

PETITIONER:
MAHARASHTRA RAJYA SAHKARI SAKKAR KARKHANA SANGH LTD.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS. ETC. ETC.

DATE OF JUDGMENT 18/04/1995

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1995 SCC Supl. (3) 475 JT 1995 (3) 581
1995 SCALE (2) 772

ACT:

HEADNOTE:

JUDGMENT:

R.M. SAHAI, J.

1. These are two sets of appeals filed by various Sahakari Sakkar Karkhanas, that is, Co-operative Societies of Sugarcane Growers, Private Undertakings, Joint Stock Companies producing sugar in the State of Maharashtra and the State itself one, directed against direction by a Full Bench of the Bombay High Court in Satara Sahakari Sakhar Karkhana Ltd. & Anr. v. State of Maharashtra & Ors., AIR 1989 Bombay 53 that the cane growers who were not members of any Co-operative Society but who were required to supply their cane under reservation order or Control Orders to sugar factories with which they were attached were entitled to market price instead of price fixed by the Government, and other directed against fixation of market price for 1993-94 by the High Court at Rs. 740/- as against Rs. 340/- to Rs. 400/- fixed by the Government.

2. The directions issued by the Full Bench are as under:

"We are therefore of the view, that unless provisions for the following are made in it, the State Order will not be valid

(i) The sugarcane growers who are not members of the factory or factories to which they are required to supply their sugarcane shall be paid for the sugarcane supplied by them the price calculated at the market rate prevailing in the locality at the date of the sale;

(ii) The market rate may be as agreed between the parties, namely, the sugarcane grower and the factory or factories concerned. If there is any dispute over it, the same should be resolved by an independent authority which may be created under the Order such as the one under clause '12 of the present Order. The au-

thority concerned should decide the dispute expeditiously after hearing the parties and by a speaking order,

(iii) No unauthorised deductions on any account should be made by the factory from the price to be paid to the sugarcane grower without his consent. The State Order should provide for a machinery similar to the above to hear and grant to the sugarcane grower, expeditious relief if he has any complaint in that behalf."

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The reasons for these directions were twofold, one, the non members were not bound by the price fixed under bye-laws framed under the Cooperative Sugar Act and other that there was no machinery in the Zoning Order issued by the State Government to hear the non-members before the price was fixed. Before examining whether these reasons are well founded in law leading to the impugned directions it is necessary to narrate in brief the necessity which impelled the Central Government to grant protection to sugar industry and consequently to control, supply and distribution of the sugarcane without sacrificing the interest of canegrower.

3. Sugar is an item of daily use in every household, rich or poor. Use of white sugar has increased with rolling of years, growth of population, rise in income etc. Today it is somewhere 134 lakh tonnes. Even in 1931 the requirement was more than 9 lakh metric tonnes. But the production was nearly 1.8 lakh metric tonnes only. And there was an import of more than 8 lakh metric tonnes. The Government, therefore, decided to grant protection to the sugar industry. The Bhargava Commission appointed by the Central Government in 1970 in Chapter 1 of Part I of its report has traced the growth and development of the sugar industry and observed that till 1930-31 there were only 29 sugar factories producing 1.22 lakh tonnes of sugar in the country. That was, however, not adequate to meet the internal requirement and nearly 8 lakh tonnes of sugar was imported in that year. In 1932 protection was granted to the sugar industry. Following this there was a phenomenal expansion of the industry and the number of sugar factories increased to 111 in 19-3334 and to 137 in 1936-37. The sugar import which was about 8 lakh tonnes in 1930-31 was almost stopped from 19-3637. Thereafter there was little development of the industry upto 1951-52. The development and regulation of the sugar industry came under the control of Government of India for the first time from May 1952 when the Industries (Development and Regulation) Act, 1951 came into force. All the 138 sugar factories which were working before 1952 were registered under the provisions of Industries (Development and Regulation) Act, 1951. New sugar factories were established thereafter under licences granted by the Central Government. Another important feature of post-1951 development noticed by the Commission was setting up of sugar factories largely in the cooperative sector due to Government policy of giving preference to cooperative societies in the matter of licensing. In respect of State of Maharashtra the Commission observed that sugar industry in Maharashtra was progressing very fast and the sugar production in Maharashtra was expected to reach 16.37 lakh metric tonnes and the State was to become the largest producer of sugar in the country. Today the State accounts for nearly 30% of the sugar output. The national output of sugar for 1991-92, 19-9293 and 1993-94 was 134 106 and 96 lakh metric tonnes respectively. The output of Maharashtra

was 42, 36 and 27 lakh tonnes for the corresponding years. 4. While granting protection to the sugar factory the Government did not ignore the interest of sugarcane growers. It is the basic rather the only raw material for sugar. It is grown by cultivators who were usually exploited or at least were in danger of being exploited. Therefore, the Government agreed for fixing price of cane.

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At a conference called by the Government of India in 1933 representatives of cane growers asked for a minimum price. The Government accepted the demand and in 1934 passed the Sugarcane Act, 193 which conferred powers on the then provincial governments to fix minimum price for the cane. Since 1950 it is being done under Control Orders issued from time to time. The last Order known as Sugarcane (Control) Order was issued by the Central Government in 1966. The main feature of the Order are two-fold one, that it broadened the base for price fixation by providing that the minimum price of cane shall be fixed having regard to the cost of production of sugarcane, the return to the grower from alternative crops, the availability of sugar to consumer at fair price, the price at which sugar produced from sugarcane is sold by producer of sugar and the recovery of sugar from sugarcane. The other is that it regulates distribution and movement of sugarcane by empowering the Government to notify in the Gazette and reserve any area where sugarcane is grown for a factory having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar with a view to enable the factory to purchase the quantity of sugarcane required by it. The Order thus attempts to assure supply of cane to sugar factories and ensure minimum price to cane growers.

5. The Bhargava Commission in Chapters 1 and 11 of Part II dealing with price fixation and stabilisation of supply of cane after examining pros and cons of the various competing interests was of the opinion that the need for steady and adequate supply of cane to the sugar industry from year to year could not be over-emphasised. It felt that an assured and of adequate supply of cane was essential for the working of the sugar industry on an efficient and economic level. The Commission observed that sharp increase and decrease in cane supply from year to year were the bane of the Indian sugar industry. Therefore, it felt that it was imperative that some kind of stability in the matter of supply of raw material to the industries should be brought about. It, therefore, recommended that provisions should be made for agreement between cane growers and factories. The Commission suggested that where Cane Growers' Societies Union operated it would be desirable to have tripartite agreements involving factories, the societies and the growers. It suggested that minimum price be fixed for sugarcane related to a basic recovery of 8.5% with a premium for every 0.1% increase in recovery on proportionate basis. It also recommended that the sales realisation from sugar after expenses should be shared with the cane growers who execute agreement for supply of cane and fulfil their contract. Both these recommendations were accepted. The latter has been incorporated as paragraph 5A in the Sugarcane (Control) Order, 1966 (order for short). The minimum price for cane is fixed for growers throughout the country and recommendations of Bhargava Commission are being followed both in fixing minimum price of cane, and payment of additional price in accordance with formula framed by it appended as Schedule 11 to 1966 Order.

6. In the State of Maharashtra it was the experience of the Government that there were cyclic ups and downs in sugarcane production in the State which adversely affected some of the sugar factories, par-

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ticularly those which were identified as sick and financially weak. The Government found that in times of shortage of sugarcane crop, in the absence of statutory provisions earmarking areas for drawal of cane it became difficult for certain factories to get adequate quantity of cane thereby affecting their obligations towards the cane growers for payment of cane price, employees and workers for payment of their salaries and wages etc. In such situations the State Government was required to assist the factories with huge amounts for enabling them to discharge their obligations by diverting funds with considerable stress and strain on the State Exchequer. The Government found that at times some of the factories starved of sugarcane whereas others exceeded their crushing capacity. In order to find out some solution to these problems the State Government appointed a Committee as an Experts Committee under Government Resolution dated 28th April, 1980 in exercise of the powers delegated to it by Notification issued by the Central Government in 1966. The said Committee was requested to take review of the work done in the past in regard to the formation of zones for Sugar factories; to identify the limitations due to which the object of formation of zones could not be achieved; and to suggest remedial measures in various matters. The Committee submitted its Report in October 1983. After considering the Report the State Government on 12th September 1984 issued the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) Order, 1984. In the Preamble to the Order it is mentioned that the Notification was issued to implement the recommendations of the Experts Committee appointed by it and also to ensure economic viability of large number of sugar factories. The order mentions that since the Government of India had granted letters of intent for establishment of new sugar factories and has stipulated therein that the conversion of the letters of intent into industrial licences shall, inter alia, depend on the State Government notifying the zones for drawal of sugarcane by new sugar factories. The Order defines 'cane grower' either as 'owner' or as a 'tenant' including a body corporate such as a company registered under the Companies Act, 1955 (1 of 1956), a society registered under the Maharashtra Cooperative Societies Act, 1960 (Mah.XXIV of 1961), any body corporate, set up under any law for the time being in force, including an Organisation owned or controlled by the Government of any State or Government of India'. It defines the 'reserved area' to mean, the area reserved for a factory as specified in the schedule pertaining to that factory. Clause (3) of the Order provides that having regard to the crushing capacity of sugar factories and the yield of sugarcane in the reserved areas, and the need for production of sugar, the area as specified in the schedule, shall be reserved for the sugar factory with a view to enabling it to purchase quantity of sugarcane required by it. Sub-clause (2) of Clause 3 prohibits any sugar factory to purchase cane or accept supplies of cane from cane growers except from the area reserved for that factory. The only exception to It is contained in Clauses 4 and 5 of the Order. Clause 4 deals with grant of licence and Clause 5 regulates supply of sugarcane empowering a permit officer to allow a sugar

factory to purchase cane from areas other than the reserved for it under Clause 3 provided he is satisfied that the circumstances mentioned in the clause existed. The order was amended in 1987,

