PETITIONER:
ANAKAPALLE COOP. AGRL. & INDUSTRIAL SOCIETYLTD. ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT06/11/1972

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHELAT, J.M.
MATHEW, KUTTYIL KURIEN
MUKHERJEA, B.K.
CHANDRACHUD, Y.V.

CITATION:
1973 AIR 734 1973 SCR (2) 882
1973 SCC (3) 435
CITATOR INFO :
RF 1974 SC 366 (62)
RF 1978 SC1296 (64)
RF 1983 SC1019 (34)
E 1987 SC1802 (9)
F 1987 SC2351 (9,12)
1990 SC1277 (2,5,6,7,11,12,13,54,61)
E 1990 SC1851 (28)
R 1991 SC 724 (13)

ACT:
Essential Commodities Act (10 of 1955) s. 3 (3C) and Levy Sugar Supply Control Order, 1972-Fixation of price of levy sugar-It correct principles applied-1972-Order, if invalid.

HEADNOTE:
The Levy Sugar Supply Control Order, 1972, fixing the price of levy sugar was made under s. 3 of the Essential Commodities Act. Its validity was challenged in petitions under Art. 32.
Dismissing the petitions,
HELD : (1) (a) Sub-section 3(3C) of the Act is not confined to levy sugar only. Fair price under the sub-Section has to be determined in respect of the entire produce, ensuring to the industry a reasonable return on the capital employed in the business of manufacturing sugar, and, in considering whether a reason-able return has been allowed the profit on the free sale of sugar can be taken into account. [887 A-B]
Panipat Co-operative Sugar Mills v. Union [1973] 2 S.C.R. 860 followed.
(b)Section 3(3C) clearly envisages and contemplates the fixation of different prices for different areas. It hardly matters if areas are called zones. The constitution of zones for price fixation is not an innovation and goes back to 1959, when the Tariff Commission made a detailed report on the cost structure of sugar and the fair price payable to the industry. [887 F-G]
(2)(a) The Tariff Commission, 1969, however, recommended the constitution of 15 zones largely on State-wise basis with exceptions in case of U.P., Bihar which were divided into 3

and 2 zones respectively, after an elaborate inquiry into the working of the Zonal system. There was thus ample and abundant justification for continuing and sustaining the zonal system. There is no basis for the contention that the price fixation has to be made with reference to the cost of each individual unit in the zone. The basis of a fair price for sugar would have to be built an a reasonable efficient and representative cross-section on whose working cost-schedules will have to be worked out and price determined by the Government under s. 3(3C) of the Act, doing justice to the weak and strong alike. Any loss to the petitioners may be due to mismanagement, lack of efficiency and following a wrong investment policy which have nothing to do with the zonal system. Not a single expert body countenanced the suggestion that price control should be unit-wise, and even before the Tariff Commission no such point of view was pressed by the sugar industry. [892 E-F; 893 F-G; 894 D, F-G; 896 G-H]
Panipat Co-operative Sugar Mills v. Union [1973] 2 S.C.R. 860 1972, followed.
(b)It is futile to say that the zoning system should not have been done State-wise, especially when climatic and agro-economic condition,-, have been taken 'into consideration while constituting the zones. If any
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other system had been followed it would have become impossible to work out a proper cost-schedule for the zone. It would have created several problems and difficulties particularly with reference to the taxes, duties etc. which are levied by each State and the wages which are payable to the workers in the different States which vary from State to State. [897 H; 898 C-E]
(c)In the present cases, while classifying zones on geographical cumagro-economic considerations, there has been no discrimination made nor does the price fixation according to each zone, taking into account all the relevant factors, give rise to any such discrimination as would attract Art. 14. Once it is recognised that prices could be fixed according to the zones, the cost schedules that have been worked out by the Commission have necessarily to be different for each zone, because, the various items which go into cost differ from zone to zone. [899 D-F]
(3)(a) Sub-section (3C) lays down the various components for determining the price of sugar. Clauses (a), (b) and (c) relate to the total cost which consists of the minimum price of sugar cane as fixed by the Government, the manufacturing cost and the duty or tax. Clause (d) relates to the return on the capital employed. The very fact that cl. (a) provides that the minimum price fixed for sugar cane has to be taken into account shows that the actual cost is immaterial. Moreover, while fixing prices according to zones, it is impossible to take the actual cost of each manufacturer or producer and fix the price accordingly. Hence, the methods followed by the Tariff Commission, which have stood the test of time and have been incorporated in the sub-section, have been followed in the fixation of price of sugar. The fact that in some cases their actual cost may be in excess of the price fixed cannot be a ground for striking down the price fixed for the entire zone in accordance with accepted principles. It may be that uneconomic units may suffer losses, but what they cannot achieve in the open market they cannot insist on where price has to be fixed by the Government. The Sugar Enquiry Commission, in its 1965-report, expressed the view that 'Cost-plus' basis of price-fixation perpetuates inefficiency

