

CASE NO.:
Appeal (civil) 460 of 1997

PETITIONER:
U.P. Co-operative Cane Unions Federations

RESPONDENT:
West U.P. Sugar Mills Association & Ors. etc.

DATE OF JUDGMENT: 05/05/2004

BENCH:
CJI, K.G. Balakrishnan & G.P. Mathur.

JUDGMENT:
JUDGMENT

(With CA Nos.461/1997, 4685/1997, 1727/1999, 4602/1999, 6065/2001, CA No. 3023, 3022/2004 @ SLP(C) No. 16851/2001, SLP(C) Nos.1363/2002, 948/2003, CA Nos.8117-8122/2001, T.C. (c) No.21-22/2003 IA No.3 in CA 460 of 1997

G.P. MATHUR, J.

1. The controversy raised in these appeals by special leave and Transfer Petitions basically relates to the competence of the State Government to fix the State Advised Price for purchase of sugarcane by an occupier of a sugar factory over and above the minimum price fixed by the Central Government. The validity of the procedure adopted for ensuring the payment of the aforesaid price to a sugarcane grower is also under challenge.

2. The power of the State Government to fix higher sugarcane price was recognised in Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. v. State of Maharashtra & Ors. 1995 (Supp) 3 SCC 475 and in State of M.P. v. Jaora Sugar Mills Ltd. & Ors. (1997) 9 SCC 207 it was held that the State Government has an obligation to ensure payment of proper price to the sugarcane growers by occupiers of the factory. However some observations made in State of Tamilnadu & Ors. v. Kothari Sugar & Chemicals Ltd. & Ors. (1996) 7 SCC 751 apparently indicate that State Government has no power to fix the price. In view of this seeming conflict, the cases were initially referred for decision by a larger Bench of three Judges and then to a Bench of five Judges.

3. We will first deal with Civil Appeal Nos.460 of 1997, 461 of 1997, 1727 of 1999 and 4602 of 1999 which arise from State of U.P. and are directed against the judgment and orders of two benches of Allahabad High Court wherein conflicting views have been taken. The Central Government by the order dated 11.3.1996 fixed the statutory premium price of sugarcane payable by the sugar factories for 1996-97 sugar season at Rs.45.90 per quintal linked to a basic recovery of 8.5 per cent sugar subject to a premium of Rs. 0.57 for every 0.1 percentage point increase in the recovery above that level. According to Sugar Mills Association the average minimum statutory price for the whole of U.P. came to about Rs.50.33 per quintal and the additional price under Clause 5-A of Sugarcane (Control) Order 1966 came to about Rs.7 per quintal and thus they were liable to pay Rs.57.33 per quintal. The State Government by the order dated 15.11.1996 fixed the State Advised Price at Rs.72 per quintal for ordinary quality and Rs.75 per quintal for fast ripening quality of sugarcane to be delivered at the gate of the factory. In case the sugarcane was delivered at the purchase centre the sugar mills were entitled to deduct about Rs.3 per quintal towards transportation cost. Writ Petition No.36889 of 1996 was filed by West U.P. Sugar Mills Association, Central U.P. Sugar Mills Association, East U.P.

Sugar Mills Association and 32 sugar mills for quashing the order dated 15.11.1996 of U.P. Government whereby State Advised Cane Price was fixed and for restraining the respondent authorities (State of U.P. and Cane Commissioner U.P.) from taking any coercive steps to enforce the payment of the said State Advised Price. A declaration was also sought that the writ petitioners are liable to pay only the minimum price fixed by the Central Government under Clause 3 of Sugarcane (Control) Order 1966 plus the additional cane price determined under Clause 5-A of the said Order. A Division Bench of the High Court allowed the writ petition by the judgment and order dated 11.12.1996. The order of the State Government dated 15.11.1996 was quashed and the respondent authorities were restrained from enforcing the State Advised Price. It was, however, directed that where an agreement in Form B or Form C of the Appendix to the U.P. Sugarcane Supply and Purchase Order, 1954 had been reached between occupiers of the factory and the cane growers or cane growers' cooperative society then the occupiers of the factory will have to pay the price in accordance with such agreement.

4. The Cane Commissioner U.P. issued a recovery certificate on 13.2.1997 for recovery of State Advised Sugarcane price from Agota Sugar and Chemicals Ltd. and on the basis of the aforesaid recovery certificate Tehsildar Bulandshahr sent a citation dated 21.2.1997 for recovery of the amount. Agota Sugar and Chemicals Ltd. then filed Writ Petition No. 775 (M/B) of 1997 before the Lucknow Bench of Allahabad High Court for quashing of the aforesaid recovery certificate and the citation. It was also prayed that a writ of mandamus be issued commanding the Cane Commissioner and authorities of the State Government not to adopt any coercive method to recover any amount from it on the basis of the recovery certificate dated 13.2.1997 and the citation dated 21.2.1997. Writ Petition No. 2086 (M/B) 1997 was filed by Shri V.M. Singh, a sugarcane grower, claiming to represent the interest of all the sugarcane growers in the State, praying that the authorities be directed to enforce the payment of State Advised Price for the sugarcane purchased by the sugar mills. The writ petitions were disposed of by a common judgment and order dated 1.2.1999. Writ Petition No. 775 (M/B) of 1997 filed by Agota Sugar and Chemicals Limited was dismissed but Writ Petition 2086 (M/B) of 1997 was allowed and a writ of mandamus was issued commanding the Cane Commissioner and State of U.P. to enforce the payment of State Advised Price for the sugarcane purchased by the sugar mills in the State. The State Government was further directed to initiate recovery proceedings against the defaulting sugar mills for non-payment of the dues and in case sugar mills failed to pay the State Advised Price and the interest to the cane growers within six weeks, the Government was directed to recover the amount in accordance with law and thereafter pay the same to the cane growers or cane growers' co-operative societies.

5. Civil Appeal No. 460 of 1997 has been preferred by U.P. Co-operative Cane Unions Federation and Civil Appeal No.461 of 1997 has been filed by State of U.P. and another against the judgment and order dated 11.12.1996 of Allahabad High Court by which Writ Petition No. 36889 of 1996 was allowed. Civil Appeal No.1727 of 1999 and Civil Appeal No.4602 of 1999 have been preferred against common judgment and order dated 1.2.1999 of Lucknow Bench of Allahabad High Court, whereby Writ Petition No.775 (M/B) of 1997 preferred by Agota Sugar and Chemicals was dismissed and Writ Petition No.2086 (M/B) of 1997 preferred by V.M. Singh was allowed. Civil Appeal No.460 of 1997 is being treated as the leading case.

6. Shri Rakesh Dwivedi, learned senior counsel for the appellant U.P. Co-operative Cane Unions Federation has submitted that the Central Government fixes only the minimum price under Clause 3(1) of Sugarcane (Control) Order, 1966 (hereinafter referred to as 1966 Order) and such fixation of minimum price does not exhaust the field of determination of price of sugarcane. In the matter of fixation of price the concept of minimum price, fair price and maximum price are well known and, therefore, even after fixation of minimum price by the Central Government

it is always open for the State Government to fix a higher price for the sugarcane. Learned counsel has submitted that the State Government can not only fix a higher price but can also advise sugarcane growers and sugar factories to agree at a higher price. The State Government can fix the higher price in exercise of its regulatory power under UP Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as 1953 Act). The Sugarcane grower or the sugarcane growers' co-operative society and the occupiers of sugar factories have to compulsorily enter into an agreement in accordance with UP Sugarcane (Supply and Purchase) Order, 1954 (hereinafter referred to as 1954 Order) and the State Government can issue directions for recording of State Advised Price in the agreements which have to be executed for supply of sugarcane. Shri Dwivedi has also urged that parchas are issued to the sugarcane growers and in exercise of the power conferred by 1953 Act, the State Government can direct that the State Advised Price be recorded in the parchas which are issued to sugarcane growers. Learned counsel has also submitted that the Central Government does not take into consideration the various bye-products like molasses, bagasse and press mud which are produced during the course of production of sugar and the sugar mills make considerable amount of money from the sale of aforesaid bye-products especially since molasses has been decontrolled after 1991. The State Government, having regard to the local conditions and also the amount earned by the sugar factories from the aforesaid bye-products, fixes the price of the sugarcane which is more realistic. Learned counsel has further submitted that there is no repugnancy between the minimum price fixed by the Central Government and the State Advised Price fixed by the State Government and the view to the contrary taken by the High Court is clearly erroneous in law.