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1988 and 1989. Sub-clause (1A) was added after sub-clause (1) in Clause 3 of the Order issued in 1984 by the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) (Second Amendment) Order, 1987 and it is provided that the area specified in each of the schedules and reserved for the factory mentioned in that schedule in accordance with sub-clause (1) of the clause shall be reviewed by the State Government after every three years and in Clause 4, sub-clause (6A) was added after sub-clause (6) which empowered the licensing authority to allow a sugar factory to manufacture sugar from the sugarcane to be purchased by it from non-members which is grown in the area reserved for it which is overlapping or common with other factories if such factory has entered into contracts for purchase of cane from such growers and if the sugarcane does not exceed the requirements of the factory based on its licensed crushing capacity during any crushing season.

7. Trouble appears to have started after the Notification was issued by the State Government in 1984. Writ petitions were filed by cooperative societies and sugarcane growers challenging the Order as being beyond the scope of the Act and the 1966 Order. It was claimed that the Order was violative of the rights guaranteed under Articles 14 and 19 of the Constitution. The challenge on behalf of the growers that the Order in preventing the cane growers from selling their sugarcane at the best price available imposed an unreasonable restriction. It was claimed that in process of reservation they have been deprived of the highest price in the area, therefore, it was liable to be struck down arbitrary. The prohibition in the Order on enrolment of the members was also challenged. A Division Bench of the Bombay High Court in *The Bahuri Sahakari Sakkar Karkhana Ltd. & Anr. v. State of Maharashtra & Ors.*, AIR 1987 Bombay 248 held that the Order was not violative of the provisions of the Constitution or the Central Government Order of 1966 and the Essential Commodities Act (hereinafter referred to as 'the Act'). Nor did the Bench find any merit in the claim that the reservation policy was violative of any constitutional guarantee as the Orders having been issued in view of the scarcity or non-availability of sugarcane and for securing the equitable distribution the Order was squarely covered in the Directive Policy unfolded by clause (b) of Article 39 of the Constitution. The Bench did not find any merit in the claim that the distribution of sugarcane on the licensing capacity of the sugar factories was violative of any statutory provision or the Constitution as the licence for crushing the sugarcane was granted by the Central Government under the provisions of Industries (Development and Regulation) Act, 1951. The Bench repelled the challenge that the order was arbitrary or violative of Article 14 of the Constitution. Nor it agreed with claim of nonmembers of the cooperative societies that the prohibition in the Order from becoming members or obligation to supply cane to the factory in the reserved area was unreasonable or arbitrary. The Bench observed

"With the sole intention of avoiding cutthroat competition between the different sugar factories as well as the sugarcane growers, the impugned order has been issued. In this

context, it cannot be forgotten that the Co-operative Societies Act has been enacted keeping in view the Directive Principles and the State Policy as

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enshrined in the Constitution. The co-operative movement in the ultimate analysis is socio-economic and moral movement. It is a part of the scheme of decentralisation of wealth and power. Cooperative capitalism is neither co-operation nor socialism. On the other hand, co-operation is a substitute for self-interest of an individual or groups of individuals for the benefit of the whole society. Wealth has no meaning if it is concentrated in few hands. In the absence of decentralisation or equitable distribution of wealth or property, it becomes impropriety. Therefore equitable distribution is the essence of equality. If for achieving this object the impugned order has been issued under the powers conferred by the Essential Commodities Act and the Sugarcane (Control) Order, 1966, then it cannot be said that this equitable distribution results in inequity or arbitrariness. In our view, the criteria adopted and the guidelines laid down are reasonable. They have a nexus with the object sought to be achieved. Without reserving areas qua each factory and regulating the supply of sugarcane to the members or non-members, the object of distribution of the essential commodity viz. the sugarcane, would not have been achieved. Therefore, we find it difficult to accept the challenge raised by the petitioners which is based on Art. 14 of the Constitution of India. "

[Emphasis supplied]

Grievance was also made by the non-members of absence of any hearing by the Permit Officer. It was stated on behalf of the State that it was intended to follow a fair procedure. Note 1 to 7 incorporating the procedure was produced before the Bench. It was found to be reasonable but the Bench was of the view that it required to be given statutory shape by amending 1984 Order. Since the necessary amendments were not made another Bench at Aurangabad held that since the State Government did not carry out the amendment in clause 5(1)(d) of the 1984 Order as pointed out by the Bench in the earlier decision the sugarcane growers had a right to supply sugarcane grown by them to the factory of their choice as they were likely to receive better value in the form of price for the sugarcane grown by them. A contrary view appears to have been taken by another Bench. The controversy was referred to a larger Bench which in paragraph 9 of the Judgment has noticed the views taken by different benches. It then observed that in none of the earlier decisions given by the Division Benches they were called upon to test the validity of the Order on the ground of deprivation of sugarcane grower of the best price available to them. The Bench observed that its validity was challenged only on the ground of the alleged illegality of the restrictions on the freedom to sell and purchase the sugarcane except to and by the factories in whose favour the Reservation Order was issued. The Bench held that the Order issued by the Central Government in 1966 did not provide for

fixation of the maximum price of sugarcane to be supplied by the sugarcane grower to the sugar factories. The Full Bench observed that the Aurangabad Bench had issued the directions permitting the growers to sell their sugarcane at the best price to different factories only because there was no machinery to hear the sugarcane growers before fixing the price and redress their grievance. The Bench found that this direction had not been complied. It thereafter considered the question of fixation of price by dividing the sugarcane growers in two categories one, who are members of any co-operative society and the others who are nonmembers. It held that since those

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growers who were members of the Society had to enter into an agreement under the bye-laws framed which were the same in all co-operative societies they could not make any grievance against fixation of price. It found that even otherwise before the Government which fixed the price they were represented by their elected Board of Directors who protected their interests. In respect of nonmembers it was held that since they were not heard nor they were represented by any one before the Committee they were placed in a double jeopardy and in absence of any machinery to hear them before the price was fixed they were put to grave injustice. The Bench further held that since there was no power in the State Order to fix the maximum price payable to the cane growers, therefore, those growers who were non-members of any sugarcane co-operative society or they were suppliers to non-debtor factories they were not bound by the prices fixed by the State Government. The price fixation was binding only on the members of the debtor factory. Having reached the conclusion that the price fixation was not binding on the non-members, therefore, "they have a choice either not to supply the sugar to any of the factories or to sell it to the highest bodies", the Bench held that, "the latter freedom of the members is however rendered nugatory by the provisions of clause 3 of the State Order", the effect of which was that the non-members would be placed in a situation where either they had the option not to supply the sugarcane to the factory owners or to resign themselves to their fate by allowing their crop to go waste. To get over this difficulty, what the Bench described as Hobson's choice it resorted to Section (3)(2)(f) of the Act read with Section 3(3)(c) and held that the supply by the growers being in nature of a compulsory sale, they were entitled to supply the sugarcane at the market rate.

8. How far this conclusion of the Full Bench is legally sustainable and whether the reasons in support of it are properly founded is the crux of the matter that requires consideration. Varied submissions on wide spectrum were advanced touching upon not only the provision of the Act, the Central and the State Orders but also the Cooperative Societies Act, the limited' scope of interference by the courts in policy decision and the principles of price fixation in controlled economy. If Sri F.S. Nariman, the learned senior counsel appearing for the Sahkari Karkhanas apprehended the effect of decision to be collapse of zoning system and gradual erosion of cooperative movement in the State, then Sri G. Ramaswamy, the teamed senior counsel appearing for the State could not see any justification for the court to interfere in matters of economic policy and the direction of the Full Bench according to him was violative of the scheme of the Act. Sri Dholakia, yet another senior counsel appearing for the State did not find any rationale

to distinguish between controlled price and the market price as once the price, of any commodity was statutorily fixed under the orders issued by the Government then that alone became the market price. Sri Venugopal the learned senior counsel appearing for private undertakings urged that the Act visualised water tight compartmentalisation of the Order issued under it to balance the interests of consumers and when the Government did not fix any maximum price but provided for payment of minimum price only there was no scope to import the concept of higher price or market price. According to him