in the industry and hence cannot always be the proper basis for price fixation. [899 F-H; 900 H; 901 A-E]
(b)The Tariff Commission had however recommended that as a measure of neutralising relative cost advantages and for rectifying the disparity in the ex-factory price structure, a graded slab system of excise duty may be introduced in place of the present flat rate. It is for the Government to take an early decision with regard to the recommendation, but as the Government is not bound to accept every recommendation of the Tariff Commission, this Court cannot strike down the Price Control Order. [901 H; 902 A-C]
(c)The Tariff Commission, which was in full possession of all facts, was satisfied that the requirements of the sugar industry could be more equitably met by the departure from the conventional method of giving a return on the basis of a certain percentage on the capital employed, and by adopting instead a uniform amount of Rs. 10.50 per quintal as the margin to be added to the other cost in arriving at a fair price of the sugar. The working of the Tariff Commission in arriving at the figure also shows that the Commission had allowed addition on account of the increase in the rate of interest on money borrowed. It is true that in Premier Automobiles v. Union of India, A.I.R. 1972 S.C. 1690, 16% return on the capital employed was considered to be reasonable, but out of that return, the car manufacturers, unlike the sugar producers, were made liable to pay minimum bonus, interest on borrowing, financial charges, warranty charges and guarantee commission. [902 C, F-H; 903 H; 904 A-F]
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(4)(a) The Tariff Commission had decided in favour of continuing the existing method of computing the quantum of depreciation on the basis of zonal averages of the costed units; and it was added that the figure so adopted was automatically to undergo an upward revision if and when the revision contemplated by the draft rules seeking to liberalise the depreciation to be earned-under the Income tax law was brought into effect. The statement furnished by the Government shows that the increase in depreciation has been allowed in accordance with the new rate of depreciation under the Income-tax Rules. [905 E-H 906 A-C]
Premier Automobilies case, A.I.R., 1972 S.C. 1690, followed.
(b)The Tariff Commission in 1959 and the Sugar Enquiry Commission in 1965 considered that no provision need be made for the purpose of rehabilitation and modernisation; but the Tariff Commission in 1969, made a recommendation. The conditions which prevailed in 1959 and 1965 were different and the latest view expressed in 1969, 'Ought to have received serious consideration by the Government. But, merely because Rs. 2.00 per quintal, as recommended by the Commission, had not been taken account while fixing the price of levy sugar, the price as fixed would not be struck down, because. its non-inclusion is in no way violative of s. 3 and 3A of the Act. [906 E-F; 907 A-B, G; 908 B-D]
[The Government should, however, give serious and immediate consideration to the matter and take a decision without further delay] [908 D]
(5)There is no serious inaccuracy or infirmity, factually or otherwise, in the escalations allowed by the Tariff Commission and accepted by the Government in fixing the price of sugar. [908 G]
(6)There is nothing to show that payment of gratuity or liability therefor had not been taken into account while fixing the price for levy sugar. [L909 C-D]

As regards bonus, the rate of minimum bonus had been raised from 4% to 8.33% by the Payment of Bonus Amendment Ordinance, 1972, but as the Bonus Ordinance was promulgated after the prices were fixed by the impugned Order, that Order cannot be struck down on the ground that the prices fixed by it did not take into account the changes in the rate of minimum bonus made by the Ordinance. Even so, in the changed circumstances the Government ought to make appropriate modifications in the impugned Order in respect of the prices of levy sugar. [910 B-E]

