. The writ petition was accordingly dismissed.

9. In support of the appeal, learned counsel for the appellants submitted that approach of the High Court is clearly erroneous. It was submitted that essentially there are two prices fixed in respect of sugarcane; one is fixed by the Central Government which is the minimum price under the Control Order issued under the Essential Commodities Act, 1955 (in short 'EC Act'). There is another price which is the State Advised Price fixed by the Executive Order. State Advised Price is normally higher than the price fixed under the Control Order. In U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association and Ors. (2004 (5) SCC 430) the controversy was competence of the State Government to fix the advised price. This Court observed that the State had the authority and there was no repugnancy.

10. The controversy lies within a very narrow compass. The purchase tax is payable under Section 6 of the Act. Under clause 2(f) of Control Order the 'price' defined is the minimum price fixed by the Central Government and clause 3 defines the 'minimum price'.

11. It is further submitted that purchase tax is payable on the purchase price. The consideration that is paid for making purchase is the purchase price. By way of illustration, it is stated that there may be three different rates; (i) fixed by the Central Government; (ii) the State Advised Price and (iii) the price fixed in the agreement between grower and the purchaser. Even if the first and the third prices are lesser than the second price i.e. the amount paid for effecting the purchase is the purchase price. The authorities therefore had rightly taken that to be the basis for determination of purchase tax payable. According to learned counsel for the respondent in view of what has been stated in Kothari's case (supra) the price agreed between the purchaser and the grower is the price on which purchase tax is payable.

12. In U.P. Cooperative's case (supra) it was observed inter-alia as follows:

"29. Learned counsel for the respondent has also submitted that in order to constitute a valid agreement, the consent of the parties thereto should be a voluntary consent and not a consent obtained under any kind of compulsion or duress. It has been submitted that after the State Government makes an announcement of a State-advised price, the occupiers of the sugar factories are compelled to enter into agreements with the cane-growers and cane-growers' cooperative societies in Forms B and C, wherein the State-advised price is mentioned. The same price is also mentioned in the parchas issued to the cane-growers. It has been urged that the sugar factories cannot be compelled to pay such State-advised price even though it may have been mentioned in the forms or in the parchas. It is not possible to accept the contention raised. As discussed earlier, the State Government in exercise of its regulatory power can fix the price of sugarcane. The mere fact that this price is not to the liking of the sugar factory does not mean that it cannot form the basis for supply of sugarcane by the cane-growers or cane-growers' cooperative society to the sugar factory. It is well settled that even a compulsory sale does not lose the character of a sale. This question has been examined in considerable detail by a Constitution Bench in Indian Steel & Wire Products Ltd. v. State of Madras (AIR 1968 SC 478). The appellant in this case supplied certain steel products to various persons at the instance of the Steel Controller, who exercised powers under the Iron and Steel (Control of Production and Distribution) Order, 1941, which was issued under the Defence of India Act, 1939. The appellant challenged the assessment of sales tax made on its turnover under the Madras General Sales Tax Act. The contention of the appellant was that it was the Controller who determined the persons to whom the goods were to be supplied, the price at which they were to be supplied, the manner in which they were to be transported and the mode in which payment of price was to be made. In short, it was said that every facet of the transaction was prescribed by the Controller and, therefore, it could not be considered as sales. Sub-clause (1) of clause 11-B of the Control Order provided that the

Controller may, by notification in the gazette, fix the maximum price at which any iron or steel may be sold and sub-clause (3) of the same clause provided that no producer or stockholder shall sell or offer for sale (and no person shall acquire) any iron or steel at a price exceeding the maximum price fixed under sub-clause (1) or (2). After review of a number of authorities, the Court held as under: (AIR p.487, para 17)

"17. For the reasons already stated, we are unable to accept the contention that the transactions with which we are concerned in these cases are not sales. Out of the four elements mentioned earlier, three were admittedly established, namely, the parties were competent to contract, the property in the goods was transferred from the seller to the buyer and price in money was paid. The only controversy was whether there was mutual assent. Our finding is that there was mutual assent in several respects. Hence, we agree with the High Court that the transactions before us are sales."