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the rationale for price fixation did no suffer from any infirmity nor it caused an prejudice to the cane growers. Sri R. Nariman the learned senior counsel appearing for joint stock companies urged that payment of market price would result in closing down of smaller units as price structure was co-related with yield and not the market. Elaborating their submissions, the learned counsel submitted that the Government of Maharashtra has been encouraging the cooperative movement in the State over the last several decades. As a result of its effort more than hundred sugar factories have come to be established in the cooperative sector. These cooperatives societies span the entire spectrum of the State's agricultural sector. All the sugar-cane-growing areas are covered by one or the other cooperative society which has established its own sugar factory. This development has not only enhanced the sugar production but has changed the very face of the rural Maharashtra. It has brought prosperity and awareness to villagers besides providing several amenities. The cooperative societies supply seeds, fertilizers, agricultural implements and many other goods at comparatively cheaper rates to their members. Many of them run schools and other educational institutions providing education to the children of the sugarcane growers. The interest of the State and the interest of the public demands that this cooperative movement is kept alive and is not allowed to be weakened or stultified. On the contrary, every effort should be made to encourage and promote it since the fate of these factories is indivisibly connected with the well-being and survival of millions of farmers who are their members. After the amendment of the Maharashtra Cooperative Societies Act (reference is to the 1985 Amendment which came into force on and from May 12, 1985) any and every person who seeks to become a member of the society will be enrolled as such. What is called the concept of 'universal membership' has been introduced by the said amendment. Every grower is welcome to join the cooperative society of his area. Nobody who applies will be refused, but if somebody wants to stay out he cannot complain at the same time that he is being paid the same price as the members of the society. It is open to him either not to raise sugarcane or to raise and sell the same to the cooperative factory concerned at the same price as the members. He cannot claim a preferential status. He too can become a member of the society if he likes and avail of all the benefits provided by the society but nobody can help him if he chooses to stay out voluntarily. While the members are under an obligation to raise sugarcane in the specified area year after year, the nonmembers are under no such obligation; they are, free to raise such crops as they choose. The argument further was that the economy of each sugar factory was different for various reasons it was also not possible to ensure an uniform price by all the factories. And if every sugar

factory is compelled to pay price at Rs. 700/- a tonne, as some factories are paying, most of them would go out of market which would cause incalculable damage to the rural economy of the State. If these societies are to be kept alive, it is necessary that a separate price is fixed for each factory having regard to its own economy and other relevant factors. Neither the members can complain of it nor the non-members. So far as the questions of law are concerned, the learned counsel submitted that neither the Central Government nor the State Government made any order un-

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der Section 3(2)(f) of the Act; hence, there was no obligation upon them to ensure the price as contemplated by Section 3(3)(c). It was urged that even if it assumed for the sake of argument that an order under Section 3(2)(f) must be deemed to have been made by necessary implication, even then Section 3(3)(c) must be held to have been satisfied for the reason that the expression 'locality' in clause (c) means, in the context, the reserved area (zone) in which the grower is situated. The price paid by the sugar factory to its members in that zone must be deemed to be and is the market price there is no other price in the said locality and since that is paid to the non-members as well, Section 3(3)(c) is satisfied.

9. Dr. Rajiv Dhawan, the learned senior counsel appearing for the non-members, however, found compulsion flowing from the zoning order both in supply and price which was arbitrary and the basis for it being the efficiency of factory it was wholly extraneous to price fixation for cane growers. Dr. Abhishek Singhvi, the learned senior counsel, did not find any justification for apprehending collapse of zoning or cooperative movement. Dr. Rajiv Dhawan submitted that non-members were not bound by the bye-laws of the society. Those bye-laws are between the society and its members. Because the society is indebted to the State, it is obliged to agree to the price advised by the State Government, the creditor. But so far as the non-members are concerned, there was no reason why they should be bound by the price fixed by the creditor for its debtor. The provisions of the Maharashtra Reservation of Areas Order in effect and in truth create a situation contemplated by Section 3(2)(f). Looking from the point of view of the non-member growers, the situation is no different from the one obtaining had a formal order been made under Section 3(2)(f) requiring the growers to sell their stock to the factory of that zone. The Government cannot simply create such compulsion and leave the growers to the mercy of the factory. In such a situation, the factory would be free to exploit and take advantage of their helplessness. A mere condition in their licence that they shall pay the same price to nonmember growers as is paid to member growers is not sufficient to secure their legal rights. While the factory can wait, the grower cannot, for the reason that if not harvested and used at the appropriate time, the cane dries up, becomes less yielding and then dies. The Government is bound to ensure, in such a situation, price for sugarcane as contemplated by Section 3(3)(c). The Reservation Order cannot be used to promote or perpetuate the cooperative movement in the State nor can it be used as a lever to compel growers to become members of the cooperative societies. There is no such compulsion under the Cooperative Societies Act and such a compulsion cannot be brought about by the Reservation of Areas Order. The nonmembers cannot be punished by compelling them to sell their cane to uneconomic and inefficient

factories at the price such factories can afford, i.e., at a price far lower than the true value and market price of the cane. The members may be so compelled because they may have a stake in the survival of those societies but the non-members have no such ties to the factory. Article 19(1)(c) of the Constitution of India entitles a citizen of this country not to join a society or an association if he does not wish to. He cannot be compelled by law to join a society or an association. No

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person can be compelled to walk into these societies, which are in truth "debtor colonies". Inasmuch as the State has failed to provide or to ensure the market price as contemplated by Section 3(3)(c) of the Act, the Full Bench was right in declaring that the non-members are entitled to sell their sugarcane to whomsoever they like and at whatever price they can obtain. Even with respect to non-members who have entered into agreements with the factories, Dr. Dhawan urged, the situation created by the Government is such that the non-members are also being forced to enter into such agreements. He explains the position thus: even if a non-member does not obtain a loan, he will be paid the very same price for sugarcane as a member of the society. If so, why should a non-member forego the facility of loan which is normally advanced at a lower rate of interest. By foregoing the loan facility, he would be losing at both ends. The vice lies, says Dr. Dhawan, in the very system that has been generated by the statutory orders made by the State. Therefore, he says, the nonmembers cannot be deprived of their liberty to sell their product freely just because they have entered into loan agreements. It is another matter that they may be liable for damages for breach of contract with the sugar factories but that is a matter between the factory and that person. So far as the Government is concerned, it cannot take note of that agreement and compel such person to sell his cane at the SAP since that would mean enforcing a private contract between the parties otherwise than through court of law. Dr. Dhawan says that in other States (other than Maharashtra and Gujarat) the Governments have not only issued statutory orders creating zones for each of the sugar factories but have also notified the price at which the sugarcane is to be sold by the growers to the factories and this price is common to the entire State though it may vary corresponding to the sugar content in the case.

10. Since entire thrust on the price structure operating unfavourably to nonmembers of cooperative society proceeded on assumption that price fixation by the Government for cooperative society was influenced with creditor and debtor relationship between the two it is necessary to understand the mechanism of pricing for cane prevalent in the State and whether it works harshly and unreasonably against non-members. The entire process of price fixation can be divided in 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 entire sugar factories in the country linking it with basic recovery of 8.5% with a proportionate increase for every 0.1% extra recovery. Therefore, normally the minimum price of cane paid by two factories cannot be same. For instance, the normal recovery in the State of Maharashtra is stated to be 10.05%. In the year 1987-88 the minimum price fixed was Rs. 19.50 per quintal. The highest and lowest price paid for the sugarcane in the Ahmednagar District during 1987-88 was Rs.366/- and Rs.240/- by Sangamner Sahkari Sakkar Karkhana and Jagdamba

Sahkari Sakkar Karkhana respectively. The recovery of Sangamner SSK Ltd. was 11.64% whereas the recovery of Jagdamba SSK Ltd. was 10.36%. It was explained that difference of 1.28% between recovery of sugar by the two factories resulted in difference of sugar production per tonne to extent of 12.8 kg. and the realisation too was Rs.64/- per tonne more. This difference got reflected

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in the price fixation.