7. Shri P. Chidambaram, learned senior counsel appearing for the State of U.P. has submitted that there are many facets of price like minimum price, minimum support price, fair price and maximum price. Section 3 of Essential Commodities Act, (hereinafter referred to as EC Act) empowers the Central Government to make orders for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. The Central Government has made Sugarcane (Control) Order, 1966 (hereinafter referred to '1966 Order') in exercise of the said power and Clause 3 of the Order provides for fixation of minimum price of sugarcane payable by the producer of sugar to the grower of sugarcane. The price is fixed having regard to, inter alia, (a) the cost of production of sugarcane; (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities; and (c) availability of sugar to the consumer at a fair price. Learned counsel has submitted that the main purpose of the 1966 Order, was to ensure that sugarcane supplies are maintained and sugar is available at fair price and, therefore, the order must be construed in the context of the policy of the Central Government to appropriate a part of the production of sugar mills as "levy sugar" and sell levy sugar at controlled price through the public distribution system (ration shops). The statutory minimum price as fixed by the Central Government is basically linked to fixation of the price of levy sugar and is not linked with the actual price of the sugarcane. Hence deliberately the Central Government kept the minimum price of sugarcane at a low level. The additional price payable under clause 5-A of the 1966 Order is factory specific and has correlation only with the profits of the sugar factory and, therefore it is only a matter of chance for a sugarcane grower to get some additional amount. If at all the factory makes profit, the amount paid to a sugarcane grower will be pitifully low or illusory. Learned counsel has also submitted that sugarcane occupies land for a longer period than any other crop and it needs larger investment in the inputs. The farmers can raise only one crop of sugarcane in a year. Price is the main incentive in any economy and the best incentive to the sugarcane grower is remunerative price for his produce. The minimum price fixed by the Central Government under Clause 3 of 1966 Order is not a remunerative price, as the definition shows that it is only a minimum price. It does not take into account higher costs and higher risks

involved in raising sugarcane. If there is a higher investment and higher risk, the sugarcane grower is entitled to higher return but the said fact is not taken into consideration while fixing the minimum price by the Central Government. Learned counsel has submitted that power to fix remunerative price must reside in some authority and therefore such a power must vest with the State Government as the field for the same remains open and unoccupied. Shri Chidambaram has further submitted that 1953 Act has been enacted to regulate the distribution, sale and purchase of cane. Section 16 of this Act empowers the State Government to regulate the distribution, sale or purchase of cane in any reserved or assigned area. The power conferred under the Act on the State Government is of wide amplitude and takes within its fold the power to determine a remunerative price to the cane grower. The Act not only confers power but also casts a duty upon the State Government to ensure that the sugarcane grower gets a remunerative price and he is incentivised to grow sugarcane because the economy of the State to a significant extent is dependent upon growing sugarcane and supplying the same to the sugar factories. Learned counsel has also urged that the State Government in exercise of its power under the 1953 Act can bring about an agreement between the sugarcane grower or sugarcane growers' co-operative society and occupiers of a factory satisfying certain terms and conditions and the price of the sugarcane will be one of the terms thereof. Under the agreements the sugarcane grower is reserved or assigned to a specified sugar mill and is bound to supply not less than 85 per cent of the agreed quantity of sugarcane. He is bound to cut the sugarcane on receipt of a cutting order and in case of non-supply he is liable to pay penalty. If these terms imposed by the Government are valid, then by the same logic the term regarding price is also valid and binding and sugar mills cannot approbate and reprobate the agreement. Learned counsel has made an alternative submission that even if it is assumed that 1953 Act does not confer such a power then Article 162 read with Entry 33 List III of Seventh Schedule of the Constitution confers power upon the State Government to fix price by an executive order. In support of this submission reliance has been placed upon certain decisions of this Court rendered in *Rai Saheb, Ram Jawaya Kapoor v. State of Punjab* (1955) 2 SCR 225 *Bishambhar Dayal Chandra Mohan & Ors. v. State of U.P.* (1982) 1 SCC 39 and *State of Andhra Pradesh v. Lavu Narendranath* (1971) 1 SCC 607. Lastly learned counsel has submitted that certain items like molasses, begasse and press mud which are bye-products of sugar industries and which contribute to the earning of the sugar mills have not been taken into consideration by the Central Government and, therefore, the price fixed by the State Government which takes into consideration all the relevant factors and the local conditions represents the true price which should be upheld.

8. Shri Shanti Bhushan, learned senior counsel appearing for the respondents (sugar factories), has submitted that the main question to be examined is whether the State Government has any statutory power to fix the State Advised Price for sugarcane and to compel the sugar factories to pay the said price. Learned counsel has submitted that in exercise of power conferred by Section 3 of E.C. Act the Central Government has made the 1966 Order, and the Central Government fixes the price of the sugarcane under Clause 3 (1) of the said Order. There is no specific provision under the 1966 Order, which may empower the State Government to fix the price of sugarcane over and above what has been fixed by the Central Government. Similarly there is no specific provision in 1953 Act and the Rules made thereunder which may empower the State Government to fix the price of the sugarcane. Learned counsel has further submitted that there is clear repugnancy between the price fixed by the Central Government and the price fixed by the State Government and, therefore, it is the price which has been fixed by the Central Government which has to prevail. It has also been contended that under Section 3 (3-C) of E.C. Act, the Central Government has to determine the price of levy sugar which a sugar factory is compelled to sell to the Central Government or the State Government under an order made with reference to Section 3(2)(f) E.C. Act and while determining price of such levy sugar it is only the minimum price of sugarcane fixed by the Central Government which can be taken into

consideration. The fixation of higher price of sugarcane by the State Government would completely dislocate the mechanism provided under the E.C. Act for determination of the price of the levy sugar. Learned counsel has further submitted that the respondents (Sugar Mills Association) had sent several letters requesting the State Government not to announce any State Advised Price and within three days of the announcement of the State Advised Price the writ petition was filed. It has thus been urged that in fact there was no agreement between the sugarcane growers or the sugarcane growers' co-operative society and the occupiers of the sugar factories for payment of State Advised Price. It has also been contended that even if the price fixed by the State Governments is mentioned in the agreements or in the parchas, the respondents (sugar factories) cannot be compelled to pay the said price as they had never given their consent for recording the State Advised Price in the agreements or in the parchas. In order to constitute a valid agreement, it is submitted, the consent of the parties must be voluntarily and must not have been obtained under any duress or compulsion and since the sugar mills had never voluntarily agreed to pay the State Advised Price, the agreements wherein such a price is recorded is not binding upon them.

9. Shri Sudhir Chandra, learned senior counsel, appearing for the appellant Agota Sugar and Chemicals Ltd. in CA No. 4602 of 1999 has adopted the argument of Shri Shanti Bhushan. In addition he has submitted that there cannot be any oral agreement regarding the price of the sugarcane between a sugarcane grower or a sugarcane growers' co-operative society and the occupier of the sugar factory as Forms B and C given in Appendix to U.P. Sugarcane Supply and Purchase Order, 1954 clearly contemplate an agreement in writing. He has further submitted that in the agreements which had been executed between the sugar factory and the sugarcane growers co-operative society the State Advised Price had not been recorded and the High Court had misread the same.

10. Before advertng to the contentions raised at the Bar it is necessary to keep in mind that sugarcane is the main raw material for manufacture of sugar as it is the sugarcane juice which is ultimately converted into crystals which becomes a marketable commodity. Sugarcane, unlike coal or ore of minerals is not available under the surface of the earth which may be extracted and stored and may be used as and when required. It is a product of agriculture which has to be grown in fields like any other agricultural crop and requires inputs and hard labour for its production and it dries within a short time of its harvesting and becomes virtually useless. The sugar factories do not have an unlimited capacity to crush sugarcane but have a fixed capacity and, therefore, they require fresh sugarcane in a limited quantity everyday during the entire crushing season. Sugar factories in the State of U.P. generally commence crushing in the month of November and continue upto the end of April or sometimes middle of May i.e. for about six months. In order to ensure proper and continuous supply of sugarcane to sugar factory throughout the crushing season, the harvesting of crop has to be done in limited quantity (according to crushing capacity and requirement of the sugar factory) everyday and not in one stretch. In view of this peculiar requirement of sugar factory the position of sugarcane growers becomes entirely different from those who grow other crops like wheat or paddy which can be harvested in one go and can be sold later on at the convenience of the farmer at the opportune time. In order to achieve the proper balance viz. to ensure a continuous supply of adequate quantity of sugarcane to the sugar factory and proper remuneration to the cane grower for the cane supplied by him, various enactments have been made which we will presently refer to.