30. In Andhra Sugars Ltd. v. State of A.P. (AIR 1968 SC 599) the question of compulsion by law to enter into an agreement was considered by a Constitution Bench. Under the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961, the occupier of a sugar factory had to buy sugarcane from cane-growers in conformity with the directions from the Cane Commissioner. Under Section 21 of the aforesaid Act, the State Government had power by notification to tax purchasers of sugarcane for use, consumption or sale in a sugar factory and the tax was leviable subject to a maximum rate per metric ton. The petitioner sugar factories filed writ petitions under Article 32 of the Constitution challenging the validity of Section 21 mainly on the ground that as the petitioners were compelled by law to buy cane from cane-growers, their purchases were not made under agreements and were not taxable under Entry 54 List II having regard to Gannon Dunkerley case (AIR 1958 SC 560). The contention was repelled after a thorough analysis of the legal position and the following observations on p.711 of the Report show that the challenge raised by the respondents here has no substance: (AIR pp. 603-04, para 4)

"4. Under Section 4(1) of the Indian Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. By Section 3 of this Act, the provisions of the Indian Contract Act, 1872 apply to contracts of sale of goods save insofar as they are inconsistent with the express provisions of the later Act. Section 2 of the Indian Contract Act provides that when one person signifies to another his

willingness to do or to abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal. When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. Every promise and every set of promises forming the consideration for each other is an agreement. There is mutual assent to the proposal when the proposal is accepted and in the result an agreement is formed. Under Section 10, all agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not by the Act expressly declared to be void. Section 13 defines consent. Two or more persons are said to consent when they agree upon the same thing in the same sense. Section 14 defines free consent. Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake as defined in Sections 15 to 22. Now, under Act 45 of 1961 and the Rules framed under it, the cane-grower in the factory zone is free to make or not to make an offer of sale of cane to the occupier of the factory. But if he makes an offer, the occupier of the factory is bound to accept it. The resulting agreement is recorded in writing and is signed by the parties. The consent of the occupier of the factory to the agreement is not caused by coercion, undue influence, fraud, misrepresentation or mistake. His consent is free as defined in Section 14 of the Indian Contract Act though he is obliged by law to enter into the agreement. The compulsion of law is not coercion as defined in Section 15 of the Act. In spite of the compulsion, the agreement is neither void nor voidable. In the eye of the law, the agreement is freely made. The parties are competent to contract. The agreement is made for a lawful consideration and with a lawful object and is not void under any provisions of law. The agreements are enforceable by law and are contracts of sale of sugarcane as defined in Section 4 of the Indian Sale of Goods Act. The purchases of sugarcane under the agreement can be taxed by the State Legislature under Entry 54 List II."

Again at SCR p.712, the Court made the following observation: (AIR p. 604, para 5)

"It is now realised that in the public interest, persons exercising certain callings or having monopoly or near-

monopoly powers should sometimes be charged with the duty to serve the public and, if necessary, to enter into contracts. Thus, Section 66 of the Indian Railways Act, 1890 compels the railway administration to supply the public with tickets for travelling on the railway upon payment of the usual fare. Section 22 of the Indian Electricity Act, 1910 compels a licensee to supply electrical energy to every person in the area of supply on the usual terms and conditions. Cheshire and Fifoot in their Law of Contract, 6th Edn., p.23 observe that for reasons of social security the State may compel persons to make contracts. One of the objects of Act 45 of 1961 is to regulate the purchase of sugarcane by the factory-owners from the cane-growers. The cane-growers scattered in the villages had no real bargaining power. The factory-owners or their combines enjoyed a near monopoly of buying and could dictate their own terms. In this unequal contest between the cane-growers and the factory-owners, the law stepped in and compelled the factory to enter into contracts of purchase of cane offered by the cane-growers on prescribed terms and conditions."

31. A similar question was examined by a Bench of seven Judges in Salar Jung Sugar Mills Ltd. v. State of Mysore (1972 (1) SCC 23). The contention was that there was no mutual assent by and between the sugar mills and the growers of the sugarcane and, therefore, there was no purchase or sale of sugarcane and consequently no tax under the Mysore Sales Tax Act could be levied. It was held that statutory orders regulating the supply and distribution of goods by and between the parties under the Control Orders in a State do not absolutely impinge on the freedom to enter into contract. Legislative measures or statutory provisions fixing the price, delivery, supply, restricting areas for transactions are all within the realm of planning economic needs, ensuring production and distribution of essential commodities and basic necessities of community. The individual freedom is to be reconciled with adequate performance by the Government of its functions in a highly organised society. In para 44 of the Report it was held as under: (SCC pp.38-39)

"The parties choose the term of delivery. They have choice of obtaining a supply exceeding 95% of the yield. They can stipulate for a price higher than the minimum. They can have terms for payment in advance as well as in cash. A grower may not cultivate and may not have any yield. A factory may be closed or wound up, and may not buy any sugarcane. A factory can reject goods on inspection. A combination of all these

features indicate that the parties entered into agreement with mutual assent and with volition for transfer of goods in consideration of price. The transactions amount to sales within the meaning of the Mysore Sales Tax Act."