11. The next is the State Advised Price. Every State has its own method to determine it. The power is assumed under Acts of the State Legislature or orders issued by the Governments. For instance, in the State of Haryana a Sugarcane Central Board is constituted under -Section 3 of the Punjab Sugarcane (Regulation of Purchase and Supply) Act 1953 headed by the Chief Minister and other high officials of the Agricultural and Cooperative Department, the Director of Sugar Mills etc. to advise the Government and the Cane Commissioner on various matters including the price of cane to be paid to growers. Similarly in U.P. and Andhra Pradesh it is done under orders issued under the U.P. Sugarcane (Regulation of Supply and Purchase) Act 1953 and the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act 1961. In Maharashtra 95% of sugar factories are in the cooperative sector. They are governed by the Cooperative Societies Act and the bye-laws framed thereunder. Bye-laws 63, 64, 64A, 65A and 65B deal with fixation of price of cane. Bye-Law 64 empowers the State Government to fix the price of cane so long the amount invested by it in setting up of sugar factory is not repaid. The exercise is undertaken by a Committee constituted by the Government known as 'Ministerial Cabinet Committee'. It comprises of the Chief Minister and other concerned Minister. It takes into account the ex-gate minimum price declared by the Central Government, the estimated sugar production and its availability for production by the sugar factories, the estimated average of sugar factory, the estimated conversion charges and the present day levy and free sale sugar price while fixing the price. In the written submission filed by the appellants it is stated that in the year 1993 while the statutory minimum price fixed by the Government of India was Rs.345/- per metric tonne the State Advised Price for the State of Maharashtra was Rs.360/- to Rs.400/per metric tonne. It is explained that although such price in other States, for instance Andhra Pradesh, Madhya Pradesh and Uttar Pradesh was Rs.400/-, Rs.530-560/- and Rs.580-600/- per metric tonne respectively but these prices were ex-gate whereas in the State of Maharashtra it was ex-field. That is a cane grower apart from the price determined by the State Government is paid harvesting and transportation charges etc. And when all this is totalled then the price paid to the cane grower in the State is the highest in the country. The advance cane price or the price for harvesting and transportation is paid to the cane growers irrespective of whether they are members of any cooperative society or not. The advance according to the appellants was paid by sugar factories under agreement entered with growers whereas according to respondents it was paid by the Banks and the nonmembers did not enter into any agreement. Since the parties were at variance on an issue of fact they were granted time on 24th February 1995 to file further affidavits clarifying their stand. From the affidavits filed it now transpires that the loans are normally advanced by the village societies or rural banks to the farmers on the

certificate issued by the sugar factories showing cane plantation, acreage, date of plantation, etc. Although the factum of agreement between the cultivator and the sugar factory is riot clearly admitted in the reply filed on behalf of the respondent but apart from those cultivators who do not need any loan for growing the crop whose

percentage appears to be negligible, it appears by and large rather the uniform practice is that a tripartite arrangement is arrived between the cultivator, the loaning society and the sugar factory. The loan is advanced on basis of the certificate issued by the sugar factory and it is the sugar factory which ultimately repays the amount due to the loaning society out of the price of cane to be paid to the cultivator, Such agreements were recommended by the Bhargava Commission as well. Even otherwise no bank or society would advance any loan unless it is assured of its repayment. It is, therefore, reasonable to assume that the advance is paid to the cultivators by the rural banks or societies on the certificate issued by the sugar factories.

12. The third is the price paid at the end of the season. The Bhargava Commission had recommended payment of additional price at the end of season on fifty-fifty profit sharing basis between growers and factories to be worked out in accordance with Schedule II to the 1966 Order. Even though in the affidavit filed earlier by the officials of the Department in the special leave petition it was stated that additional price was paid but a doubt had arisen as in Ex.6 filed along with the additional affidavit of Dy. Secy. to the Government of Maharashtra in C.A. No.523/89 explaining the mechanism of fixation of cane price it appeared that in the State of Maharashtra either the State Advised Price is paid or additional cane price is paid, whichever is more. Therefore, the appellant was directed to explain whether the additional price was paid in addition to State Advised Price but the affidavit filed in pursuance of the Order dated 24th February 1995 remains vague. It appears the practice in the State is to pay the advance as stated earlier at the beginning of the season and then the cost of transportation and harvesting in the middle of the season and the price worked out finally at the end of the season, by the Ministerial Cabinet Committee headed by the Chief Minister, Cabinet Ministers of the concerned Department etc. on statements submitted by each factory and recommendations made by the Committee after discussing the matter with members of State Federation of Cooperative Sugar Factories and representatives of the State Co-operative Bank. In the State of Maharashtra, therefore, it appears instead of additional price it is the State Advised Price which is paid.

13. It would be appropriate to notice here how the State Advised Price and the additional price is worked out and if it in any manner prejudice the cane growers specially the non-members. In the additional affidavit filed by Dy. Secretary of Govt. of India in Civil Appeal No.523 of 1989 the mechanism of price fixation is explained as under :

Mechanism of fixation
of cane price

Receipts -

Financial Results -

1. Sale of Sugar

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Add -	Value of the closing stocks	}	Levy and Free sale at assumed prices.
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as on 30/9 of }
 the year. }
 Deduct - value of the opening }
 stocks of the year }

2. Add or deduct profit or
 loss from Ancillary Units.

3. Add - other receipts from

a) Sales of molasses Press mud Bagasse.

b) Miscellaneous
 receipts.

c) Rebates

(1) + (2) + (3)

 (R)

Expenditure

I. Cane cost

(a) Govt. of India minimum price
 linked with actual recovery
 deducting the average harvesting/
 transport charges.

II. Expenditure relating to cane -
 Commission to Harvesting
 and Transport contract
 Khodaki etc.

III. Harvesting & Transport charges.

IV. Cane Purchase Tax.

V. Conversion charges.

a) Store consumption

b) Electrical charges

c) Outside repairs

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d) Salaries/wages

e) Overheads

VI. Interest Payable.

1) Capital loans and deposits (NRD/RD)

2) Working Capital

VII. Bonus - Minimum 8.33%

VIII. Education Fund under section 68 Maharashtra
 Cooperative Societies Act.

Audit Fees.

Other Provision.

DSI/Sakhar Sangh

Grand Total of

I to VIII

 'E'

R - E = S Surplus

Deduct : Current Depreciation Investment |
 Allowance Development Rebate and | D
 part of accumulated losses |

S - D + 'NS' Net Surplus.

Per M.T. 'NS' = Additional cane price.

Govt. of India's Minimum statutory CP + Addi. C. P. = 'X'

Govt. of - Minimum

Maharashtra Advised CP - 'Y'

X or Y whichever is more.

14. The manner of working out additional cane price is
 provided in Schedule 11 of the Control Order, 1966 in
 following manner:

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"The amount to be paid on account of
 additional price (per quintal of Sugarcane)
 under Cl.5-A by a producer of sugar shall be
 computed in accordance with the following
 formula, namely:

$$x = \frac{R-L+2A+B}{2C}$$

Explanation. - In this formula -

1. "X" is the additional price in rupees per quintal of sugarcane payable by the producer of sugar to the sugarcane grower.
 2. "R" is the amount in rupees of sugar produced during the sugar year excluding the excise duty paid or payable to the factory by the purchaser.
 3. "L" is the value in rupees of sugar produced during the sugar year, as calculated on the basis of the unit cost per quintal ex-factory, exclusive of excise duty determined with reference to the minimum sugarcane price fixed under Cl.3, the final working results of the year and the Cost Schedule and return recommended by such Authority as the Central Government may specify from time to time.
 4. "A" is the amount found payable for the previous year but not actually paid [vide sub-clause (9)].
 5. "B" is the excess or shortfall in realisations from actual sales of the unsold stocks of sugar produced during the sugar year, as on 30th day of September [vide item 7(ii) below] which is carried forward and adjusted in the sale realisations of the following year.
 6. "C" is the quantity in quintals of sugarcane purchased by the producer of sugar during the sugar year.
 7. The amount "A" referred to in Explanation 2 shall be computed as under, namely
 - (i) the actual amount realised during the sugar year; and
 - (ii) the estimated value of the unsold stocks of sugar held at the end of 30th September, calculated in regard to free sugar stocks at the average rate of sales made during the fortnight 11th to 30th September and in regard to levy sugar stocks at the notified levy prices as on the 30th September.]
- Explanation. - In this Schedule "Sugar" means any form of sugar containing more than ninety per cent. sucrose]."

15.A comparison of the two would indicate that there is not much difference between the two. In the latter too the cost incurred in producing sugar has to be deducted from the receipts. In any case since the grower is paid either the State Advised Price or Additional Cane Price whichever is high no prejudice can be said to be caused to nonmembers. In the affidavit filed on 10 March 1995 it is stated that the final price determined for the earlier year is the advance price for the next year. For instance, if amount 'A' was fixed as final State Advised Price at the end of 1993-94 for a factory then that becomes the advance price for 1994-95. It has been explained that the final State Advised Price is fixed on the basis of detailed statement submitted by the Sugar Commissioner giving a detailed operational financial picture of the working of the sugar factories such as sugar cane crushing, sugar recovery, sugar bags

produced, quantity sold as levy and free, income from other items, cost relating to harvesting and transport of cane, sugar factory wages, power, fuel, chemical and other expenses, depreciation provision etc. etc. According to the affidavit broadly these principles related to, (a) valuation of closing stock of free sale sugar and molasses; (b) fixation of Khodki charges (i.e. labour charges paid for collecting cane pieces remaining in the field after harvesting); (c) provision of depreciation and investment allowance/development rebate; (d) sugarcane price to be paid to the members/nonmembers outside the area of operation; (e) limit of cash component to be paid to the farmers in the cane payment where cane price is on the high side; (f) interest rate on non-refundable/refundable deposits to be paid to members/non-members; and (g) deductions to be made compulsorily from the sugarcane price payment to the farmers. In effect the price for next year which is paid at the commencement of season comprises of not only the price based on recovery of 8.5% but also the profit arrived at after sale of sugar.