JUDGMENT:
ORIGINAL JURISDICTION : Writ Petitions Nos. 279-283, 293, 296, 297, 300, 303, 304 & 306 of 1972.
Under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.
S.V. Gupte, K. Srinivasamurthy, Naunit Lal and M. N. Shroff, for the petitioners (in W.P. No. 279/72).
K.Srinivasamurthy, Naunit Lal and M. N. Shroff, for the petitioners (in W.P. Nos. 280-283 & 303/72).
P.Ram Reddy, S. Kondala Rao and G. N. Rao, for the petitioner (in W.P. No. 293/72).
A.K. Sen, N. R. Khaitan and O.P. Khaitan for the petitioner (in W.P. No. 296/72).
L.M. Singhvi, N. R. Khaitan and O. P. Khaitan, for the petitioner (in W.P. No. 297/72).
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C.K. Daphtary, R. K. P. Shankardass, R. N. Banerjee, H. K. Puri and S. K. Dhingra, for the petitioner (in W.P. No. 298/72).
A. Subba Rao, for the petitioner (in W.P. No. 300/72).
L. M. Singhvi, N. R. Khaitan, O. P. Khaitan and A. T. Patra, for the petitioner (in W.P. No. 304/72).
G. S. Rama Rao, for the petitioner (in W.P. No. 306/72).
L. N. Sinha, Solicitor-General of India, G. L. Sanghi and S. P. Nayar, for the respondent (in W.P. Nos. 279-283/72).
L.N. Sinha, Solicitor General of India, and S. P. Nayar, for the respondents, (in W.P. Nos. 293, 296, 297 298, 300, 303, 304, & 306 of 1972).
B.Sen, Leila Sheth and B. P. Maheshwari, for the intervener (Upper Ganges Sugar Mills).
A.Subba Rao and B. K. Seshu, for interveners (Nizamabad Co.-opt Sugar Factory & Nizam Sugar Factory).
M.C. Setalvad, P. N. Tiwari, J. B. Dadachanji and O. C. Mathur, for the intervener (Mahalaxmi Sugar Mills).
C. K. Daphtary, J. B. Dadachanji, O. C. Mathur and P. N.Tiwarifor the intervener (M/s. Hindustan Sugar Mills Ltd.)
V. S. Desai, J. B. Dadachanji, O. C. Mathur and P. N. Tiwari, for the intervener (Delhi Cloth & General Mills Ltd.).
P.N. Tiwari, J. B. Dadachanji, and O. C. Mathur, for the intervener (Ganga Sugar Corpn. Ltd.).
The Judgment of the Court was delivered by
GROVER, J. These petitions under Art. 32 of the Constitution have been brought by or on behalf of the various factories, cooperative societies and Mills which carry on the business of manufacturing and selling sugar (hereinafter called compendiously the "sugar producers") challenging the validity and legality of the Levy Sugar Supply Control Order 1972 made under s. 3 of the Essential Commodities Act, 1955, hereinafter called the "Act" fixing the price of levy sugar in the different zones in the country and praying for

various reliefs. Writ Petitions Nos. 279 to 283, 293, 300, 303 and 306 of 1972 are by the sugar producers in Andhra Pradesh zone; Writ Petitions No. 297 and 304 of 1972 by the sugar producers in North Bihar zone and Writ Petitions Nos. 296 and 298 of 1972 by those in the Punjab zone.

The principal questions that arise for our determination are, The following:

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(1) What is the true scope and ambit of S. 3 (3 C) of the Act ?

(2) (a) Whether the system of fixing price for each zone (the entire country having been divided into 15 zones), is justifiable and is based on correct principles ?

(b) Whether the state-wise constitution of the zones is proper and justified ?

(c) Does the zonal system lead to discrimination and as such is violative of Art. 14 of the Constitution ?

(3) Is price fixation based on proper principles and have the prices been determined by following the correct methods and in accordance with s. 3 (3C) of the Act ?

(4) What is the correct position about depreciation and rehabilitation allowance and the extent to which these have been taken into consideration in price fixation ?

(5) Have the escalation in various items by which price determination is made been properly allowed ?

(6) Whether the items in respect of payment of additional bonus as provided by the Payment of Bonus Amendment Ordinance 1972 and gratuity are taken into account ?

The history of control over sugar production, its distribution and the method followed in the fixation of the fair or levy price of sugar has been set out in the connected case (Civil Appeal Nos. 1357 to 1369 of 1972) judgment in which also has been delivered today and the same ground need not be traversed again.

The first question-formulated by us which arises in these writ petitions can be divided into two parts. The first part involves the point whether sub-s. (3C) of s. 3 of the Act deals with levy sugar only and is confined to it alone, particularly, in the matter of determination of a reasonable return as provided by clause (d) of that sub-section. In the writ petitions the argument on behalf of the sugar producers has been that the whole object of having a scheme of partial control under which 60 to 70%, sugar has to be sold in accordance with the orders made by the Government under S. 3 (f) of the Act for which levy price is payable and the balance is saleable in the free market would be defeated. The result of accepting an interpretation that profit on the free sale of sugar can be taken into account while considering whet-her a reasonable return has been allowed on the capital employed by the sugar producers would, it has been stressed, be contrary to the scheme and purpose of the sub-section in question. This aspect of the matter has been

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fully dealt with in the above connected case. We have held that fair price has to be determined in respect of the entire produce ensuring to the industry a reasonable return on the capital employed in the business of manufacturing sugar. In other words the contentions of the sugar