32. In Sukhnandan Saran Dinesh Kumar v. Union of India (1982 (2) SCC 150) after considering the provisions of the 1966 Order and the 1953 Act made by the U.P. Legislature the Court clearly ruled that in order to protect the sugarcane-growers who are not in a position to negotiate, the Government can prescribe terms in a contract which they have to enter into with the occupiers of sugar factories. After elaborate discussion of the relevant provisions, the Court expressed its view in the following words in para 22 of the Report: (SCC p. 165)

"The proposition is now beyond the pale of controversy that the State can impose a restriction in the interest of general public on the right of a party to contract where in the opinion of the Government the contracting parties are unable to negotiate on the footing of equality. Constitutional validity of statutes prescribing minimum wages has been founded on this proposition. The principle can be effectively extended to the powerful sugar industry and the cane-growers because the cane-growers admittedly are at a comparative disadvantage to the producers of sugar and khandsari sugar who were described in the course of arguments as sugar barons. It does not require an elaborate discussion to reach an affirmative conclusion that sugarcane-growers who are farmers cannot negotiate on the footing of the equality with the producers of sugar and khandsari sugar. The State action for the protection of the weaker sections is not only justified but absolutely necessary unless the restriction imposed is excessive."

33. As discussed earlier, the reservation or assignment of area is made for the benefit of a sugar factory. The agreements executed by the cane-growers or cane-growers' cooperative society in favour of occupier of a factory are also for the benefit of the sugar factory as by such agreements it gets an assurance of a continuous supply of freshly harvested sugarcane on the days indicated in the requisition slips issued by it so that there may not be any problem in getting optimum quantity of raw material throughout the crushing season. In absence of the agreements the sugar factory will also be a loser as it may face great problem in getting the supply of sugarcane according to its requirement. The occupiers of the factory are themselves keen on execution of the agreements but their only objection is to the mention of State-advised price. The agreement is one composite

transaction and it is not open to them to contend that the terms thereof which are to their advantage should be enforced but the term relating to price notified by the State Government should not be enforced as their consent in that regard was not a voluntary act. In our opinion, having regard to the advantages derived by the sugar factories, they are fully bound by the agreement wherein the State-advised price may be mentioned and it is not open to them to assail the clause relating to price of the sugarcane on the ground that their consent was not voluntary or was obtained under some kind of duress.

34. Learned Senior Counsel for the respondents has strenuously urged that the Central Government having made the 1966 Order which contains a specific provision for fixation of price of sugarcane, under clause 3(1) thereof, the regulatory power under the 1953 Act cannot embrace within its fold the same power of fixation of price as this will be clearly repugnant to a law made by Parliament and would be void in view of Article 254(1) of the Constitution. In Tika Ramji (AIR 1956 SC 676) it has been held that the EC Act under which the Central Government made the 1966 Order and the 1953 Act made by the U.P. Legislature have been enacted with reference to Entry 33 of List III of the Seventh Schedule. The constitutional validity of the 1953 Act was upheld by the Constitution Bench in the said decision. On p. 437 of the Report (SCR) the Court quoted with approval the following passage from the judgment of Sulaiman, J. in Shyamakant Lal v. Rambhajan Singh 1939 FCR 193) (FCR at p. 212 : AIR at p. 83) for the principle of construction in regard to repugnancy: (AIR p. 700, para 32)

"When the question is whether a Provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility:"

(emphasis supplied)

And then went on to hold: (AIR p.700, para 33)

"33. In the instant case, there is no question of any inconsistency in the actual terms of the Acts enacted by Parliament and the impugned Act. The only questions that arise are whether Parliament and the State Legislature sought to exercise their powers over the same subject-matter or whether the laws enacted by Parliament were intended to

be a complete exhaustive code or, in other words, expressly or impliedly evinced an intention to cover the whole field."