16. Few facts are necessary to be stated in respect of price fixed under the bye-law of the society. One price fixation for the cooperative societies under bye-law 64 either by the Director of Factories or by the State Government was not challenged to be ultra vires, either before the High Court or this Court. It cannot, therefore, legitimately be urged that it was violative of the Control Order or the Zoning Order or it was arbitrary. In fact as explained earlier it is the State Advised Price. If the claim of non-members is taken to its logical conclusion it would act unreasonably for them. Let it be tested. Suppose the price fixed for two factories 'A' and 'B' is Rs.400/- and Rs.500/- respectively, 'X' being a non-member in area 'A' the price for factory 'A' is not binding on him. If it be so the price fixed for 'B' is certainly not binding on him. And the factory 'B' is not bound to offer him Rs. 500/-. It may or may not. That may lead to uncertainty and even exploitation. And then the price of Rs.500/- fixed for 'B' is as much State Advised Price as Rs.400/- for 'A'. Much argument was advanced on how the market price in a locality should be understood. It appears unnecessary to deal with it as any other construction would be destructive of zoning and the concept of pricing in controlled economy. Second, there is no machinery in the State to determine the State Advised Price for non-members as 95% of the sugar factories being in cooperative sector the fixation of price under the bye-laws was always considered to be legal. And rightly so. Therefore, any determination of price by an authority under the bye-laws is valid for cane growers attached to a sugar factory in reserved area. Third, entire concept of minimum and maximum price for cane appears to be out of place. As pointed out by the Commission minimum price is fixed on quality formula. Further, average recovery of the normal crushing period was preferred according to Commission as against average recovery of the optimum period. All this results in payment of adequately reasonable price which comprises of not only cost of cultivation but profit as well. It does not stop there. The payment of additional price or final State Advised Price on profits obtained by a factory as indicated earlier is also paid. The price thus being paid on recovery of cane and profits made from sale of sugar is not minimum but optimum price which is paid to a cane grower. The fourth and the most

important is that the advance paid to the cultivators at the commencement of the season on final price determined for earlier years appears to be reasonable and fair. The mere fact that such determination is made in exercise of power under bye-law 63 does not render it bad for non-members. No objection could be taken to payment of transport and harvesting charges. That too is explained to be linked with distance etc. So long the determination of price is fair and just and based on relevant material it cannot be held to be not applicable to one class of growers, namely, non-members in the zone because they are not members of the cooperative societies. If the exercise of power is not bad for members of the society it cannot be held to be bad for non-members, unless it is found to be arbitrary. So far cultivation of cane and payment of price is concerned the two are similarly situated. Further the production of sugar being of primary concern the Government ensured that the growers were not denied the minimum. The Additional Cane Price or final State Advised Price are paid as a matter of incentive. And what is incentive for one year becomes the minimum price for next year. The concept of market price, better price or higher price thus has no place in the scheme. There is no reason why such fixation should not be held to be binding on nonmembers as in the scheme of price fixation no distinction is made between members and non-members.

17. The difference between members and non-members of cooperative societies in relation to cane price may also be noticed. A cooperative society usually invests 7.5% in setting up of a factory or Sahkari Karkhana whereas the balance is borne by the State and the financial institutions. Its members under bye-laws are under obligation to clear every dues of the society otherwise any amount due from them to the society is first charge on the sugarcane cultivated by them and is recoverable from the price of cane. Every member of the society under bye-law 18A is required to undertake cultivation of minimum of half acre. The nonmembers on the other hand have no such obligation. They are not required to cultivate or grow any minimum cane. But they derive all those benefits and advantages as are available to the members of the society. In the licence for crushing cane issued under clause 4(5) of the State Order it is provided in the Form B clause (xvii) that the factories shall be bound to pay same cane price to non-members as members. A nonmember is also entitled to share the profits which are worked out at the end of the season. There is thus practically no difference between a member and non-member so far supply of cane or its price is concerned. A member is no doubt entitled to some facilities such as running of other business or availing the education facility etc. run by the cooperative societies but that has nothing to do with cane price or its supply. As a matter of fact the sale of by-products etc. is shown as receipt while calculating additional price or final State Advised price.

18. With this background it may now be examined whether provision in the State Zoning Order suffers from any drawback for not providing any machinery to hear the individual non-members and also whether the fixation of price by the Director of Sugar Factories or the State Government under bye-law 64 framed under Cooperative Societies Act can be said to be binding on members only thus entitling

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nonmembers to sell their cane at market price. The exercise of pricing is undertaken by a Committee in accordance with

guidelines provided after taking into consideration various factors so that the price of sugar does not escalate and cane growers are not deprived of good return to dissuade them from going for alternative crop. In the affidavit filed by the Under Secretary of the State it is explained that the price determined by the Committee is notified every year but no objection was ever received. No cane grower can thus legitimately claim that the price fixed for the cane was not productive. The affidavit also pointed out that the non-members have not organised themselves so as to entitle their representative to be invited. Hearing of every individual grower even otherwise is physically impossible. Presence of representative of cane growers' cooperative society before the Committee fixing the price makes it broad based. Such representative would bargain for better price for cane growers irrespective of whether such a cane grower is a member of the cooperative society or not. No representative would agree for lower price for members of the society. Therefore, absence of individuals or non-members of cooperative society before the Committee fixing the price cannot reflect adversely on the price fixation. No material has been placed to demonstrate how the fixation of price by the State Committee with assistance of Director of Sugar Factories has prejudiced the non-members. In the affidavit filed on behalf of the State it is pointed out that the price of cane fixed to be paid by the Sahkari Sakkar Karkhana is even paid by other factories. Reason being that the price fixation having been done by the Committee it is taken to be fair and just. Same reasoning applies to non-members. Truly speaking the price fixation should be observed in broad perspective. If every individual has to be heard the entire system may fall for sheer non-practicality. In Maharashtra there are 137 sugar factories. With each factory nearly five to six thousand cane growers are attached. Twenty per cent of them are non-members. If the Committee starts hearing every individual non-member then it shall prove to be an unending purposeless exercise. One may have right to challenge the price fixation on ground that the Committee or the authority did not act in accordance with the guidelines for fixation of price in accordance with the order but that right can be exercised appropriately only after publication of the price. In these appeals since no one objected, the individual members cannot claim that the price fixed was not fair or just.

19. Therefore, absence of any machinery in the State Order for hearing nonmembers could not destroy effectiveness of pricing. Even otherwise the price fixation in a controlled economy may not be bad so long it is in accordance with the policy formulated by the Government and the decision by the Committee of Experts is not found to be arbitrary. It cannot be assailed only because cane growers of one area are getting better price than the other. The difference in price arising due to application of principle uniformly is neither bad nor arbitrary. It may be that since the price is linked with yield it may cause hardship to one set of growers as they might be deprived of better price as compared to his neighbour due to deficient functioning of the factory but in a welfare State and controlled economy individual hardship cannot override the larger social interest.

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20. Reason for government intervention to fix the price has been explained earlier. It was to increase sugar production. It continues even today. While doing so the Government ensured stable and assured income to the growers.

That is why the pricing was devised even before 1950. When the First Five Year Plan was drafted in 1951 the control was justified, for smooth functioning of an unregulated economy. When the second Five Year Plan was made it was recognised that controls were administratively cumbersome but it was found necessary for a developing economy. Necessity of control for sugar and fixing of price for cane is as necessary today as it was in 1934 or 1951 or 1956. The role of price control is not merely to reduce distortions which would otherwise have been prevalent resulting in exploitation of cane growers particularly when there was surplus production of cane but to promote his financial and social condition. The fruits of controlled economy for the weaker and poorer cannot be doubted. In agricultural sector the price control as an instrument of policy has boosted the economy. To denounce it, therefore, may not be in interest of the cane growers. Once when there was glut of cane in 1990- 91 it was the State which came to rescue and paid Rs. 10,000/- per hectare even to non-members. The Full Bench too did not find any flaw in price fixation, nor it held it to be unremunerative yet it imported the concept of free and competitive market price for those cane growers who were not members of any society mainly because they were not bound by the bye laws. The submission of compulsive cooperative system founded on bye laws does not have much substance. No material was placed before the High Court or this Court to substantiate

that the Government resorted to under pricing of cane to enable the sugar factories to discharge their financial obligation. In absence of any material it cannot be assumed that the Director of Sugar Factories who are none else than cane growers themselves would opt for a lesser price for their cane because the sugar factories of which they are members were under an obligation to pay their debts.

21. Coming to the other rationale of the Full Bench that the price of cane having been fixed under the bye- laws for the cooperative societies it was binding on the members and not others it may be appropriate to reproduce the gist of relevant bye-laws noticed by the Full Bench

"Bye-laws Nos.63, 64, 64A, 65A and 65B deal with the fixation of price of sugarcane and deduction of certain amounts from the prices paid to the members.

Bye-law 63 states that the Board of Directors of the factory will give advances to the members against the price of the sugarcane supplied by them, by prior permission of the Director of Sugar and the Deputy Registrar of the Co- operative Societies and in accordance with their directions and after making deductions for certain purposes.