producers have been repelled.
The second part of the first question is whether price fixation according to zones and not unit-wise (we shall call this "the Zonal system") is permissible under s. 3(3C) of the Act. According to that provision different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar. It has been sought to be established from clauses (a') to (d) of the same sub-section that what is contemplated is the price fixation of each unit or factory; otherwise it win not be possible to ensure that a reasonable return has been secured on the capital employed as required by clause (d). The Tariff Commission of 1969 has recommended a return of Rs. 10.50 per quintal of sugar. That recommendation having been accepted by the Government (vide its Resolution dated February 20, 1970) the only way,, so it has been suggested on behalf of the sugar producers, to ensure that return is to compute the cost of sugarcane, the manufacturing cost, the duty or tax payable and then add the above amount by way of return to the aggregate of the aforesaid items mentioned in clauses (a) to (c) of the sub-section. This can be done if all these items are computed unitwise and not, by taking a large number of units in an area because the aforesaid items are bound to vary and be different from unit to unit. We shall have an occasion to go more fully into matter while considering question No. (2). But we are unable to agree that the provisions of s.. 3 (3C) do not in any way warrant the fixation of price for the zones into which the country may be divided. The aforesaid provision clearly envisages and contemplates the fixation of different prices for different areas. It hardly matters if areas are called zones. The previous history, as will be presently seen, also fully supports such a view. The Constitution of zones for price fixation is not an innovation and goes back to 1959 when the Tariff Commission made a detailed report on the cost structure of sugar and the fair, price payable to the sugar industry.
It will be useful to note certain preliminary matters before the various aspects of question No. 2 are considered. In 1930 when the Tariff Board appointed by the Government of India investigated for the first time the claim for protection from the sugar industry there were only 29 factories producing sugar. Protection was granted to the industry in 1932. Thereafter the growth of the industry was rapid. By 1938-39, the number of sugar factories rose to 139. According to the Tariff Commission report 1959, the number of operating factories at that time was
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157 with a total output of 1.98 million tonnes. In 1969 when the Tariff Commission made its report there were 205 factories with a capacity for production of 34.69 lakhs tons. The number of factories is stated to have now increased to 221. As the production of sugar depends on sugarcane, a number of steps have been taken for the development of sugarcane. The supply of sugarcane of good quality and a fairly long, season of production are two prerequisites for maintaining the production of sugar. The duration of the season in the sugar industry means the period from the date of the start of the crushing by the factory to the date of finaly closing it, and it varies from region to region as it depends on two factors, (i) availability of sufficient quantity of cane and (ii) period for which reasonably good quality of cane giving economic recovey of sugar is available. Sugar recovery depends mainly on three factors : (i) the quality of sugarcane, (ii)

length of the crushing season and (iii) the overall operating efficiency of the sugar factory concerned.
The idea of preparing the cost schedule for sugar manufacture dates back to 1937. The first schedule was prepared in 1937 by the Director of the Indian Institute of Sugar Technology, Kanpur. The Tariff Commission in 1959 was of the view that to construct the cost schedule for the entire country at a uniform' 'Percentage of recovery and identical range of duration will only result in inflating the All India cost. The Commission arrived at the conclusion after a study of the break-up cost of individual regions that cost schedules could be constructed on the basis of actual recovery and duration as pertaining to each region. It grouped the sugar factories in various States into four regions or zones based on standard schedules for a uniform recovery of 10 per cent and for duration ranging from 90 to 200 days.
It appears that some State Governments represented that the Northern region comprising the States of Uttar Pradesh, Bihar and Punjab was unduly large with wide internal disparties in costs. The result was that uniform price fixed for the zone showed large differences in profit margins. The sugar Enquiry Commission headed by Dr. S. R. Sen in its final report in 1965 recommended five cost schedules for the same number of zones at 10% recovery and for different durations. Assam with one factory was to be treated as a separate zone. The Government, however, fixed prices for 16 zones under the Sugar (Control) Order 1963. The number of zones kept on changing till it was increased to 23 for the years 1965-66 and 1966-67. But in December 1967 prices .were fixed for 6 zones including Assam. The Tariff Commission in 1969 recommended the Constitution of 15 zones which suggestion was finally accepted (see page 67, Tariff Commission Report 1969).
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We may first take up the group of petitions of the sugar producers in the Andhra Pradesh Zone.
The position about price of levy sugar in zone 2 in which the sugar producers in Andhra Pradesh are functioning was that for the sugar produced in 1968-69, the price-fixed was Rs. 161.14 per quintal for D-29 quality. After the creation of fifteen zones in February 1970, the price for levy sugar for the Andhra Pradesh zone was fixed at Rs. 150.43 per quintal inclusive of excise duty. In May 1971 sugar was decontrolled which continued till December 1971. From that time till June 1972 when partial control was reimposed, a scheme of voluntary control of Sugar was in force. By agreement between the Government and the sugar producers 60% of the sugar released every month had to be placed at the disposal of the Government at Rs. 150/- per quintal exclusive of excise duty for D-30 quality. Under the impugned order the price of Rs. 121.97 per quintal was fixed for D-29 grade and Rs. 122.82 for D-30 quality for the Andhra Pradesh zone.
One of the main grievances of the sugar producers is that the above price was far below the price payable even under the voluntary scheme of distribution and so far as the actual cost of production of the various petitioning units is concerned the same was greatly in excess of the price of levy sugar fixed by the impugned order. Thus the sugar producers in this zone were being made to suffer huge losses instead of getting a reasonable return as provided by clause (d) of s. 3 (3C) of the Act. All this was attributed to the zonal system which is stated to suffer from the following serious defects apart from others:

(i) The sugar producers in Andhra Pradesh varied greatly in economic viability; some units were very large and some very small, e.g., crushing capacity of 3750 tonnes at Vayyuru and 800 tonnes at Seethanagaram respectively out of the costed, units (see Appendix 32, page 207, 1969 report, Tariff Commission).