35. In M. Karunanidhi v. Union of India (1979 (3) SCC 431) the principles to be applied for determining repugnancy between a law made by Parliament and law made by the State Legislature were considered by a Constitution Bench. In pursuance of an FIR lodged against Shri M. Karunanidhi, CBI after investigation had submitted charge-sheet against him under Sections 161, 468 and 471 IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. The Madras Legislature had passed an Act known as the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 which had received the assent of the President. It was contended that by virtue of Article 254(2) of the Constitution, the provisions of the Indian Penal Code, Prevention of Corruption Act and Criminal Law Amendment Act stood repealed. After review of all the earlier authorities the Court laid down the following tests: (SCC pp.448-49, para 35)

"35.1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.
2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

35.1. The same question was examined in considerable detail in Hoechst Pharmaceuticals Ltd. v. State of Bihar 1983 (4) SCC 45) and it was held that one of the occasions where inconsistency or repugnancy arose was when on the same subject-matter one would be repugnant to the other and, therefore, in order to raise a question of repugnancy, two conditions must be fulfilled. The State law and the Union law must operate on the same field and one must be repugnant or inconsistent with the other and these are cumulative conditions. In National Engg. Industries Ltd. v. Shri Kishan Bhageria (1988 Supp SCC 82) Sabyasachi Mukharji, J. opined that the best test of repugnancy is that if one prevails, the other cannot prevail.

36. In S. Satyapal Reddy v. Govt. of A.P. (1994 (4) SCC 391) the question was examined in the context of prescription of a higher qualification by the State

Government. The service rule made by the Central Government prescribed a diploma in Mechanical Engineering as the minimum qualification for appointment on the post of Assistant Motor Vehicles Inspector while the rule made by the State Government required a degree in Mechanical Engineering or certain other alternative qualifications. The challenge made by the diploma-holders was negatived and it was held that prescribing a higher qualification did not give rise to any inconsistency or repugnancy as both the rules could operate harmoniously and effect could be given to both of them. Similarly, in Preeti Srivastava (Dr) v. State of M.P. (1999 (7) SCC 120) it was held that laying down higher eligibility qualification by the State Government for admission to postgraduate medical courses did not lead to any kind of repugnancy.

37. Under sub-clause (1) of clause 3 of the 1966 Order, the Central Government can only fix a minimum price of sugarcane. This clause should be read along with sub-clause (2) which creates an embargo or prohibition that no person shall sell or agree to sell sugarcane to a producer of sugar and no such producer shall purchase or agree to purchase sugarcane at a price lower than that fixed under sub-clause (1). The inconsistency or repugnancy will arise if the State Government fixed a price which is lower than that fixed by the Central Government. But, if the price fixed by the State Government is higher than that fixed by the Central Government, there will be no occasion for any inconsistency or repugnancy as it is possible for both the orders to operate simultaneously and to comply with both of them. A higher price fixed by the State Government would automatically comply with the provisions of sub-clause (2) of clause 3 of the 1966 Order. Therefore, any price fixed by the State Government which is higher than that fixed by the Central Government cannot lead to any kind of repugnancy.

38. The decisions of this Court touching the controversy in hand may now be examined. In Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. v. State of Maharashtra (1995 Supp (3) SCC 475) (SCC paras 11, 12 and 21), R.M. Sahai, J. speaking for a three-Judge Bench held that the entire process of price fixation can be divided into three stages. The first is the fixation of what is known as the minimum ex-factory price by the Central Government under the 1966 Order for all the sugar factories in the country linking it with basic recovery of 8.5 per cent with a proportionate increase for every 0.1 per cent extra recovery. The second is the State-advised price and every State has its own method to determine it. The power is assumed under the Acts of the State Legislature or orders issued by the Government and in the State of U.P. it is done by orders issued under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953. The third is the price paid at the end of the season. The Bhargava Commission had recommended the payment of additional price at the

end of the season on 50-50 profit-sharing basis between growers and factories to be worked out in accordance with the Second Schedule to the 1966 Order. In para 21, it was observed as under:

"The price is fixed, maybe, by the Board of Directors or by the State Government under bye-laws but the prices are for the reserved area. The Central Government did not fix any maximum price obviously because the conditions in the agricultural sector differed from State to State. Therefore, it having fixed a minimum price expects the State to offer remunerative price to its cultivators. In a controlled economy the price fixation machinery is to be determined by the State Government or under the 1966 Order in the manner provided therein. Since in Maharashtra 95% of the sugar factories are in the cooperative sector the price is fixed by the Government as it has substantial financial stake. But so long the price fixation does not suffer from any infirmity or it is held to be prejudicial to the cane-growers so as to benefit the State or the financial institution it cannot be held to be bad."