Bye-law 64 states that the price of the sugarcane supplied by the members, shall be as fixed by the Board of Directors every year. The Board of Directors will fix the price according to the constitution, the object and the bye- laws of the society and after taking into consideration the financial transactions and conditions of the year. The bye-law then makes an exception to this general rule and states that so long as the share capital invested by the Government is not refunded com-

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pletely and/or the loan taken from the In-

dustrial Finance Corporation or from any Central Financial Institution supplying funds for fixed capital assets is not fully repaid, the price to be paid to the members shall be that as fixed by the State Government. For the purposes of our discussion, we will refer

to this period briefly as the debt-period. Bye-law 64A states that whenever it becomes necessary for the factory to purchase sugarcane from non-members outside its jurisdiction, the factory shall take permission of the State Government for such purchase. However, during the debt period the price to be paid to the nonmembers shall be that as will be fixed by the State Government before the beginning of the crushing season. Bye-law 65A mentions the deductions to be made from the price payable to the members for raising non-refundable deposit from them, the rate of such deductions and the rate of and the manner of its disbursement and the interest to be paid on such deposit. Bye-law 65B gives power to the Board of Directors to collect deposits by making deductions from the price to be paid to all sugarcane suppliers and states that such deposits shall be used only for the expansion of the factory and other capital expenditure. The bye-law also lays down the rate of interest to be paid on such deposits."

Bye-law 64 empowers the Board of Directors to fix the price of sugarcane to be supplied by members of cooperative society to the factory. It further provides that the price so fixed shall be according to the Constitution the object and the bye-law of the society and after taking into consideration the financial transaction and conditions of the year. In this bye-law there is a further exception empowering the State Government to fix the price so long the share capital invested by the Government is not refunded completely or the loan taken from the financial institution is not repaid. The Board of Directors which are referred in the bye-laws are none else than the agriculturist or the cane growers themselves. It is difficult to visualise that they would opt or fix a price for the sugarcane which would be unremunerative. As explained earlier the price fixed by the Cabinet Committee in exercise of power under the bye-law is the State Advised Price. It applies uniformly to all cane growers irrespective of whether they are members or non-members and whether they are in reserved area or outside it. To confine it to the members as they having entered into agreement and being members of the cooperative societies are bound by it is ignoring the entire price mechanism. Nowhere in the country the State Advised Price is fixed for one class of growers only. In absence of any material to show that the fixation by the Government was one sided or with a view to exploit the cane growers the submission that it did not apply to non-members cannot be accepted. The order does not make any distinction between members and non-members. Nor does it visualise separate mechanism for price fixation for the two. 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

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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 stock. But so long the price fixation does not suffer from any infirmity or it is held to be prejudicial to cane grower so as to benefit the State or the financial institution it cannot be held to be bad. Therefore once the price fixation has been undertaken and performed by such an authority it cannot be held to be inapplicable to one particular class of cane growers as the fixation having been done by the State Government under the bye-laws it was not binding on those cane growers who were not members of any society. That would be defeating the entire purpose of enforcing controls.

22. Reverting to the various issues which arise for consideration it may be stated that zoning or reservation and fixation of price for each zone are inter-linked. Therefore, it may be seen whether zoning suffers from any infirmity. It has already been explained that even under the 1966 Order the fixation of minimum price is factory-wise. Thus each factory has been considered to be one zone. Reservation or zoning and fixation of price for each zone has been upheld by this Court in *Shri Malaprabha Coop. Sugar Factory Ltd v. Union of India & Anr.* (1994) 1 SCC 648 and *Anakapalle Co-op. Agrl. and Industrial Society Ltd., etc.etc. v. Union of India and others* (1973) 3 SCC 43 5. That was not challenged as well. Yet it was urged that such zoning could not be used to enforce a cooperative pricing system contrary to the statutes and rules. The approach does not appear to be correct as it assumes that price fixation is undertaken for cooperative societies as they are indebted to State Government, Manner of price fixation has been indicated earlier. The exercise is taken by the Committee in accordance with guidelines in the 1966 Order. In absence of any challenge to it on ground of it being arbitrary or being in violation of the principles of pricing the assumption that pricing in zone is like a private arrangement between the State as a creditor and cooperative society as a debtor cannot be countenanced. The mere fact that the bye-laws empower the State Government to fix the price for cooperative society does not render it bad. If the price fixed by the Government is good for members of cooperative society who are as much cane growers as nonmembers then there is no reason to hold that such price was bad or it operated unreasonably for non-members. Zoning has been resorted to in the State to regulate the supply of cane to various factories on equitable basis. It is a well established feature in the country. Once a zone is reserved for a factory the cane grower has an obligation to supply cane to the factory and the factory has a corresponding obligation to lift the cane from the field, crush it produce sugar and pay to the grower not only the minimum price but also share the profit with him.

23. In the affidavit filed by the Dy. Secretary of the State it has been explained that while forming the zones for the sugar factories besides capacity and requirement of sugarcane to the sugar factory the physiological nature of sugarcane is also taken into consideration. It is stated that crop of sugarcane is a perishable commodity and it has to be crushed at the earliest after its harvesting for which

the optimum distance of 40 kms has been laid down by the Union

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of India, therefore, zones of the factories are normally between 35 to 40 kms radius around the factory. The affidavit points out that in the process of zoning many Talukas in the State pockets where there are no sugar factories have been left out because those areas do not fall within the radius of 35 to 40 kms. However, from such pockets where the sugarcane is produced such sugarcane is allotted to the neighbouring needy factories in accordance with the Maharashtra Sugar Zoning Order and the cultivators supplying sugarcane from such free areas, even though they are non-members they, get the same benefits as are available to the members of the said factory to whom the sugarcane is allotted. It is also stated that in any areas where there is no sugarcane production or it is very meager like the parts of Thane District, they have been kept free because such sugarcane involves huge transport costs and it is not possible to transport the sugarcane in adequate quantity to any of such factories. The affidavit further points out that in those areas where there is adequate sugarcane supply or they have good potential for growing sugarcane but there is no sugar factory they have been kept free so that the rights of sugarcane growers in such areas to organise and establish sugar factories can be protected. Till such time the sugarcane grown in such areas is allotted to the neighbouring needy zone and the price paid is the same as is paid to the members of the cooperative societies of the sugar factories. In one of the applications filed by one of the karkhanas, I.A. No. 11 of 1993 in C.A. No. 523 it is stated that before the crushing season starts the karkhana enters into an agreement both with the members and non-members and gives them all necessary input for growing sugarcane such as seeds, fertilisers, technical know-how, guarantee, finance for crop loan and also undertakes an activity of harvesting and transporting of sugarcane. The application points out that the claim of the non-members was not justified as when there was a glut then it were the karkhanas like the applicant who had at heavy expenditure ensured that the cane of the non-members was diverted to other karkhanas and they even bore the cost of transportation. But in absence of Zoning Order when there was a glut then the sugar factories exploited the cane growers by offering them lower price. It has been pointed out that nearly 80% to 95% sugar factories are in the cooperative sector but some of them have better cane growing areas coupled with better and efficient functioning of the factory. They are in a position to offer better price as compared to other factories which are economically weak and are in difficulty. What is clear from these affidavits is that zoning is beneficial to the cane growers and it has been resorted not only to ensure that the regular cane supply is available to sugar factories but also to protect the cane growers who may otherwise have been seriously affected.

24. Having discussed the pricing of sugarcane, the near similarity between members and nonmembers of a cooperative society qua supply of cane and payment of price, the non-feasibility of hearing every individual grower by the Committee before fixation of the price of cane and applicability of uniform rate of cane in the reserved area both for members and non-members it may now be examined whether supply of cane by the cane growers under the Zoning Order issued by the State of Maharashtra is a compulsory

sale within meaning of clause (f) of sub-sec-

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tion (2) of Section 3 of the Act so as to attract Section 3(3)(c) of the Act. Both these sub-sections are part of Section 3 of the Act which is the main Section and is directed towards achieving the objective of the Act to provide, in the interest of general public, for the control of the production, supply and distribution of, and trade and commerce in certain commodities. Sub-section (1) of Section 3 spells out the general power of the Government to control production, supply and distribution of essential commodities if it is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and its availability at fair price. Sub-section (2) illustrates this power, further, by empowering the Government to provide for, issuing licences or permits for production or manufacture of any essential commodity or for its storage, transport etc. and for controlling price at which an essential commodity may be bought or sold. Its clause (f) empowers the Government to direct any producer to sell the goods produced by it either to itself or to State Government or to any person or class of persons specified in the Order. What price is to be paid to the producer for such sale is provided by Section 3(3) of the Act. Relevant part of it is reproduced below:

"S.3. Powers to control production, supply, distribution, etc., of essential commodities

(1).....

(2).....

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of subsection (2), there shall be paid to him the price therefor as hereinafter provided

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where on such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale."

A very perusal of it indicates that its field of operation extends to where any person is required to sell any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2) of Section 3.

25. Two conditions, therefore, must exist one, it should be a sale of an essential commodity and second that such sale must be in compliance with an order with reference to sub-section (2)(f) of Section 3, the relevant part of it reads as under:-

"S.3. Powers to control production, supply, distribution, etc., of essential commodities

(1).....

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide

(a)

(b)

(c)

(d)

(e)

(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,

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(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order."