(ii) A uniform price has been fixed for all units although the manufacturing cost varieswidely from unit to unit.

(iii)The extreme disparity was evident from para 9.5.1 of the 1969 report which showed that the actual crushing reason (based on 22 hours per day) for the individual unit had a divergence ranging from 26 days to 195 days. State-wise averages indicated a range from 26 to 153 days whilst the all India weighted average came to 108 days for the costed units. In Andhra Pradesh the duration in 1966-67

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which is the base year of the costed units varied from 163 days to 41 days.

(iv) Only 7 units out of 19 units in Andhra Pradesh zone were selected for working out the averages. This highly involved highly disparate and unfair comparison.

(v) According to table 9.3 at page 75 of the 1969 report the average of the cane actually crushed by all the 7 costed units came to 1233 tonnes per unit whereas the average of the cane actually crushed by all the 19 units in the State is 1065 tonnes. According to the figures supplied by the counsel for the petitioner at the time of arguments the total cane actually crushed in 1966-67 by all the 19 units in Andhra Pradesh was 16,60,000 tons. The average duration for that year being 82 days the average daily crushing of the 19 units worked out to 1065 tonnes per unit whereas the crushing capacity of 1233 tonnes per day wits taken as the base. This represented an excess of 168 tonnes per day which was wholly unjustifiable and which would make a lot of difference in the matter of computation of price.

(vi) The conversion cost given at pages 209 and 210, Appendix 33 of the 1969 report worked out to Rs. 25.86 per quintal which is the conversion cost for 1233 tonnes relating to 7 costed units but the average daily crushing of all the 19 units being 1065 tonnes the actual conversion cost will work out-to Rs. 29.94. Thus the difference in conversion cost would be Rs. 4.08 per quintal for sugar.

(vii)The weighted average were on a very restricted basis and hand-picked units could not furnish proper guidance The weighted average were farcical and were in no way different from the ordinary averages.

(viii)No account has been taken of the admitted fact that duration and recovery often depend on vagaries of nature or unforeseen events. For instance in the case of the sugar producers in Writ Petition No. 283/72 the

duration was 162 days in 1969-70, the recovery being 9.493% but it came down to 78 days in 1971-72 because the sugarcane crops were damaged by a highly distructive disease.

In the North Bihar group,, of petitions of which writ petition 297/72 may 'be taken to be representative points similar to the above have been raised. For the North Bihar zone, the prices-
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fixed by the impugned order were Rs. 157.55 for D-30 and, Rs. 155.85 per quintal for D-29 qualities respectively. According to the sugar producer its own cost of production comes to Rs. 181.96 per quintal without any return. Owing to the faulty price fixation, this unit was suffering a heavy loss, the accumulated amount of loss having reached the figure of Rs. 9.50 lakhs. According to the statements and tables prepared and submitted to us, in the North Bihar zone the cost factors of the costed units are so disparate and unequal that five out of the 8 costed unit$, do not even get their actual cost, leave aside any return.

The tables relating to the weighted averages are meant to show that there is no particularity or charm about the weighted averages. It is not an average which tends to remove the disparity between the, various units in a zone. In the table showing the ex-works price of sugar based on minimum price of the cane, duration and recovery for North Bihar zone compared with individual units for the season 1971-72 the zonal average cost on the basis of 66 days' duration and 8.86% recovery and Rs. 91.34 cost of cane comes to Rs. 139.52 per quintal excluding the return. After applying cost schedules to cane price duration and recovery of individual factories the results show that at least 10 factories suffer heavy losses because their cost ranges between Rs. 623. 81 per quintal of the factory at Ryam to Rs. 139. 83 of the factory at Chanpatiya. This is exclusive of the return of 10. 50%. It may be observed here that the factory at Ryam has a duration only of 7 days which is almost 'a freak figure and explains the high cost incurred by it for manufacturing sugar. But the total number of factories in North Bihar zone is 25 and the cost of other factories varies between 138.44 to 121.89 per quintal. It is next pointed out that under the averaging technique the Central Government fixes a common price for all sugar factories in every State or price zone by averaging extraordinary cost disparities. The average cost formulae ignore disparity in (a) cane cost per quintal; (b) duration; (c) recovery, (d) daily crushing capacity and (e) capital employed by one factory and the other in each zone.