38.1. The next is State of M.P. v. Jaora Sugar Mills Ltd. (1997 (9) SCC 207) which has been decided by a Bench of two Judges. The dispute arose on account of fixation of price under the M.P. Sugarcane (Regulation of Supply and Purchase) Act, 1958. The contention on behalf of the sugar factories was that clauses 3 and 5-A of the 1966 Order determine the liability to pay the price and additional price and the Central Government having determined the price of the sugarcane under the aforesaid Order, there is no power with the State Government dehors the Order to fix any agreed price. The concept of agreed price came into force on 19-9-1976 by virtue of clause 3-A of the said Order and until then there was no power to fix an agreed price. It was also urged that the State Government has, therefore, no power under the Act to fix any price as the field was occupied by the 1966 Order. The contention was, however, not accepted and after noticing the provisions of clauses 3(2) and 3(3), it was held as under in para 8 of the Report: (SCC p.211)

"8. This would clearly indicate that despite the fixation of minimum price under clause 3(1), by agreement between the sugarcane-grower and the purchaser of the sugarcane, they would be at liberty to agree to sell or purchase the sugarcane at a higher price than that fixed by the Central Government under clause 3(1). Only for postponement of payment beyond 14 days, there should be an agreement in writing between the parties obviously with the concurrence of the Central Government or authorised

authority in that behalf. Thus, there is no statutory prohibition in that behalf to pay higher price. That would be further clear by clause 3(2) which speaks of the contract between the parties for payment of higher price of sugarcane fixed under sub-clause (1) of clause 3 pursuant to the agreement or pursuant to the minimum price fixed by the Central Government under clause 3(1) of the Order."

38.2. It was observed in paras 9 and 10 that there was no prohibition for the cane-growers and occupiers of the sugar factories in entering into oral agreement through the service of the Cane Commissioner, a statutory authority, who could effect such an agreement. The agreement would not be tainted with compulsion but in novation of the minimum price fixed under the 1966 Order. After noticing the provisions of the M.P. Act, which are somewhat similar to the U.P. Act, it was held as under in para 13 of the Report: (SCC p.213)

"13. It would thus be clear that the Cane Commissioner having power to compel the cane-growers to supply cane to the factory or khandsari unit, he has incidental power and is duty-bound to ensure payment of the price of the sugarcane supplied by the sugarcane-grower. The price fixed or agreed is a statutory price and bears the stamp of statutory first charge on the sugar and assets of the factory over any other contracted liabilities to recover the price of the sugarcane supplied to the factory or khandsari unit."

38.3. S.K.G. Sugar Ltd. v. State of Bihar (1997 (9) SCC 362) is a decision by a Bench of three Judges and deals with the effect of the 1966 Control Order and the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981. It was clearly ruled that the provisions of the 1966 Order do not show that there is any prohibition on the factory or the association of factories entering into an agreement to pay higher price than the minimum price prescribed under the Order and the object of the Order is to ensure that the cane-growers should not be compelled to sell their sugarcane at a price lower than the minimum price fixed by the Central Government under clause 3. In this case an agreement had been arrived at between Sugar Factories Owners Association and sugarcane-growers, wherein a higher price was agreed to be paid but this was sought to be resiled by the appellant on the ground that it was a company, which was an independent entity in the eye of the law and was, therefore, not bound by any such agreement. After noticing the provisions of the Act and the earlier decision rendered in State of M.P. v. Jaora Sugar Mills Ltd. it was held as under in para 6 of the Report: (SCC p. 367)

"6. It is not in dispute that under Section 31 of the Supply Act, the State

Government has power to fix the reserved area, in other words, zone was carved out for the appellant for the supply of sugarcane to the factory. All the farmers who are cultivating sugarcane within that zone are bound by the State action to supply sugarcane to the factories within that reserved area. Consequently, the factory also is bound by the actions of the State Government. Obviously, pursuant to the obligation had by the State under the Supply Act, the meeting was convened by the State Government whereat the Factory Owners' Association and farmers participated and agreed to fix the price at Rs .20.50 per quintal of sugarcane. As a consequence, both the cane-growers as well as the owners of the factory are bound by the decision. This having been agreed upon, the price fixed by the State Government in excess of the minimum price fixed by the Central Government under clause 3 of the Order would be the price fixed for supply of sugarcane and the Government would be entitled to enforce the liability."