This sub-Section came up for interpretation by this Court in Union of India & Anr. v. Cynamide India Ltd. & Anr. (1 987) 2 SCC 720. It was held:

" an order under Section 3(2)(f) is a specific order directed to a particular individual for the purpose of enabling the Central Government to purchase a certain quantity of the commodity from the person holding it. It is an order for a compulsory sale. "

It was reiterated in Shri Malaprabha (supra) and it was observed:

"It is a specific order directed to a particular individual in order to enable the Central Government to purchase a certain quantity of commodity from the person holding it. It is an order of compulsory sale. "

26. Can clause (3) of the State Order issued in 1984 either on the language or its effect be construed to be an Order of compulsory sale? It expressly does not purport to be. an order under Section 3(2)(f) of the Act. It is not an order of the nature as was issued by the Central Government for sale of levy sugar. It does not direct cane grower to sell its cane to the Government or to any person specified in the Order. In absence of any provision the order cannot be held to be order directing the producers to sell the cane so as to make it a compulsory sale under clause (f) of sub-section (2) of Section 3.

27. Language of the Order apart even otherwise the purpose and objective for which the Order was issued does not remotely or even impliedly warrant any inference that the supply of cane by the growers was sale. Mere restriction on supplying cane to anyone else than the specified sugar factory cannot be construed as an order for sale. It is true that the effect of such an order as has been issued by the State of Maharashtra is that a grower who is in the reserved area is precluded from supplying his cane to any other factory than the one specified but that is a restriction to subserve the main objective of ensuring that the sugar factory is not starved and the production does not suffer. That does not make the Zoning Order one of compulsory sale. Any order under sub-section (1) resulting in restricting the supply of essential commodity in a particular area or directing it to be sold or purchased on a particular price is not an order under Section 3(2)(f) of the Act. If compulsion arising out of restriction is held to be compulsory sale then it would render the entire scheme

of Section 3(2) nugatory. What is contemplated by Section 3(2)(f) is a specific order. It applies in those cases where any essential commodity is directed to be sold or parted with in pursuance of an order of the Government. It has no application to supply in a reserved area. Further under clause (5) of Zoning Order the cane

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under orders of the Director can be supplied to other factories. The provision completely demolishes the argument of compulsory sale.

28. What was vehemently urged by Dr. Dhawan, was that the invidious pricing system resorted to by the sugar factories which were indebted to State Government resulted in forcibly drawing such cane growers who were not members of any cooperative society, therefore, it was contrary to the statutory equitable pricing system consequent to the compulsory sale under the Act. It was urged that the fixation of price was irrational and unfair as it had no bearing or relation to the yield of the crop or to the predicament of the farmer. The learned counsel vehemently submitted that any pricing resorted to either by the cooperative societies or by the State Government solely and exclusively in relation to the management of cooperative factories was an extraneous and irrelevant consideration. The learned counsel urged that since price fixation was not delegated under the 1966 Order any action by the State Government or cooperative societies to resort to price fixation which was unfair and unjust to the nonmembers was contrary to the Act. The submission proceeded on assumption that the fixation of price was in respect of a commodity which was directed to be compulsorily sold under the orders issued by the Government. As explained earlier the assumption does not appear to be well founded. The entire edifice of the submission was built on the compulsive nature of transaction involved in supply of cane and payment of price. But what was lost sight of was that Section 3(3)(c) could be attracted only if the order issued by the Government could be held to be one under Section 3(2)(f). The submission ignores that economics of pricing in a controlled economy is entirely different than a free market. The equilibrium in the latter is reached by interaction of supply and demand. Its graph keeps on moving up and down governed by the principle of scarcity. But the controlled economy does not operate on demand and supply. The production, distribution and the supply are regulated and controlled by the Government in public interest. Such orders are issued in social interest for the common benefit and fair price for the needy and poor. Legality of such orders cannot be tested on cost structure of free economy or maximum profit theory. The concept of cost structure and the profit in a controlled economy is entirely different. In *M/s. New India Sugar Works etc. etc. v. State of Uttar Pradesh & Ors. etc. etc.* (1981) 2 SCC 293 this Court although in a different context observed as under:

"The policy of price control has for its dominant object equitable distribution and availability of the commodity at fair price so as to benefit the consumers. It is manifest that individual interests, however precious they may be must yield to the larger interest of the community, namely, in the instant case, the large body of the consumers of sugar. In fact, even if the petitioners have to bear some loss there can be no question of the restrictions imposed on the petitioners being unreasonable.

29. The another facet of the same submissions by Dr. Dhawan was that due to operation of the State Order directing a cane grower to supply its cane to a factory in whose reserved area it falls, the real nature of supply was a compulsory sale as visualised in Section 3(2)(f). It was attempted to be supported by clauses (6)(a), (6)(b), (6)(c) of the 1966 Order and clauses

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(3) and (1) of the State Order. It was urged that even though compulsory supply has to be made by operation of different provisions of the two orders yet it was in nature of contract of sale under compulsion. Reliance was placed on *Andhra Sugars Ltd. & Anr. Etc. v. State of Andhra Pradesh & Ors.* (1968) 1 SCR 705 and *Vishnu Agencies (Pvt.) Ltd. Etc. v. Commercial Tax Officer & Ors. Etc.* (1978) 2 SCR 433. The learned counsel submitted that since the Order was specific both in letter and intent and it was clear from the schedules that all growers could supply cane only to an identifiable sugar factory the necessary inference that arose was that it was a compulsory sale and, therefore, the respondents were entitled for a market price under Section 3(3)(c). Help was also taken from *Shri Malaprabha* (supra) and it was urged that where there were general orders which identified the seller and the buyer and both were aware of the nature of transaction that the sale had to be made to identifiable designated person the sale was nothing but a compulsory sale. It was urged that a provision with in built specific identification could not be used as a device to disguise the real nature of transaction. None of the submissions appear to be well founded. As observed in *Shri Malaprabha* (supra) and *Anakapalle* (supra) the provisions of Section 3(3)(c) could apply only where there was a specific order of sale. In absence of any such order the inference that the learned counsel for respondent has attempted to draw cannot be said to be justified. What is contemplated under Section 3(3)(c) is an order of a compulsory sale and not a compulsion arising out of enforcement of restrictions under the provisions of controlling distribution and supply. A cane grower in a reserved area gets the price for supply of his cane to a specified factory. This price is payable both to members and nonmembers. The orders only restrict that the supply could not be made to any factory outside the area. The restriction may result in confining the choice but it cannot be construed as an order of sale. The situations in which an order can be considered to be an order for compulsory sale may be one where the Government by a particular order or a general order as in the case of levy sugar directs the producer to part with his goods. Number of commodities have been declared to be essential commodity under Section 3 of the Act. Its supply and distribution may be regulated either by restricting the area or fixing the price. If in respect of any such commodity the Government passes an order directing a producer to sell any essential commodity to Government or to any class of persons specified in the order then it shall be a compulsory sale. None of the decisions on which reliance was placed has any relevance. The observation in *Andhra Sugars* (supra) that where cane growers entered into agreement with factory owners who were bound to purchase the cane by operation of statutory provisions may amount to compulsion of law and not coerce and the agreements so entered are enforceable as contracts of sale as defined in Section 4 of the Indian Sale of Goods Act, did not mean that the compulsive element of supplying cane resulted in compulsory sale. The Court was bringing out the distinction between coerce and compulsion

under law. But every compulsion does not bring about a compulsory sale. Similarly the other decision in Vishnu Agencies (supra) was concerned with determining whether supply made under statutory order was sale for purposes of levy of sales tax.

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30. The dual pricing system, one, for members and other for nonmembers or the option to non-members to sell to the factory of their choice may be negative of the zoning concept and may effect the cooperative movement in the State. Dr. Singhvi may be right that even before Zoning Order was issued the cooperative movement was there and the benefits that a member of the society derives may not result in affecting the system largely but any policy which has the tendency of shaking the system rudely must be avoided.

31. Consequently the first two directions issued by the Full Bench on price fixation cannot be upheld. As regards third direction it has been explained in the affidavit filed in pursuance to order dated 24th February 1995 which substantially remains uncontroverted that the deductions under bye-law 65 are made for the Chief Minister's Relief Fund, Small Saving Schemes, Cane Development Fund, Vasantdada Sugar Research Institute, Area Development Fund etc.. The details as to how the deductions are made have also been mentioned. It is true that they are made in exercise of power under bye-law 65 which does not apply to non-members. But these deductions being for the general welfare of the society it cannot be said that they are either bad or they suffer from any infirmity. The deposits deducted unlike members are refundable and they carry same interest as is paid to members. A non-member who is sharing in profits of the sugar production cannot be heard to say that he has no obligations towards the society because he is not a member of any co-operative society.

32. With the conclusion thus arrived the other issues are rendered academic. Suffice it to say that the Court's responsibility is to construe the provision which may advance the co-operative movement in the State. The amendments in Sections 22 and 23 have facilitated the membership. Notwithstanding the right of a cane grower to become a member of cooperative society the provisions cannot be construed so as to result in nullifying the whole system of control devised to improve production of the sugar in the country. For sake of more profit to few individuals the society cannot be made to suffer. Ours is a mixed economy. Competition and control have been blended to reduce economic imbalance. If the individual growers who do not constitute more than 20% otherwise get the same profit as a member of cooperative society then there appears no justification to construe the provision to give them a bit more profit when it is fraught with danger of small units closing down and the entire zoning system coming to a crash.