Writ Petition No. 298/72 is representative of the Punjab group. There are five sugar factories in the Punjab zone. The price of levy sugar was fixed under the impugned order at 147.71 per quintal. Details of the audited manufacturing cost were filed with the petition for the 1971-72 season. It was claimed that the manufacturing cost for that season, came to Rs. 208.22 per quintal exclusive of interest on capital employed which worked out to another 16.40 per quintal. Thus the cost including interest came to Rs. 224.62 per quintal. The total loss on stock as on July 1, 1972 would come to Rs. 9,74,350.77. It was stated that the
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petitioner had recovered an average price of Rs. 245.00 per quintal on the sale of, free sugar out of the 1971-72 production and if the petitioner is able to secure approximately the same price for the balance stock of 2935 quintals of free sugar and thus to some extent neutralise

the over all loss this will still leave a loss of Rs. 87.17 per quintal to be made up on the sale of its present stock of levy sugar. During the month of December 1971 the duration was seriously affected by the Indo-Pakistan-hostilitiesan important factor which has not been taken into consideration by the government.

Servshri M. C. Setalvad, B. Sen and V. S. Desai who have appeared for the Interveners Nos. 6, 3 and 7 in Writ Petition No. 297 of 1972 respectively do not support the arguments challenging the zonal system. On the contrary a strong case has been made by them in favour of the zonal system. The Interveners whom they represent are obviously the low cost units and are in favour of the zonal system being retained. The tug of war in respect of the zonal system is between the high cost units and the low cost ones; the former are against it and the latter in favour of it.

The system of fixing the prices, according to certain regions or zones, is not a new one. The tariff Commission in 1959 favored the formation of four zones. In the report of the Sugar Enquiry Commission 1965 it was pointed out that the Government had actually fixed the prices for 22 zones which meant that from four zones the number had been increased to twenty two or more. The commission was of the view that there should be five zones only in addition to Assam. The Tariff Commission, 1969, however recommended the constitution of fifteen zones largely on State-wise basis with an exception only in case of Uttar Pradesh and Bihar. Uttar Pradesh was divided into three zones and Bihar into two. The Tariff Commission had been specifically requested to inquire into the working of the zonal system, the main point for inquiry being the zones into which the sugar producers should be grouped having regard to the basis of classification to be recommended by the Commission. The view of the Commission was that on the whole the number of price zones should be fifteen which would reduce, though not eliminate, the inter-se anomalies in the cost structure without resorting to the extreme of the fixation of price for each unit or a single or at the most two, one for the sub-tropical and other for the tropital one. The Tariff Commission hoped that in the course of time conditions would be created making the operation of the second alternative feasible. From Chart IV relating to production of sugar ,to be found in the report of the Sugar Enquiry Commission 1965, the All India production arose from 12,00,000 tons. to 32,00,000 tons. in 1964-65. This notwithstanding the fact that the prices

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were being fixed on the basis of regions. In para 19.7 at page 127 of the said report the Commission made some very useful observations. It rejected the industry's contention that under the system of determining price on the principle of average for a zone there was no incentive for heavy investment in block. If was, pointed out that in recent years of control-on sugar in spite of the sugar prices having been-fixed on a zonal system there had been a substantial addition to the capacity even in the sub-tropical belt It was stated :

> "Further, a study of the cost structure of the old and new factories reveals that in the total cost there is hardly much difference between the Cost of production in the old factories where the element of depreciation is very low and that in the new factories where its incidence is fairly heavy. While in an old unit the capital cost is lower, the

recurring cost is often higher, in a new unit of comparable capacity, it tends to be opposite. What the industry ought to be concerned with is the untimate ex-factory price. To take out of context one element of cost that goes into the total cost and then to plead that because the incidence in respect of that element of cost is low in the case of old plants some allowance should be given to the industry as a whole, is not justifiable.",

It is somewhat difficult to accept the argument of those who are opposed to the zonal system that the loss alleged to have resulted to some of the sugar producers can be attributed to the prices having been fixed zone-wise. For instance, in the Punjabzone the crushing capacity of all the factories is practically the same e. about 1,000 ton per day. The prices which were fixed by the Government were on the basis of 67 days duration with a recovery of 8.75%. In the case of Malva Sugar Mills the actual duration was 95 days, the recovery being 8.78%. Ordinarily and in the normal course Profits should have been made by the said unit and it should not have incurred losses. The reasons for incurring losses can be many including mismanagement, lack of efficiency and following a wrong investment policy which have nothing to do with the zonal system. This system by and large leads to efficiency and affords an incentive to cut down the cost. It is only when there is keen competition between the units in the same zone that a real effort will be made by each unit to reduce its cost and make the working and running of the unit more efficient. The essence of the matter is that a commercial concern can be a success only if these is proper planning and efficient management. The argument on behalf of the sugar producers which claim that they have been running into losses because of

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the zonal system can hardly be sustained on the evidence on the material produced by them. It is true that in a few cases all the data and the details of costs etc. were set out in the petition and were supported by statements made out from audited accounts but in most cases it was at the stage of rejoinder or at the time of arguments that elaborate statements were prepared showing figures of losses into which these units are running owing to. the fixation of price by the impugned Order. The government in these circumstances could possibly have had no opportunity to check up the correctness of all the figures and even if that could be done as, weekly returns are submitted on prescribed forms to the authorities concerned it would still not be possible for the government to determine their accuracy without a complete investigation being carried out. Nor could it be ascertained with out a prolonged investigation what the real causes were for some of the sugar producers incurring much heavier costs than the others.