11. The Central Legislature initially enacted Sugarcane Act, 1934 and the Statement of Objects and Reasons, amongst others, said that the initiative in the matter of fixing prices for cane must be left to Provincial Governments so as to suit local conditions. Section 3 of this Act empowered the Provincial Government, by notification in the official gazette, to declare any area as controlled area, to fix a minimum price or minimum prices for

the purchase in any controlled area of sugarcane intended for use in any factory and to prohibit in any controlled area the purchase of sugarcane intended for use in any factory otherwise than from the grower of the sugarcane or from a person licensed to act as a purchasing agent. The purchase of sugarcane intended for use in factory in any controlled area at a price less than the minimum price notified was made an offence under Section 5. Section 7 of the Act conferred wide powers on the Provincial Government to make rules for the purpose of carrying into effect the objects of the Act. The U.P. Legislature thereafter enacted the U.P. Sugar Factories Control Act, 1938 (U.P. Act No.1 of 1938) which repealed the Sugarcane Act, 1934 in its application in the province of U.P. Section 2 (a) of E.C. Act defines essential commodities and in view of Section 2(b) of the said Act "food crops" includes crops of sugarcane. The Central Government exercising powers under Section 3 of the E.C. Act made the Sugarcane Control Order, 1955. Clause 3(a) of this Order laid down that the Central Government may, after consultation with such authorities, bodies or associations as it may deem fit, by notification in the Official Gazette, fix in respect of an area the price or the minimum price to be paid by producers of sugar for sugarcane purchased by him. This order was repealed by the Sugarcane (Control) Order, 1966 (for short '1966 Order') and Clause 2(g) and (i) and sub-clauses (1), (2), (3) of Clause 3 thereof are being reproduced below:

2(g) "price" means the price or the minimum price fixed by

the Central Government, from time to time, for sugarcane delivered -

(i) to a sugar factory at the gate of the factory or at a sugarcane purchasing center; or

(ii) to a khansari unit;

(i) "producer of sugar" means a person carrying on the business of manufacturing sugar by vacuum pan process

3. Minimum price of sugarcane payable by producer of sugar -(1) The Central Government may, after consultation with the authorities, bodies or associations as it may deem fit, by notification in the official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them, having regard to -

(a) the cost of production of sugarcane;

(b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;

(c) the availability of sugar to the consumers at a fair price;

(d) the price at which sugar produced from sugarcane is sold by producers of sugar; and

(e) the recovery of sugar from sugarcane:

Provided that the Central Government or, with the approval of the Central Government, the State Government, may, in such circumstances and subject to such conditions as specified in Clause 3-A, allow a suitable rebate in the price so fixed.

Explanation - (1) Different prices may be fixed for different areas or different qualities or varieties of sugarcane.

(2) No person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause (1).

(3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane grower's co-operative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or sugarcane growers' co-operative society or that fixed under sub-clause (1), as the case may be, either at the gate of factory or at the cane collection center or transfer or deposit the necessary amount in the Bank account of the seller or the co-operative society, as the case may be.

12. The 1966 Order has been amended several times by the Central Government. Sub-clause 3 of Clause 3 was substituted on 18.5.1968, Clause 3-A relating to rebate that can be deducted from the price paid for the sugarcane was inserted on 24.9.1976 and Clause 5-A was inserted on 25.9.1974. The definition of 'price' given in Clause 2(g) shows that it can either be the price or the minimum price fixed by the Central Government. Clause 3(3) deals with payment of the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or sugarcane growers' co-operative society or that fixed under sub-clause (1) as the case may be. Clause 3-A which deals with rebate that can be deducted from the price paid for sugarcane also refers to either the minimum price of sugarcane fixed under Clause 3 or the price agreed to between the producer and the sugarcane grower or the sugarcane growers' co-operative society. So far as the power of the Central Government is concerned, under Clause 3(1) it can fix only the "minimum price" of sugarcane to be paid by producers of sugar for the sugarcane purchased by them. This is the lowest permissible rate. The effect of Clause 3(2) is that a producer of sugar can under no circumstances purchase sugarcane at a price lower than the minimum price fixed under Clause 3(1) and there is a similar prohibition on the cane grower and he cannot sell or agree to sell sugarcane to a producer of a sugar below the said price. But the 1966 Order, in view of definition of "price" given in Clause 2(g) and also the language used in Clauses 3 and 3-A, clearly contemplates that there can be a price other than the "minimum price" of sugarcane fixed under Clause 3(1), namely, the "price agreed to between the producer and the sugarcane grower or the sugarcane growers' co-operative society". Clause 5-A lays down that where a producer of sugar purchases sugarcane from a grower of sugarcane during each sugar year, he shall in addition to the minimum sugarcane price fixed under Clause 3 pay to the sugarcane grower an additional price, if found due in accordance with the provisions of the Second Schedule. This additional price is to be calculated in accordance with the formula given in Second Schedule and is dependent upon the value of the sugar produced and the profits made and in effect it is a sharing of profits. Sub-clause (5) of Clause 5-A lays down that no additional price determined under sub-clause (2) shall become payable by a producer of sugar who pays a price higher than the "minimum sugarcane price" fixed under Clause 3 to the sugarcane grower, if the same is not less than the total of the price fixed under Clause 3(1) and additional price determined under Clause 5-A (2). This provision again contemplates payment of price higher than the minimum price fixed under Clause 3 (1). A whole reading of the 1966 Order would, therefore, show that the Central Government shall fix the minimum price of sugarcane but there can be a price higher than the minimum price which may be in the nature of agreed price between the producer of sugar and the sugarcane grower or the sugarcane growers' co-operative society. So the field for a price higher than the minimum price is clearly left open in the 1966 Order made by the

Central Government.

13. The U.P. legislature enacted the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (for short 'the 1953 Act') which was published in Gazette on 9.10.1953. Sections 2(a), 2(n), 15 and 16 of this Act read as under:-

Section 2(a) "assigned area" means an area assigned to a factory under Section 15;

Section 2(n) "Reserved area" shall mean the area reserved for a factory under an Order for reservation of Sugarcane areas made under Rule 125-B of the Defence of India Rules, 1962, and when no such order is in force, the area specified in an order made under Section 15.

"15. Declaration of reserved area and assigned area - (1) Without prejudice to any order made under Clause (d) of sub-section (2) of Section 16, the Cane Commissioner may, after consulting the Factory and Cane-growers Co-operative Society in the manner to be prescribed -

(a) reserve any area (hereinafter called the reserved area), and

(b) assign any area (hereinafter called an assigned area),

for the purposes of the supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned.

(2) Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.

(3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to the factory, as may be determined by the Cane Commissioner.

(4) An appeal shall lie to the State Government against the order of the Cane Commissioner passed under sub-section (1).

16. Regulation of purchase and supply of cane in the reserved and assigned areas - (1) The State Government may, for maintaining supplies, by order, regulate -

(a) the distribution, sale or purchase of any cane in any reserved or assigned area; and

(b) purchase of cane in any area other than a reserved or assigned area.

(2) Without prejudice to the generality of the foregoing powers such order may provide for -

(a) the quantity of cane to be supplied by each Cane-grower or Cane-growers' Cooperative Society in such area to the factory for which the area has so been reserved or assigned;

(b) the manner in which cane grown in the reserved area or the assigned area, shall be purchased by the factory for

which the area has been so reserved or assigned and the circumstance in which the cane grown by a cane-grower shall not be purchased except through a Cane-growers' Co-operative Society;

(c) the form and the terms and conditions of the agreement to be executed by the occupier or manager of the factory for which an area is reserved or assigned for the purchase of cane offered for sale ;

(d) the circumstances under which permission may be granted -

(i) for the purchase of cane grown in reserved or assigned area by a Gur, Rab or Khandsari Manufacturing Units or any person or factory other than the factory for which area has been reserved or assigned; and

(ii) for the sale of cane grown in a reserved or assigned area to a Gur, Rab or Khandsari Manufacturing Unit or any person or factory other than the factory for which the area is reserved or assigned ;

(e) such incidental and consequential matters as may appear to be necessary or desirable for this purposes."

14. In exercise of the power conferred by Section 28 of the 1953 Act, the State Government has made U.P. (Regulation of Supply and Purchase) Rules, 1954 (for short 'the Rules'). Rule 21 lays down that the occupier of a factory shall by August 31, each year, apply to the Cane Commissioner in Form I, Appendix III, for the reservation or assignment of an area for supply of cane to the factory during the ensuing crushing season. There is a specific column viz. Item No.6 in Form I Appendix III wherein details of purchases, if any, made at more than the minimum cane price during the last crushing season have to be given. Here the occupier has to fill in the quantity of sugarcane which was purchased at a price more than the minimum price and also the amount of increase over and above the minimum price. Thus payment of higher price and quantum of sugarcane so purchased is a factor which is taken into consideration while reserving or assigning an area in favour of a sugar factory. Rule 38-A enjoins that at every purchasing centre at least one weighment clerk shall be appointed and deputed by the occupier of a factory who is required to weigh the sugarcane and calculate the cane price correctly. Similarly under sub-rule (4) of this Rule the cane growers co-operative society is required to appoint one society clerk at every purchasing centre who has to carefully watch and check the wieghment of cane and also examine the parcha in which weight and price of cane are recorded. Rule 94(b) requires occupier of a factory to put up at each purchasing centre a notice in Devnagri script, showing the minimum price of cane fixed by Government and also the rates at which cane is being purchased at the centre. Rule 96 (1)(i) (j) lays down that no occupier of a factory shall purchase cane without preparing or causing to be prepared at the purchasing centre a parcha in quadruplicate showing correctly the rate at which the sugarcane is purchased and the price that has to be paid for the sugarcane at that rate. Rule 100 requires an occupier of a factory to maintain in respect of each sugarcane grower (except in respect of cane purchased through a cane growers' co-operative society) a detailed account containing several items including the net weight of cane purchased and the rate per quintal paid for sugarcane.