38.4. It was also observed in the same paragraph that the State Government acted in its statutory capacity to fix the higher price of the sugarcane.

13. It is to be noted that in the State of U.P. the SAP forms part of the agreement. In the instant case it is not there. Paras 39 and 40 of U.P. Cooperative's case (supra) deal with question of statutory price. In Ponni Sugars case (supra) the decision in U.P. Cooperative's case (supra) was followed. The controversy appears to have been blown out of proportion. There is no dispute that respondent paid the SAP which is subject to certain adjustments. That being so, the respondent cannot take the plea that because it was agreed by the grower and the purchaser that certain amount would be paid, that does not in any way render the amount paid as SAP irrelevant. In fact, an agreement cannot determine the question of liability to pay the purchase tax. Section 6 of the Act reads as follows:

"6. Levy of purchase tax under certain circumstances.\027 Subject to the provisions of sub-section (5) of Section 5, every dealer who in the course of his business purchases any taxable goods in circumstances in which no tax under Section 5 is leviable on the sale price of such goods, and

(i) either consumes such goods in the manufacture of other goods for sale or otherwise (or consumes otherwise) or disposes of such goods in any manner other than by way of sale in the State, or

(ii) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under Section 5."

14. It is the stand of the respondent that purchase price is not defined and, therefore, the agreed price would be taken to be the purchase price. This plea is clearly unsustainable. As noted above, the basic question is what is the consideration paid for effecting the purchase.

15. The definition of "Sale" (in Section 2(t) of the Act) is relevant. It refers to transfer of the property in goods by one person to another in the course of trade or business "for cash or for deferred payment or other valuable consideration". "Purchase price" is well-known expression in commercial transactions. Every purchase involves a corresponding sale. The purchase money or purchase price for property is the price to be paid for it. Speaking technically, acquires by "words of purchase" and is a "purchaser" when he obtains title in any other mode than by descent or devolution of law. It was noted in Commissioner of Income Tax, Andhra Pradesh v. T.N. Aravinda Reddy (1979 (4) SCC 721) as follows:

"The meaning of the word 'purchase' in Section 54, Clause (i) of the Income Tax Act, 1961does not differ from its plain meaning which sense buying for a price equivalent of price by payment in kind or adjustment towards an old debt or for other monetary consideration. Each release in the circumstances of the given case is a transfer of the releaser's share for valuation to the release. In plain English, the transferee purchases the share of each of his brothers. Thus Section 54, Clause (i) is attracted."

16. Normal meaning of the word 'purchase' is acquisition for money or for any consideration. That is the primary meaning. In Concise Oxford Dictionary, apart from the two meanings "buy, acquire", another meaning given to the word "purchase" is "procure". The word "procure" consists of much wider import than the word "purchase". In the same dictionary, the word "procure" has been mentioned the meaning as "obtained by care or effort acquire". Purchase is thus a word of restricted meaning than the word "procure". While considering a taxing statute which deals with income from business the word "purchase" will therefore, have to be seen in the commercial sense. In the commercial sense, a transaction of purchase is a part of a transaction of sale. A transaction of sale can never be complete unless there is a transfer of property from the seller as well and the buyer who is the purchaser, must, therefore, acquire the property before he can claim to have purchased the property.

17. In the Sale of goods Act and also in the Central Sales Tax Act or in any of the sales tax laws made in the several States, the definition includes the sale of goods, and not to the purchase of goods. That must be so because the sale of a commodity must include within its ambit the concept of sale as well as purchase. It is not possible to conceive of a sale of goods without a buyer.

18. It is fairly accepted that SAP has been paid. The claim of the respondent is that determination is tentative and certain adjustments can be made later. But till that is done the SAP

has to be taken as the consideration. In our view appellants were justified in demanding purchase tax on the amount paid as SAP and the High Court's view is clearly unsustainable and is set aside. The view expressed in Ponni Sugars case (supra) is in consonance with the view expressed by the Constitution Bench in U.P. Cooperative's case (supra). The observations relating to the agreed price which is above the lowest permissible rate cannot read to mean that any ceiling is fixed by the agreed price. In fact in Ponni Sugars case (supra) and U.P. Cooperative's case (supra) this Court held that the price fixed under the Control Order was the minimum price and it was the lowest permissible rate. The highest amongst the three prices relatable to the purchase is the price on the basis of which the purchase tax is to be levied.

19. The appeal is allowed but in the circumstances with no order as to costs.