The extreme position taken up on behalf of some of the petitioners that the prices should have been fixed unit-wise and on the basis of actual costs incurred by each unit could hardly be tenable. Apart from the impracticability of fixing the prices for ,each unit in the whole country the entire object and purpose of controlling prices would be defeated by the adoption of such a 'system. It must be remembered that during the earlier period of price control the price was fixed on an all India basis. That still is the objective and if such an objective can be achieved it cannot be doubted that it will be highly conducive to proper

benefit being conferred on the consumers. According to the Commission the objective to be achieved should be to have only two regions in the whole country, namely, sub-tropical and tropical. Not a single expert body appointed by the Government of India from time to time countenanced the suggestion that price control should be unit-wise. It appears that even before the Tariff Commission such a point of view was understandably not pressed on behalf of the sugar industry. The low cost units demanded the formation of the larger zones. The high cost units asked for the formation of smaller zones. No material has been placed before us to show that there was any serious demand for prices being fixed unit-wise. Even in the arguments it was almost common ground with the exception of one or two dissentient voices that zoning is unavoidable in our country in the matter of fixing of the price of sugar.

We may now advert to some of the salient flaws and infirmities which have been sought to be shown with the assistance of various facts and figures from which the zonal system is said to suffer. Firstly the method of selection of the units for the purpose of
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costing and taking of the averages has been subjected to severe. criticism.

As stated in para 9.1 of Chapter IX of the 1969 report the .findings of the Commission were based on 66 costed units out, of 200 working units in the industry. It was also mentioned in. para 9.1.1 that on a scrutiny of the cost forms it was found that the information furnished by most of the non-costed units was not satisfactory. The defects noticed were in regard to allocation of costs under the various heads and inclusion of certain items which should ordinarily have constituted a part of the return. It was further stated that the cost Accounts Officers of the Commission made a detailed scrutiny of the accounts in the selected. units and worked out costs in a fair and equitable manner to enable the Commission to determine appropriate costs for each unit for detailed cost investigation. The 66 units which were costed out of 68 selected for the purposes accounted for nearly 34% of the total capacity and 37% of the total production of sugar in 1966-67. The average duration of the costed units was 101 days with a recovery amounting to 9.73% as compared to All India figure of 95 days and 9.91% recovery respectively. The commission was the best judge of selecting the units for cost study and for working out the average cost. The reasons given by it for 'Selecting the costed units do not suffer from any disregard of the recognised principles of costing. It is true that the selection of some units out of all the units in a particular zone can lead to the anomalies and the hardships which- have been pointed out on behalf of the sugar producers. To take an illustration the average with regard to crushing capacity in the Andhra Pradesh Zone might have been different if all the units had been taken into consideration. But the Commission could not have taken the averages of all the units unless it had selected them for costing which in the very nature of things was not practical and which for the reasons given by the Commission itself could not be done because of theunsatisfactory nature of the information furnished by most of the non-costed units. Indeed the petitioner in " Writ Petition no. 279, did not even reply or send any memoranda to the Commission although the questionaries were sent to it. Similarly in Andhra Pradesh Zone three other units. Amadalavalase Coperative Agricultural & Industrial Society Ltd. Sivakarni Sugars