15. In exercise of power conferred by Section 16 of the Act, the State Government has made UP Sugarcane (Regulation of Supply and Purchase) Order, 1954 (hereinafter referred to as 1954 Order). Clause 3-A of this Order provides for purchase of cane in reserved area and Clause 4 provides

for purchase of cane in an assigned area. Clause 3(2) lays down that a cane grower or a cane growers' co-operative society may within 14 days of the issue of an order reserving an area for a factory, offer to supply cane grown in the reserved area to the occupier of the factory in Form A of the Appendix. Clause 3(3) and Clause 4 (1) lay down that the occupier of the factory for which an area has been reserved or assigned shall within fourteen days of the receipt of the order enter into an agreement in Form B or Form C of the Appendix, with the cane grower or the cane growers' co-operative society, as the case may be, in respect of the cane offered. Clause 5 (1) lays down that cane grown in the reserved or assigned area shall not, except with the permission of the Cane Commissioner, be purchased by any person without the previous issue of requisition slips and identification cards to the growers by the occupier of the factory. Sub-clauses (2) and (3) of Clause 5 mandate that the requisition slips and identification cards to the members of cane growers' co-operative society shall not be issued except by such society and records of the same have to be maintained by the occupier of the factory and also by the cane growers' co-operative society. Clause 5(4) lays down that purchase of cane shall be spread over the entire crushing season in an equitable manner and Clause 5(7) lays down that no person shall transfer or abet the transfer of requisition slips for the cane of a grower to another person.

16. The proforma of the agreement regarding sale and purchase of cane which is to be executed between a cane grower and the occupier of a factory is given in Form B and that between cane growers' co-operative society and the occupier of a factory is given in Form C and they mention the terms thereof. Para 1 of Form B contains the agreement of the sugarcane grower to sell his sugarcane crop (giving details of area and approximate yield) to the occupier of the factory at the minimum price notified by the Government and on such dates as may be specified in requisition slips issued by the said occupier. Para 2 provides that the cane shall be taken by the factory in installments equitably spread over the whole working period of factory. Para 3 provides that in the event of willful failure to supply at least 85 per cent of the agreed quantity of sugarcane, the cane grower shall be liable to pay the factory compensation at the rate not exceeding thirty-three naya paise per quintal on such deficit. Para 4 provides that in case the cane grower willfully fails to supply sugarcane to the factory on three consecutive occasions according to the requisition made by the factory, he shall cease to have a claim to sell cane to the factory. Para 6 is important and it provides that in the event of a break down at the factory or of other circumstances due to natural causes, calamities, accident beyond human control arising to show that the factory will not be able to purchase the cane it has agreed to purchase, the cane grower, after giving a week's notice to the occupier of the factory and with the previous permission of the Cane Commissioner shall have the option of making other arrangements for the disposal of the cane and in such case no compensation shall be payable by either party to the other.

17. Form C is the proforma of the agreement which has to be executed between the cane growers' co-operative society and the occupier of a factory regarding sale and purchase of sugarcane. Para 1 of this proforma contains the agreement of the society to sell sugarcane (giving details of the area and the quality) to the factory at the minimum price notified by the Government and the supply has to be made in such quantities and on such dates as may be specified in the requisition slips issued by the occupier. It also contains a proviso that the price payable by the factory to the society shall not in any case be lower than that paid generally by the factory to other growers of the villages in which co-operative society operates. The remaining paragraphs of the agreement are almost similar to that of proforma in Form B regarding supply of cane being taken by the factory in installments equitable spread over the whole working period of the factory, compensation to be paid by society to the factory in the event of deficit and the right of the society to make other arrangements for the disposal of the cane with the previous permission of the Cane Commissioner in the event of break down or happening of other circumstances where under factory is

unable to purchase the sugarcane.

18. A sugar factory normally runs in shifts for the whole day during the crushing season and it needs a continuous supply of freshly harvested sugarcane according to its daily crushing capacity which should be spread over the entire crushing season of about six months. The U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 and the U.P. Sugarcane Supply and Purchase Order, 1954, have been made to achieve that object. Any shortfall in supply of sugarcane to sugar factory will seriously affect its production resulting in huge losses. Therefore, the first and foremost requirement for the profitable running of the sugar factory is that it should get adequate quantity of sugarcane everyday throughout the crushing season and for ensuring this, a system of reserving or assigning an area in favour of sugar factory has been evolved under Section 15 of the Act. The reservation of an area ensures the supply of the entire sugarcane grown therein to the factory in whose favour it has been reserved. Similarly the assignment of an area ensures the supply of such quantity of sugarcane to the factory in whose favour it has been assigned as may be determined by the Cane Commissioner. Another advantage to the sugar factory is that sugarcane from its reserved or assigned area cannot be sold to any other factory in the vicinity even if it offers a higher price to a grower. This arrangement does not allow the market forces to operate and thereby completely avoids competition amongst the sugar factories which could lead to escalation in prices. It is common knowledge that every sugar factory is keen to have the maximum area reserved or assigned for it so that it may get adequate raw material. Sugarcane requires a particular type of soil and climatic condition and cannot be grown everywhere. The sugar factories are established in the sugar producing belt in close proximity with each other and very often there are competing claims for reservation or assignment of an area in their favour. It is for this reason that an appeal is provided under Section 15(4) of the Act against an order made under Section 15(1) of the Act by the Cane Commissioner reserving or assigning an area in favour of sugar factory. Once an area is reserved in favour of a factory the cane grower in the said area or the cane growers' co-operative society operating therein gets tied to that factory and has to compulsorily enter into an agreement in prescribed proforma (Form B or Form C) given in the Appendix to 1954 Order. In view of Clause 5 of the said Order cane grown in the reserved or assigned area cannot be purchased by anyone without the previous issue of requisition slips and identification cards to the growers by the occupier of the factory and in the case of members of the cane growers co-operative society by such society. Since the requisition slips are non-transferable and they are issued by the sugar factory according to its requirement of sugarcane, it thereby completely controls the purchase of sugarcane from a reserved or assigned area. The terms of the agreement in Form B and Form C are also quite stringent as in the event of failure to supply at least eighty-five per cent of the agreed quantity of sugarcane the cane grower or the cane growers' co-operative society has to pay compensation. Even in the event of a break down in the factory or its inability to purchase due to calamities or circumstances beyond human control, the cane grower or the cane growers' co-operative society is not at liberty to make any other arrangement for disposal of cane except after giving a week's notice to the factory and obtaining prior permission of the Cane Commissioner. Here too no compensation is payable by the factory to the cane grower or the cane growers' co-operative society for the loss which may be suffered on this account.

19. The provisions referred to above have been made for the benefit of the sugar factory so that it is assured of and gets a continuous supply of freshly harvested sugarcane in quantity according to its crushing capacity and for the whole duration of the crushing season. No doubt the cane grower also gets some advantage in the sense that purchase of his yield is assured but at the same time many limitations and restrictions are imposed upon him. In view of the aforesaid statutory provisions, the position of a cane grower becomes entirely different from that of a farmer producing any

other kind of agricultural crop where there are absolutely no restrictions upon him. He is at absolute liberty to harvest his crop at his convenience without being dictated by a third party, to sell it to anyone whomsoever he likes and whenever he wants. It is in this scenario, which is not the creation of the cane grower but of the statutory provisions operating in the field, that we have to examine the question whether the State has any authority or power to fix the price of the sugarcane supplied to a producer of sugar (sugar factory).

20. The preamble of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is - an Act to regulate the supply and purchase of sugarcane for use in sugar factories, gur, rab or khandsari sugar manufacturing units. The various provisions of the Act show in unmistakable terms that it regulates the supply and purchase of sugarcane required for use in sugar factories. 'Regulate' means to control or to adjust by rule or to subject to governing principles. It is a word of broad impact having wide meaning comprehending all facets not only specifically enumerated in the Act, but also embraces within its fold the powers incidental to the regulation envisaged in good faith and its meaning has to be ascertained in the context in which it has been used and the purpose of the statute.

21. In State of Tamilnadu v. M/s. Hindu Stone & Ors. 1981 (2) SCC 205 it was held that regulation must receive so wide an amplitude so as to impute prohibition within its fold. It will be useful to reproduce the relevant part of para 10 of the Report wherein this principle was succinctly stated by Chinappa Reddy, J. in following words:-

"..... We do not think that 'regulation' has that rigidity of meaning as never to take in 'prohibition'. Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J. in G.K. Krishnan v. State of Tamil Nadu, 1975 (1) SCC 375 : "The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied". In modern statutes concerned as they are with economic and social activities, 'regulation' must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in Commonwealth of Australia v. Bank of New South Wales, (1949) 2 All ER 755 (PC) - and we agree with what was said therein - that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

Again in *K. Ramanathan v. State of Tamilnadu & Anr.* 1985 (2) SCC 116 it was held that the word 'regulation' cannot have any rigid or inflexible meaning so as to exclude prohibition. It is a word of broad import, having a broad meaning and is very comprehensive in scope. It was further held that the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed or the making of a rule with respect to the subject to be regulated. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation.

22. In *VSR & Oil Mills Vs. State of A.P.* AIR 1964 SC 1781 agreements for a period of ten years had been executed for supply of electricity and the same did not contain any provision authorising the Government to increase the rates during their operation. However the State Government issued orders enhancing the agreed rates exercising power under Section 3(1) of Madras Essential Articles Control & Requisitioning (Temporary Powers) Act, 1949 which reads as under:

".....The State Government so far as it appears to them to be necessary or expedient for maintaining, increasing or securing supplies of essential articles or for arranging for their equitable distribution and availability at fair prices may, by notified order, provide for regulating or prohibiting the supply, distribution and transport of essential articles and trade and commerce therein."