33. Even though as discussed earlier the supply made by the non-members could not be considered to be compulsory sale within meaning of Section 3(2)(f) and therefore, the provisions of Section 3(3)(c) are not attracted, yet the methodology adopted by the State for fixing price requires to be rationalised as various discrepancies have surfaced for which there is no satisfactory explanation. The Full Bench felt that there was something grievously wrong with pricing system in the State, therefore, it found a legal basis for striking it down at least for non-members. What is baffling is that even though factory after factory, rather, nearly the entire lot is shown to be suffering loss yet new units are coming up every day in the cooperative

sector. May be because as

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claimed by the State it is vitally concerned in production of sugar and is, therefore, investing substantial funds, nearly 95% in setting up of the units. May be as suggested by the respondents that the public funds thus transferred for social welfare is being siphoned off by vested interests. May be as argued that the loss is more paper work than truth as in fact it has resulted in giving rise to what has come to be known as powerful political sugar lobby in the State of Maharashtra. But these are matters more political than legal, the remedy for which may not be in courts. Even otherwise it is not possible to identify the evil, both, for paucity of material and discipline, of restraint, of keeping away rather than delving in such hazardous zone. All the same from the chart filed along with the affidavit in C.A. No.523 of 1989 it appears the factories having better recovery have been permitted to pay lower price as compared to the factories the recovery of which is lower. For instance at item Nos.14 and 15 the two karkhanas, Ashok and Dayaneshwar, are shown to have recovery of 10.21% and 10.53% respectively. Yet the price paid in 1985-86 was Rs.270/- per tonne by Ashok whereas it was Rs.250/- by Dayaneshwar. Similarly serial nos.21 and 22 the factories, Sanjiwani and Sangamrer with same recovery, that is, 11.31% have been made to pay Rs.364/-, Rs.330/- and Rs.240/- for years 1985-86, 1986-87 and 1987-88 and Rs.391/-, Rs.348/- and Rs.366/- respectively. Then again at serial no.37 and 38 Shriram and Ajinkyatara the recovery percentage was 10.84 and 11.75 respectively and the price paid was Rs.311.50, Rs.300/- and Rs.285/- and Rs.305.50, Rs.330/- and Rs.415/- respectively. It has not been explained how this difference has arisen. Such wide disparities are bound to create distrust. In price mechanism chart the expenditure which is deducted from the receipts includes overheads which are substantial. Over and above the interest, loan, bonus etc. is also deducted.

34. In the written arguments filed on behalf of respondents it is explained that there is considerable disparity in the market price of sugarcane in Maharashtra in recent years and the variation in 1990-91 ranged between Rs.545/- to Rs.275/- in 1991-92 between Rs.511/- and Rs.286.80 whereas in 1992-93 it was between Rs.731/- and Rs.310/-. According to respondents this price variation has nothing to do with the product, namely, the recovery from the sugarcane but is based on extraneous consideration as seen by its principal creator, namely, the State Government.

35. The respondents may not be justified in advancing this submission as the entire price structure of cane is founded on two basic factors, one, the recovery percentage and other the incentive for sharing profit arrived at by working out receipt minus expenditures And that is neither contrary to law nor unfair. But the wide disparity in the price paid by two factories is certainly glaring and is apt to create misgiving. How to remedy it? In a welfare society the consumer of essential goods is as important as the manufacturer and producer of it. The entire objective of the Essential Commodities Act is to promote social welfare. It is being achieved by controlling price of sugar with equal emphasis on cultivation of cane and its price. Any legislation must be viewed with this perspective. In the Zoning Order clause (5) empowers sugar factory to accept cane from other zone as well but no similar right has been given to cultivators.

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For better appreciation the entire clause is set out :

"5. Regulation of supply of Sugarcane.-

(1) A permit officer may allow a sugar factory to purchase cane or to accept supplies of cane from cane growers from areas other than the area reserved for it under clause 3 if he is satisfied that any 'of the following circumstances exist namely

(a) In the event of production of cane in the area reserved for the factory being not adequate for enabling it to reach optimum level of crushing;

(b) In the, event 'of surplus production of cane in the areas reserved for other factories which those factories are not able to crush during the crushing season.

(c) In the event of stoppage of nearby sugar factory due to mechanical break down, labour unrest, lock-out or any other reason.

(d) In the event of cane grower or cane growers from the area reserved for a particular factory declining to supply cane to the said factory on account of any of the following reasons, if found justified by the Permit Officer

(i) Non-payment or late payment of cane price by the sugar factory; or

(ii) Non-fulfilment of any of the obligations by the sugar factory arising out of agreement between the cane grower or cane growers and the sugar factory; or

(iii) Discrimination by the sugar factory in harvesting of cane and thereby causing loss to the cane grower or the cane growers;

Provided that before passing any order under this sub-clause, for any of the above reasons, the Permit Officer shall give the parties concerned a reasonable opportunity of being heard in person or through the authorised representative."

36. Clause (5) prescribes the situations in which one sugar factory will be permitted by the prescribed authority to purchase sugarcane from the zone of another sugar factory. It does not provide for the cane grower seeking a permit for sale of his cane to another sugar factory (than the factory within whose zone he may be situated) even if any or all the conditions prescribed in the clause are satisfied. Take a case where a sugar factory indulges in all the three irregularities mentioned in subclause (d) of Clause (5), viz., it does not pay the price of cane at the proper time, it does not adhere to the agreement it has entered into with the grower and it also discriminates in harvesting the cane thereby causing loss to the cane growers even then the cane grower cannot apply for permit to sell his cane to whomsoever he likes. All that probably he can do is to complain. But he will get some relief only when there is another factory (which, of course, has its own zone) which is prepared to purchase cane from this zone and applies for permit to the permit officer to purchase cane from this zone. If it does not so apply, the grower within the first zone is helpless. That is not being fair and just to the growers. It is, therefore, necessary that the State Government may suitably amend the Zoning Order so as to provide that in a case where any of the three circumstances mentioned in Clause 5(d) are present it would be open to the

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cane growers to apply to the specified officer for permission to supply his cane outside the zone. In such an event, it may be open to the officer to designate the factory to which the grower should sell his cane ensuring that the grower gets a price which is not less than the price obtained in his zone.

37. The State Government would be further well advised to get the matter thrashed out, before the next crushing season commences, by an Expert Committee comprising of economists and financial experts well versed in price fixation, particularly in agricultural sector. This exercise has become imperative after the enforcement of Zoning Order. In fact when Zoning Order was introduced the State at that time should have got these aspects examined. However, the price equation since 1984 has undergone tremendous upsurge. The escalation is manifold. Benefit of higher price of sugar must percolate to growers as well. Therefore, the Committee may examine,

(a) if the fixation of State Advised Price uniformly for the entire State as it is being done in other States, or at least separately for different zones, as the normal recovery in the zones varies, would be more feasible;

(b) if the additional price worked out in the manner indicated in Schedule 11 of Control Order of 1966 is more advantageous and beneficial to the growers. If it be so it may opt for the same as it would avoid tedious exercise by the Ministerial Committee and have the benefit of uniformity;

(c) The Committee may further examine whether Rs. 600/- which has been paid by the factories to the non-growers under interim order passed by this Court would not be a reasonable minimum price for 1995-96 and may furnish the basis for fixation of price for future years;

(d) It may also suggest ways and means for improving yield by the sugar factories and reducing overhead expenses and eliminating, possible, paper loss;

(e) It would further be in interest of the Government to ask the Committee to examine if the shortcomings pointed out by the Full Bench in other regard can be rectified and rationalised; and

(f) The Committee may examine whether bye-law 65 should be applied to nonmembers or not.

38. Although the price fixation has not been found to suffer from any infirmity yet due to passage of time, nearly eight or nine years, since this price fixation was challenged and with rise of price all around it appears expedient to dispose of these appeals with following directions to ensure smooth functioning both for the past and future :

(i) The directions of the Full Bench in paragraph 25 of the Judgment shall stand set aside.

(ii) The State Government may take appropriate steps to amend Clause (5) of the Zoning Order so as to protect the cane growers.

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(ii) The Government may appoint a Committee of Experts to study and examine the price structure in the light of what has been stated

earlier.

(iv) Even though the order issued by the State Government determining price for each factory is upheld but since in consequence of the order passed by the High Court an interim order was granted by this Court and the factories were directed to pay Rs.600/- to the cane growers and they were directed to furnish bank guarantee for Rs.145/- it is directed that the amount paid by the factories shall not be liable to recovery from the cane growers. But the bank guarantee furnished by the appellants or sugar factories shall stand discharged.

(v) It is made clear that the direction not to recover RS. 600/- from non-growers would not entitle any member of the cooperative society or the cooperative society itself to claim that it was entitled to be paid Rs.600/- for its cane during the years in dispute.

39. For the reasons stated in the order these appeals are disposed of with above directions. Parties shall bear their own costs.

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