The enhancement in rates was challenged on the ground that any increase in agreed tariff was out of the purview of Section 3(1). Chief Justice Gajendragadkar, speaking for the Constitution Bench, held as under:

"The word regulate is wide enough to confer power on the State to regulate either by increasing the rate or decreasing the rate, the test being what is it that is necessary or expedient to be done to maintain, increase, or secure supply of the essential articles in question and to arrange for its equitable distribution and its availability at fair prices. The concept of fair prices to which Section 3 (1) expressly refers does not mean that the price once fixed must either remain stationary, or must be reduced in order to attract the power to regulate. The power to regulate can be exercised for ensuring the payment of a fair price, and the fixation of a fair price would inevitably depend upon a consideration of all relevant and economic factors which contribute to the determination of such a fair price. If the fair price indicated on a dispassionate consideration of all relevant factors turns out to be higher than the price fixed and prevailing, then the power to regulate the price must necessarily include the power to increase so as to make it fair. Hence the challenge to the validity of orders increasing the agreed tariff rate on the ground that they are outside the purview of Section 3(1) cannot be sustained."

In *Jiyajeerao Cotton Mills Ltd. & Anr. v. Madhya Pradesh Electricity Board & Anr.* 1989 (Suppl) 2 SCC 52 the validity of the orders providing for higher charges/tariff for electricity consumed beyond legally fixed limit was upheld in view of Section 22(b) of the Electricity Act which permits the State Government to issue an appropriate order for regulating the supply, distribution and consumption of electricity. It was held that the Court while interpreting the expression "regulate" must necessarily keep in view the object to be achieved and the mischief sought to be remedied. The necessity for issuing the orders arose out of the scarcity of electricity available to the Board for supplying to its customers and, therefore, in this background the demand for higher charges/tariff was held to be a part of a regulatory

measure. In Quarry Owners' Association v. State of Bihar 2000(8) SCC 655 the question which required consideration was whether the State Government had the power to fix the rate of royalties in Mines and Minerals (Regulation and Development) Act, 1957. The Court after taking note of the fact that the words "regulation of mines and mineral development" are incorporated both in the Preamble and the Statement of Objects and Reasons of the Act held that the word "regulation" may have different meaning in different context but considering it in relation to the economic and social activities including the development and excavation of mine, the fixation of the rate of royalties would also be included within its meaning. In Deepak Theatre, Dhuri v. State of Punjab & Ors. (1992) Supp. 1 SCC 684 while interpreting the Cinemas Regulations Act, 1952 and having regard to the preamble thereto - an Act to make provision for regulating exhibition of cinematographs - it was held that classification of seats and fixation of rates of admission according to paying capacity of a cinegoer is also an integral power of regulation and, therefore, fixation of rates of admission became a legitimate ancillary or incidental power in furtherance of the regulation under the Act.

23. The 1953 Act, the Rules and 1954 Order substantially deal with sale and purchase of sugarcane. Section 16 (1) provides that the State Government may, for maintaining supplies, by order, regulate sale or purchase of cane in any reserved or assigned area or purchase of cane in area other than a reserved or assigned area. Section 16(2)(b) of the Act lays down that the order may provide for the manner in which cane grown in a reserved or assigned area shall be purchased by the factory and the circumstances in which cane grown by cane growers shall not be purchased except through a cane growers' cooperative society. Section 17 enjoins speedy payment of the price of cane purchased by occupier of a factory, payment of interest where default occurs for a period exceeding 15 days from the date of delivery and recovery of amount by the Collector as arrears of land revenue on a certificate issued by the Cane Commissioner. Rule 38-A requires weighment clerk to calculate the cane price correctly after weighment of cane and the clerk appointed by the society to examine that the weight and price are correctly recorded in the parchas. Rule 96 mandates that cane shall not be purchased at the purchasing centre without preparing a parcha in quadruplicate mentioning amongst others the rate at which the cane is purchased and the price that has to be paid for the same and Rule 100 casts a duty upon the occupier of the factory to maintain separately for each cane grower a complete account of several items including the rate per quintal paid for cane.

24. Sugarcane supplied to sugar factory are "goods" within the meaning of Section 2(7) of Sale of Goods Act. Sub-section (1) of Section 4 of Sale of Goods Act provides that 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. Sub-section (3) of the same Section provides that where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of property in the goods is to take place at a future time or subject to some conditions thereafter to be specified, the contract is called an agreement to sell. Section 5 provides that a contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. These provisions show that price is an essential element of sale of goods.

25. In Popatlal Shah v. State of Madras 1953 SCR 677 it was held by a Constitution Bench that the expression "sale of goods" is a composite expression consisting of various ingredients or elements. There are the elements of a bargain or contract of sale, the payment or promise of payment of price, the delivery of goods and the actual passing of title and each one of them is essential to a transaction of sale though the sale is not completed or concluded unless the purchaser becomes the owner of property. In State of Madras v. Gannon Dunkerley 1958 SCR 379 (at page 397) it was observed that according to the law both of England and of India, in order to constitute a sale it is necessary that there should be an agreement between the parties

for the purpose of transferring title to the goods which, of course, presupposes capacity to contract, that it must be supported by money consideration and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale. The law is, therefore, well settled that in a matter relating to sale of movable property or goods, price is an essential element of the transaction.

26 The Preamble of the 1953 Act says "An Act to regulate the supply and purchase of sugarcane required for use in sugar factories" The provisions of the Act referred to above also show that the legislature has made very elaborate provisions regarding supply of sugarcane by canegrowers, its purchase by the sugar factories and payment of price thereof. In fact, very detailed and exhaustive provisions have been made in the Rules and the 1954 Order to ensure that at the time of delivery of sugarcane by the canegrowers, its weight and price is correctly recorded and the price is paid to them within 14 days, failing which sugar factory is liable to pay interest. In such circumstances, the irresistible conclusion which can be drawn is that the regulatory power possessed by the State Government shall also include the power to fix the price of the sugarcane. If it is held that the State under its power of regulation cannot fix the price, then the statutory provision contained in the 1953 Act, the Rules and 1954 Order will become completely one sided, operating entirely for the benefit of sugar factories giving them many advantages with no corresponding obligations and leaving the canegrower in a lurch with host of restrictions upon him. This can never be the intention of the Legislature. It will not be fair to read the Act and the Rules in such a restrictive manner, whereby the provisions made for the benefit of the canegrowers become wholly illusory.

27. It has been urged by learned counsel for respondents that the expression "at the minimum price notified by Government" used in the proforma of the agreement which is to be executed between a canegrower and the occupier of the factory as given in Form B and that which is to be executed between a canegrowers' cooperative society and the occupier of the factory as given in Form C in the appendix to 1954 Order indicates that it is only the minimum price fixed by the Central Government which can be the consideration or price for the sale of sugarcane to the sugar factory. Strong reliance in support of this submission has been placed upon certain observations made by this Court in *Ch. Tika Ramji & Ors. v. State of Uttar Pradesh & Ors.*, 1956 SCR 393. The proforma of agreement viz. Forms B and C are contained in the appendix to U.P. Sugarcane Supply and Purchase Order, 1954. This Order has been made by U.P. Government in exercise of the power conferred by Section 16 of the 1953 Act, which provides that the State Government may for maintaining supplies by Order regulate the distribution, sale or purchase of cane in any reserved or assigned area, etc. The Order having been made by the State Government in exercise of a power conferred by an Act made by U.P. legislature, the only logical inference which can be drawn is that the word "Government" refers to State Government. There is no indication in the proforma of the agreement or in the 1954 Order that the word "Government" would refer to Central Government. If the State Government is prescribing a proforma of an agreement which is to be executed by a canegrower or a canegrowers' cooperative society and the occupier of the factory regarding sale and purchase of sugarcane wherein the word "Government" is used, it can only mean the State Government and not the Central Government unless there is clear indication to the contrary.

28. The observations made in *Tika Ramji* (supra), strong reliance on which is placed by learned counsel for the respondents, have to be understood in the context in which they were made. It may be noted that the writ petitions in the said case were filed in this Court in the year 1954 and the judgment was delivered on 24.4.1956. At the relevant time, it was the Sugarcane (Control) Order, 1955 which was in operation. Clause 3 of this Order empowered the Central Government to fix the price or the minimum price to be paid by a producer of sugar for sugarcane purchased by him. The 1955 Order has been repealed by Sugarcane (Control) Order,

1966 and Clause 3 of this Order provides that the Central Government may fix the minimum price of sugarcane to be paid by producers of sugar. There is a difference between "the price" which is a fixed amount and "the minimum price" which only indicates the lowest permissible rate. The 1966 Order which itself was made by the Central Government more than a decade after the judgment was rendered in Tika Ramji was amended in 1978 and Clauses 3(3) and 3-A thereof contemplate an "agreed price" which in view of the mandate of Clause 3(2) is bound to be higher than the "minimum price" fixed under Clause 3(1). Naturally it is this "agreed price" which is to be mentioned in the agreements for sale and purchase of sugarcane in Forms B and C otherwise the very purpose of entering into agreements would be defeated. The State Government had not fixed any price for the sugarcane under its regulatory power by the time Tika Ramji (supra) was decided by this Court in April, 1956 and only the Central Government had taken a step for fixing the price. It was in these circumstances that it was observed that the "price fixed by the Government" would mean "the Central Government". The observations relied upon by the learned counsel for the respondents were made while considering the question whether there was any repugnancy between the provisions of the Sugarcane Control Order 1955 and the 1953 Act, the Rules and 1954 Order and they should be understood in that context. The relevant portion of the judgment on page 434 is being reproduced below :

"The price of cane fixed by Government here only meant the price fixed by the appropriate Government which would be the Central Government, under clause 3 of the Sugarcane Control Order, 1955, because in fact the U.P. State Government never fixed the price of sugarcane to be purchased by the factories. Even the provisions in behalf of the agreements contained in clauses 3 and 4 of the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, provided that the price was to be the minimum price to be notified by the Government subject to such deductions, if any, as may be notified by the Government from time to time meaning thereby the Central Government, the State Government not having made any provision in that behalf at any time whatever. The provisions thus made by the Sugarcane Control Order, 1955, did not find their place either in the impugned Act or the Rules made thereunder or the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954; and the provision contained in Section 17 of the impugned Act in regard to the payment of sugarcane price and recovery thereof as if it was an arrear of land revenue did not find its place in the Sugarcane Control Order, 1955."

Having regard to the factual situation then existing that U.P. Government had not fixed the price of the sugarcane, it was held that the price of the cane fixed by the Government could only mean "Central Government". It has not been laid down as a principle of law that the words "minimum price notified by Government" must necessarily mean the minimum price fixed by the Central Government or that under no circumstances it can mean the price fixed by the State Government.

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 canegrowers and canegrowers' 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 canegrowers. 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 the

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 canegrowers or canegrowers' 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*, 1968 (1) SCR 479. 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 & 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 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, they 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 number of authorities, the Court held as under :

"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 Sugar Mills Ltd. v. State of Andhra Pradesh*, 1968 (1) SCR 705, the question of compulsion by law to enter into an agreement was considered by a Constitution Bench. Under the Andhra Pradesh (Regulation of Supply and Purchase) Act, 1961, the occupier of a sugar factory had to buy sugarcane from canegrowers 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 canegrowers, their purchases were not made under agreements and were not taxable under Entry 54 List II having regard to *Gannon Dunkerley's case*. The contention was repelled after a thorough analysis of the legal position and the following observations on page 711 of the Report show that the challenge raised by the respondents here has no substance :

"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 in so far 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 No.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 page 712, the Court made the following observation :

"..... 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 No.45 of 1961 is to regulate the purchase of sugarcane by the factory owners from the canegrowers. The canegrowers 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 canegrowers and the factory owners, the law stepped in and compelled the factory to enter into contracts of purchase of cane offered by the canegrowers 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 & Ors.*, 1971 (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 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 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 organized society. In para 44 of the Reports it was held as under :

"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 agreements 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 & Ors., 1982 (2) SCC 150, after considering the provisions of 1966 Order and 1953 Act made by 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 following words in para 22 of the Reports:

".....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 canegrowers or canegrowers' 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 for 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 the Parliament and would be void in view of Article 254(1) of the Constitution. In *Ch. Tika Ramji (supra)* it has been held that the E.C. Act under which the Central Government made the 1966 Order and the 1953 Act made by 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 page 437 of the Reports the Court quoted with approval the following passage from the judgment of Sulaiman J. in *Shyamkant Lal Vs. Rambhajan Singh* 1939 FCR 188 (at 212) for the principle of construction in regard to repugnancy :

"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....."

And then went to hold :

"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*, AIR 1979 SC 898, the principles to be applied for determining repugnancy between a law made by Parliament and law made by State legislature were considered by a Constitution Bench. In pursuance of an FIR lodged against Shri M. Karunanidhi the CBI after investigation had submitted chargesheet against him under Section 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 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 Indian Penal Code, Prevention of Corruption Act and Criminal Law Amendment Act stood repealed. After review of all the earlier authorities Court laid down the following tests :

"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."

The same question was examined in considerable detail in *M/s Hoechst Pharmaceuticals Ltd. v. State of Bihar*, AIR 1983 SC 1019 and it was held that one of the occasion 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 Engineering Industries Ltd. v. Sri Kishan Bhageria & Ors.*, AIR 1988 SC 329, Sabyasachi Mukharji, J. opined that the best test of repugnancy is that if one prevails, the other cannot prevail.

36. In *S. Satyapal Reddy & Ors. v. Govt. of A.P. & Ors.*, 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 *Dr. Preeti Srivastava v. State of M.P. & Ors.*, 1999 (7) SCC 120, it was held that laying down higher eligibility qualification by the State Government for admission to Post Graduate Medical Courses did not lead to any kind of repugnancy.

37. Under Sub-section (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 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. & Ors. v. State of Maharashtra & Ors.* 1995 Supp. (3) SCC 475 (paras 11, 12, 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 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 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 Second Schedule to the 1966 Order. In paragraph 21, it was observed as under :

".....The price is fixed, may be, 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....."

The next is State of M.P. v. Jaora Sugar Mills Ltd. & Ors., 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. Sugar (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 de hors 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 Reports :

"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."

It was observed in paras 9 and 10 that there was no prohibition for the canegrowers 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 some what similar to U.P. Act, it was held as under in para 13 of the Reports:

"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."

SKG Sugar Ltd. v. State of Bihar 1997 (9) SCC 362 is a decision by the Bench of three judges and deals with the effect of 1966 Control Order and the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981. It was clearly ruled that the provisions of 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 canegrowers 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 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. (supra) it was held as under in para 6 of the reports :

"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 where at 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....."

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

39. These cases clearly lay down that under the 1966 Order the Central Government only fixes the minimum price and it is always open to the State Government to fix a higher price. Under the enactments made by the State Legislatures areas are reserved for the sugar factories and the canegrowers therein are compelled to supply sugarcane to them and therefore the State Government has incidental power to fix the price of sugarcane which will also be statutory price. They further lay down that the Cane Commissioner can direct the canegrowers and the sugar factories to enter into agreements for purchase of sugarcane at a price fixed by the State Government and such agreements cannot be branded as having been obtained by force or compulsion.

40. Learned senior counsel for the respondents has placed strong reliance on certain observations made in State of Tamil Nadu v. Kothari Sugars and Chemicals Ltd., 1996 (7) SCC 751, which is a decision by a Bench of two judges. In our opinion, this decision can be of no assistance to the respondents as the point for consideration here was entirely different, which will be evident from paras 1 and 3 of the judgment which read as under :
"Para 1. The question for decision is :Whether for the purchase of sugarcane from the canegrowers, a purchaser is liable to pay purchase tax under the State Sales Tax Act on the

amount paid by the purchaser to the canegrower over and above the price fixed under clauses 3 and 5-A of the Sugarcane (Control) Order, 1966 ?

Para 3. The occasion for payment by the purchaser of the amount in excess of the aggregate of the minimum cane price and the additional cane price so fixed, arises on account of an order of the State Government dated 15.11.1980 purporting to fix a higher revised minimum cane price and directing the sugar factories in Tamil Nadu to pay that price to the canegrowers. Pursuant to the direction, each sugar factory was directed to make that payment and in compliance thereof this sugar factory paid the excess amount as an 'advance' described as under :

"..... being advance payment towards cane supply during 1980-81 season, against probable additional cane price under Section 5-A of the Sugarcane (Control) Order, 1966."

41. It is important to note that in Tamil Nadu there is no statutory provision for regulating the supply and purchase of sugarcane for use in sugar factories or khandsari sugar manufacturing units. Therefore, the order of the State Government dated 15.11.1980 fixing higher revised minimum cane price had not been issued in exercise of any statutory power. In para 6 of the Reports, the Court observed that unless there be an agreement between the grower and the purchaser for purchase of the sugarcane at 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. It was further observed that without any contractual or statutory basis fixing the sale price of sugarcane 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 cannot form part of the price of sugarcane. It was pointed out in para 7 that the State advice to the purchasers to pay certain amount in addition to the minimum price fixed under Clause 3 in anticipation of fixation of the additional cane price under Clause 5-A, does not have any statutory basis. The amount of advance was paid in anticipation of fixation of additional cane price under Clause 5-A, which means that in case the fixation under Clause 5-A was at a higher amount than the amount paid as advance, then the purchaser would have to pay the deficit amount. Similarly, when the amount of advance was in excess, the purchaser would be entitled to refund of the excess amount, irrespective of the fact that whether the refund was actually made or not. Any amount paid by way of advance towards a probable additional price to be worked out in accordance with the formula given in the 1966 Order could not be treated as price of sugarcane for the purpose of levy of sales tax. In fact in para 9 of the reports it was observed that for treating the entire amount paid by the purchaser as the price of the sugarcane supplied, it must be found proved as a fact that the higher price including the excess amount was paid as the price of sugarcane under an agreement between the grower and the purchaser irrespective of a lower amount being fixed as an aggregate of the price fixed under Clauses 3 and 5-A of the 1966 Order. It was further held that 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 part of the amount paid in advance prior to the fixation of the additional price under Clause 5-A, cannot be treated automatically as a part of the total price of the sugarcane.

42. The question in issue here did not come up for consideration before the Bench and some general observations made in the course of the reasoning given in a matter dealing with liability to pay tax on some amount which was paid by sugar factory as "advance" towards the probable additional cane price under Clause 5-A cannot be construed as an expression of opinion on the merits of the matter. It is well settled that a decision is an authority for what it actually decides and not what logically

flows from it. Every observation of Court are not to be interpreted or used like provisions of Statute as if they were part of an Act. It is, therefore, not possible to hold that the Court laid down any principle of law that it is not open to the State to fix higher price or that there could be no agreement between the canegrowers and the occupier of the factory for payment of higher price.

43 One of the main reasons given by the High Court for allowing the writ petition and quashing the order of fixation of State Advised Price is that power to fix sugarcane price had been given to the State Government under the Sugarcane Act, 1934 and hence it would be redundancy to say that the same power to fix cane price also flows from Section 16 of the 1953 Act. The High Court has also held that when the 1953 Act was enacted there was already a law, viz., the Sugarcane Act, 1934, which enabled the State Government to fix the minimum cane price and hence, it could not have been the intention of the U.P. Legislature while enacting 1953 Act that Section 16 thereof would include the power to fix the minimum cane price as such a power was already there with the State Government under Section 3(2) of the Sugarcane Act, 1934. The High Court, therefore, concluded that Section 16 of the 1953 Act only gave power to the State Government to regulate the supply and purchase of sugarcane in the narrower sense and not in the wider sense so as to include the power to fix the minimum price. This reasoning of the High Court proceeds on the footing that the Sugarcane Act, 1934 was in existence and was in operation when the 1953 Act was enacted by U.P. Legislature. It appears that the correct legal position was not brought to the notice of the learned judges. The Sugarcane Act, 1934 was repealed by U.P. Sugar Factories Control Act, 1938 (UP Act No.1 of 1938). Section 26 of U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 repealed the U.P. Sugar Factories Control Act, 1938. With the enforcement of the Government of India Act, 1935, there was distribution of legislative powers between the Dominion Legislature and the Provincial Legislature and the entire subject matter of Sugarcane Act, 1934 fell within the Provincial Legislative list. It was in these circumstances that the U.P. Legislature enacted the U.P. Sugar Factories Control Act, 1938 which repealed the Sugarcane Act, 1934 in its application in the State of U.P. This position has been noticed in Ch. Tika Ramji & Ors. v. State of Uttar Pradesh & Ors., 1956 SCR 393 at page 400, 401 and 417. Therefore, the aforesaid reasoning given by the High Court has no legal basis.

44. The second reasoning given by the High Court is that even if the State Government had the power to fix the minimum cane price under Section 16 of the 1953 Act, this power came to an end in view of Article 254(1) of the Constitution on the enactment of the E.C. Act and the promulgation of the Sugarcane Control Order, 1955 (later replaced by the 1966 Order), which now gives exclusive power to the Central Government to fix the minimum price. As discussed earlier we are not in agreement with the aforesaid reasoning as the question of repugnancy does not arise. The High Court has also held that the Central Government, while fixing the price of the sugar under Section 3(3C) of the E.C. Act, takes into consideration the minimum price of sugarcane fixed under 1966 Order and if the sugar mills are compelled to pay a higher price than that fixed by the Central Government, it will disturb the price of the levy sugar and such an eventuality could not have been contemplated by the legislature. Over a period of time, the quota of levy sugar has gone down from 40 per cent to 10 per cent of the total production of sugar and the sugar mills are now free to sell 90 per cent of their production in open market. Under Section 3(3C) of the E.C. Act, the Central Government has to determine the price of the levy sugar having regard to several factors enumerated in the sub-section and the minimum price fixed under 1966 Order is only one of the factors. The manufacturing cost of sugar and securing of reasonable return on the capital employed in the business of manufacturing sugar are also relevant factors under Clauses (b) and (d) of Section 3(3C) E.C. Act and, therefore, the fixation of higher price for sugarcane by the State Government by itself cannot have any major or substantial impact on the fixation of the price of the levy sugar by the Central Government.

45. Shri Shanti Bhushan, learned senior counsel, has strenuously urged that the fixation of higher price by the State Government will seriously affect the economy of the sugar factories inasmuch as the price of the sugarcane is a very major factor and contributes to the extent of 70 per cent of the price of sugar. Learned counsel has submitted that any increase in the price of sugarcane by the State Government is bound to result in a serious financial crisis for the sugar factories which are already passing through a bad phase and are suffering huge losses. He has also placed before the Court some facts and data to show that the sugar mills being run by U.P. State Sugar Corporation and those under the cooperative sector, which pay the State Advised Price for sugarcane, are running on huge losses. Reports have also been placed to show that the State Government has given heavy amounts by way of subsidy to these sugar factories in order to sustain the loss. The contention is that the payment of State Advised Price by the sugar factories will result in a virtual closure of the sugar industry. Shri Rakesh Dwivedi, learned senior counsel for appellant, has seriously disputed the aforesaid submission and has urged that the respondent sugar factories have not produced their balance sheets to show that they are in fact running on losses. He has submitted that virtually all the factories being run by the U.P. State Sugar Corporation were established in Nineteen Thirties, have very old machinery and technology and are over-staffed and the main reason for the losses suffered by them is their poor performance on account of the frequent breakdowns, the machinery being old and employment of excessive manpower and not the price of sugarcane. The U.P. State Sugar Corporation, it is urged, could not invest money in order to improve the technology or install new machinery due to financial crunch. Shri Dwivedi has also placed before the Court data relating to some of the factories being run under cooperative sector which have made profits.

46. Learned counsel for both the sides have also placed reliance on the Report of the Sugar Industry Inquiry Commission, 1974, also known as 'Bhargava Commission', which was given on 27.2.1974. Shri Chidambaram has referred to paragraphs 1.20, 1.23 and 1.24 of the Report, wherein it is said that there is need not only to intensify cane development work to increase the sugarcane yield, but also to bring more area under sugarcane. Sugarcane occupies land for a longer period than any other crop, its period of growth extending from 10 months to 18 months and during this period, two or more other crops can be grown, which give the farmer a quicker return for his investment. Sugarcane also needs larger investment in the inputs. It, therefore, recommended that the statutory minimum cane price be so fixed that the return from the sugarcane has an edge over the return from other alternative crops, in which technological breakthrough had already been achieved, and should be varied from year to year in future in proportion to the changes in return from other competitive crops and that it wholly covered the cost of cultivation in all major cane growing regions. Shri Chidambaram has also urged that para 2.22 of Chapter II of the Report shows that the Central Government, while fixing the minimum price of sugarcane, does not take into consideration extra realization from molasses. Molasses, which is a bye product of sugar industry, is the main raw material for production of rectified spirit, potable and industrial alcohol and ethmol. Learned counsel has submitted that on account of decontrol of molasses and its heavy demand, the sugar mills earn considerable amount of money from the sale of this bye product. Besides molasses, bagasse and press mud are also produced in the manufacture of sugar which are again not taken into consideration. Bagasse is used in co-generation and also for manufacture of paper and press mud is used in manufacture of manure. According to learned counsel, since these three items from which sugar factories earn considerable amount of money are not taken into consideration by the Central Government, the minimum price fixed under the 1966 Order is not realistic. The State Government is aware of the local conditions like cost of the inputs and labour etc. and as it also takes into consideration the aforesaid factors (molasses, bagasse and press mud) the price of the sugarcane fixed by it reflects the correct price.

47. Shri Shanti Bhushan has also placed before the Court a copy of the order passed by the Central Government under Clause 3 of the 1966 Order on 9.1.2003 fixing the minimum price of sugarcane for the sugar year 2002-2003, which shows that prices have been fixed for different factories keeping in view the minimum price of sugarcane at Rs.69.50 per quintal linked to a basic recovery of 8.5 per cent sugar subject to a premium of Rs.0.82 for every 0.1 per cent point increase in the recovery above that level. The chart shows that in the State of U.P. generally the price fixed for sugarcane for most of the sugar mills being run by the U.P. State Sugar Corporation or in cooperative sector (Sahkari) is much lower than the price fixed for the sugar mills being run by private sector. The price of sugarcane fixed for some of the sugar mills, which will illustrate the situation, is given below :

S.No.	Name of Sugar Factory	Minimum Sugarcane Price (Rupees per quintal)
1.	U.P. State Sugar Corporation Ltd. Panninagar, Distt. Bulandshahr.	71.96
2.	U.P. State Sugar Corporation Ltd. Rohana Kalan, Distt. Muzaffarnagar.	73.60
3.	Daurala Sugar Works, Daurala, Distt. Meerut.	89.18
4.	The Upper India Sugar Mills Khatauli, Distt. Muzaffarnagar.	84.26
5.	The Upper Doab Sugar Mills Ltd. Shamli, Distt. Muzaffarnagar.	86.72
6.	Siel Ltd. Titawi, Distt. Muzaffarnagar.	87.54
7.	Bisalpur Kisan Sahakari Chini Mills Ltd. Bisalpur, Distt. Pilibhit.	71.14
8.	L.H. Sugar Factories Ltd. Pilibhit, Distt. Pilibhit.	78.52
9.	Ghaghara Sugar Ltd. Ajhapur, Distt. Lakhimpur Kheri.	86.72

48. Bulandshahr, Meerut and Muzaffarnagar are adjoining districts in Western U.P. but the prices of sugarcane range from Rs.71.96 to Rs.89.18. The Sugar mills at serial nos. 2 and 6 are situate within the same district of Muzaffarnagar, but the difference in prices is almost Rs.14.00. Similarly, sugar mills at serial nos.7 and 8 are situate within the same district of Pilibhit and serial no.9 is in adjoining district of Lakhimpur but the difference in prices is quite substantial. It is not likely that there would be any substantial difference in the quality of cane grown within the same district or in the same area. The prices fixed by the Central Government clearly indicate that a sugarcane grower who falls within the reserved area of a sugar mill run by U.P. State Sugar Corporation or by cooperative sector gets much less while as one who falls within the reserved area of sugar mill run by private sector gets much higher. This is possibly due to the reason that the sugar mills of U.P. State Sugar Corporation are very old having obsolete technology due to which recovery is poor. There is no justifiable reason why a sugarcane grower should suffer only on account of the fact that he happens to fall within the reserved area of a mill run by the U.P. State Sugar Corporation or in the cooperative sector. The State Government fixes uniform prices and not factory wise. Such a fixation of price is, therefore,

more just and equitable from the point of view of a sugarcane grower.

49. It is, however, difficult to form any definite opinion on the factual aspect of the matter only on the basis of the statistical data placed before us by the learned counsel for the parties as a correct or true assessment of the situation cannot be had from the same. Moreover, we are more concerned with the legal aspect of the matter.

50. In view of the discussions made above, Civil Appeals No.460 of 1997 and 461 of 1997 are allowed and the judgment and order dated 11.12.1996 of the High Court is set aside. Civil Appeals No.1727 of 1999 and 4602 of 1999 are dismissed and the judgment and order dated 1.2.1999 of the High Court is affirmed.

Civil Appeal No. 4685 of 1997: The State of Bihar Vs. Bihar Sugar Mills Association

State of Bihar has preferred this appeal by special leave against the judgment and order dated 4.2.1997 of the Patna High Court by which the writ petition preferred by Bihar Sugar Mills Association was allowed and the order dated 29.11.1996 passed by the Sugarcane Commissioner, Bihar, fixing the price of sugarcane for crushing season 1996-97 was quashed. For doing so, the High Court basically relied upon the provisions of Sugarcane (Control) Order, 1966 issued by the Central Government and also the judgment and order dated 11.12.1996 of Allahabad High Court in CMWP no. 36889 of 1996 (West U.P. Sugar Mills Association v. State of U.P.). The High Court did not examine the provisions of Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 in order to ascertain whether under the said Act the State Government has any power to fix the price of sugarcane. We have set aside the judgment of the Allahabad High Court dated 11.12.1996. We are, therefore, of the opinion that the matter requires fresh consideration in the light of our decision in CA No. 460 of 1997 (U.P. Co-operative Cane Unions Federation v. West U.P. Sugar Mills Association). The appeal is accordingly allowed and the judgment and order dated 4.2.1997 of the High Court is set aside and the writ petition is remitted back to the High Court for fresh consideration in accordance with law.

Civil Appeal No.6065 of 2001 : State of Punjab & Ors. v. Saraya Industries Ltd. & Ors. and SLP (C) No. 1363 of 2002 : State of Haryana & Ors. v. The Saraswati Industrial Syndicate Ltd. & Anr.

State of Punjab and State of Haryana have preferred these appeal and special leave petition against the common judgment and order dated 23.12.1998 of Punjab & Haryana High Court by which a bunch of writ petitions preferred by the respondent Sugar Mills were allowed and the direction given by the State Government to the writ petitioners to pay the State Advised Price for the sugarcane purchased by them during the year 1996-97 was declared illegal and it was held that the writ petitioners cannot be compelled to pay any price over and above the statutory minimum price fixed by the Central Government for the sugarcane purchased by them. For doing so, the High Court basically relied upon the provisions of Sugarcane (Control) Order, 1966 issued by the Central Government and also the judgment and order dated 11.12.1996 of Allahabad High Court in CMWP no. 36889 of 1996 (West U.P. Sugar Mills Association v. State of U.P.). The High Court did not examine the provisions of Punjab Sugarcane (Regulation of Supply and Purchase) Act, 1953 in order to ascertain whether under the said Act the State Government has any power to fix the price of sugarcane. We have also set aside the judgment of the Allahabad High Court dated 11.12.1996. We are, therefore, of the opinion that the matter requires fresh consideration in the light of our decision in CA No. 460 of 1997 (U.P. Co-operative Cane Unions Federation v. West U.P. Sugar Mills Association). The appeal and the special leave petition are accordingly allowed and the judgment and order of High Court is set aside and the writ petitions are

remitted back to the High Court for fresh consideration in accordance with law.

CA Nos. 8117-22 of 2001 and SLP(C) No. 16851 of 2001 : Government of Andhra Pradesh & Anr. v. KCP Sugar & Industries Corpn. Ltd. & Ors.

Leave granted in SLP(C) No.16851 of 2001. These appeals by special leave have been preferred by Government of Andhra Pradesh against the judgment and order dated 8.5.2001 of the High Court of Andhra Pradesh by which the writ petition preferred by respondent KCP Sugar Mills was allowed and order passed by the State Government on 4.12.1998 fixing the price of sugarcane was set aside. For doing so, the High Court basically relied upon the provisions of Sugarcane (Control) Order, 1966. The High Court did not examine the provisions of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 in order to ascertain whether under the said Act the State Government has any power to fix the price of sugarcane. We are, therefore, of the opinion that the matter requires fresh consideration in the light of our decision in CA No. 460 of 1997 (U.P. Co-operative Cane Unions Federation v. West U.P. Sugar Mills Association). The appeals are accordingly allowed and the judgment and order dated 8.5.2001 of the High Court is set aside and the writ petition is remitted back to the High Court for fresh consideration in accordance with law.

Transfer Case Nos. 21 and 22 of 2003 : The South Indian Sugar Mills Association, Tamil Nadu V. Government of Tamil Nadu & Ors.

The South Indian Sugar Mills Association, Tamil Nadu filed writ petition praying that a writ of mandamus or any other appropriate writ, order or direction may be issued forbearing the Government of Tamil Nadu and the Commissioner of Sugar and Cane Commissioner, Chennai, from fixing and announcing or notifying any price for sugarcane except the additional price under Clause 5A of the Sugar (Control) Order, 1966, to be paid by the sugar mills in Tamil Nadu to the sugarcane growers for the sugar season 1999-2000. The writ petitions were transferred to this Court and were heard along with CA No. 460 of 1997.

The State of Tamil Nadu has not made any statutory enactment for regulation of supply and purchase of sugarcane. In the counter-affidavit filed on behalf of the respondents it is admitted that the State Government is not fixing State Advised Price for sugarcane in exercise of any statutory power. In fact in para 9 of the counter-affidavit it is stated that the State Government will not make any unilateral announcement of State Advised Price as apprehended by the petitioner. It is further stated that the Government will follow the past practice of consultation with the sugar mill owners and cane growers and only after ascertaining their respective views and making them to come to an agreement on fixation of price, the State Advised Price, as an agreed price, will be recommended by the State Government. In view of the fact that there is no statutory enactment regarding regulation of supply and purchase of sugarcane, it is obvious that the State Government has no power to fix the price of the sugarcane. However, it is always open for the sugar mills to enter into agreements with the sugarcane growers to purchase sugarcane at a price higher than the statutory minimum price fixed by the Central Government. The Transfer Petitions are accordingly disposed of in the aforesaid terms.

SLP (C) No. 948 of 2003 :M/s. Naraingarh Sugar Mills Ltd. v. State of Haryana & Ors.

This Special Leave Petition has been preferred against the judgment and order dated 20.12.2002 of a Division Bench of the Punjab & Haryana High Court by which interim orders passed in favour of petitioner were

vacated. The main ground which weighed with the High Court for vacating the stay order was that the writ petitioner had not even paid the statutory minimum price of sugarcane to the farmers and a sum of Rs.5 crores was due from it. In the facts and circumstances of the case, we do not find any ground to interfere with the order passed by the High Court. The Special Leave Petition is accordingly dismissed.

IA No.3 of 2002 in CA No. 460 of 1997 : New Horizon Sugar Mills Ltd.
Ariyur, Kandamangalam P.O., Pondicherry

This application has been moved in CA No.460 of 1997 (U.P. Co-operative Cane Union Federation v. West U.P. Sugar Mills Association & Ors.). Since the main relief claimed in the application is against Government of Pondicherry which is not party to the civil appeal, it is not possible to grant the prayers made in the application. The application is accordingly dismissed.

JUDIS