Ltd. and Challapali Sugar Ltd. did not send any reply or memoranda as is apprarent from Appendix IT in the report.
As regards the averages and weighted averages which have beer, worked out by the Commission for the purpose of fixing .prices in respect of the varying figures of different items of cost we are unable to appreciate how these have not been properly worked out. It may be that if a different method had been adopted than the one followed by the Commission the averages
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worked out might have been different but the principle Df weighted average which was followed with regard to those items where it could be applied is a well recognised one and was adopted even by the Sugar Enquiry Commission in 1965.
The method of working out the weighted averages is well known in the determination of price and has been employed in working out the cost structure of the sugar industry and fixing of sugar prices on prior occasions also, e.g., in 1959 by the Tariff Commission. As pointed out in Cost Accounts' Handbook edited by Theodore Lang, 1945 Edn. the items of a series to be averaged vary in importance in some quantitative way in addition to the importance explicitly given by the figures in the series. An illustration of weighted average occurs in pricing stores issues where different lots of raw material have been acquired at different prices. In such a case a simple average of price is usually not considered desirable. Examples have been given in the book to show that the simple average while it may be technically correct is practically valueless or positively misleading under certain circumstances. "Where quantities as well as dollar values are to be considered, weighted averages are far more significant than a simple average."
We may next deal with the harsh and unjust results to which the zonal system adopted by the Commission is stated to lead. The figures given about the actual cost of the petitioning units worked out according to the tables and the formulae given in the Tariff Commissions report have been produced to demonstrate the extent and magnitude of the financial loss to which the petitioners are being put or will be put. The stress has been on the utter disregard of the principle embodied in sub-s. (3C) of s. 3 of the Act that a producer is entitled to a reasonable return on the capital employed in the business of manufacturing sugar. The petitioners have sought to establish that instead of earning any return they are actually out of pocket in the matter of cost owing to the price fixation by the government worked out in accordance with the tables given in the report. Apart from what has previously been noticed about the various factors which may be responsible for incurring of high cost we are unable to agree that the price fixation has to be made with reference to the cost of each individual unit in the zone. As pointed out in our judgment in the connected case (supra) the basis of a fair price would have to be built on a reasonably efficient and representative cross-section on whose working cost schedules will have to be worked out and price determined by the government under s. 3(3C) of the Act. The cost schedule must be such as would do justice to the weak and strong alike. There can thus be no doubt that
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there was ample and abundant justification for continuing and sustaining the zonal system.
We shall now deal with clause (b) of question No. 2. In Writ Petition No. 280/72 it has been pointed out that the peti-

tioner factory incurred heavy loss in spite of sale in free sugar No sugarcane, it has been claimed, was available' for more than 60 days i.e. from December 22, 1971 to February 19, 1972. The actual cost of production has come to 'Rs. 173.90. The recovery of this factory is 9.54%. There is another factory situate At Rayagoda at a distance of 80 miles from the petitioner. As that happens to be in the State of Orissa the price of Rs. 152.98 per quintal has been fixed for sugar in that zone. If a division had not taken place on linguistic basis but agro-economic and agro-climatic factors-had been taken into consideration the petitioner would have got a price of Rs. 152.98 in the same way as the factory in the Orissa State. According to this petitioner the reasoning of the Tariff Commission as given in para 31 at page 108 of the report for constituting the zones on the basis of States is altogether unconvincing and highly fallacious. In Writ Petition No. 283/72 (The Chittoor Coop. Sugar Ltd.) the factory is on the border of Tamil Nadu State but is within the State of Andhra Pradesh. There are two factories in the Tamil Nadu State which are said to be at a distance of 80 km. from this factory, namely, Murgappa (Palar Sugars Ltd.) and North Arcot Joint Coop. Sugars Ltd. The levy price fixed for Tamil Nadu zone for 1971-72 is Rs. 134.01 per quintal. Although it can be safely presumed that these factories within such a short distance would be governed by the same agro-climatic and agro-economic conditions yet they have been grouped differently resulting in serious disparity in prices. In Writ Petition No. 293/72 the factory is at Bobbili in the State of Andhra Pradesh. The duration during the year in question was 78 days, the recovery being 8.929%. Its crushing capacity is 850 tonnes per day as compared with the Nizam Sugar Factory Ltd. which has a duration of III days, recovery of 11-18% and crushing capacity of 4500 tonnes per day. This Bobbili factory is a pigmy as against the giant. Its actual cost per quintal is Rs. 184.65 whereas the cost of the Nizam Sugar Factory is Rs. 117.00. Total production of the petitioner factory is 50,000 odd tonnes whereas that of the Nizam Factory would be about 5 lakh tonnes odd. The levy price for both these factories has been fixed at the same figure. All this, it is urged, shows the gross defects in the state-wise zonal system. If there are very big units and there are very small units in the same zone either they must be classified according to their size or the price must be fixed for each individual unit.

The criticism that climatic and agro-economic conditions have not been taken into consideration while constituting the zones does

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not appear to be valid. The climatic conditions in the State of Assam, West Bengal, Orissa and Kerala which are in one zone seem to be substantially similar. The Commission has pointed out that there is only a small number of units in each one of these States and the costs are more or less similar. Bihar has beer. divided into two zones and U.P. into three zones. The' reasons are given in para 8.16 of Chapter VIII of the 1969 report. It has been pointed out that the climatic conditions of the' two areas, namely, the Meerut Division of the Western U.P., and Gorakhpur Division are different as they are separated by 300 miles. The units in Central U.P. had also, for the same reasons,' to be constituted into a separate group. On similar basis the units in Bihar had been sub-divided into two zones, North and South. It is, therefore, altogether futile to say that the zoning' should not have been done state-wise. If any

other system had been followed it would have become impossible to work out a proper cost schedule for the zone. For instance, if the Chittoor Coop. Sugars Ltd. which is in Andhra Pradesh towards the extime end and which is very near the State of Tamil Nadu had been grouped with the factories in Tamil Nadu or if the Nizam Sugar factory and the Nizamabad Coop. Sugar Ltd, which are quite near the border of Maharashtra State had been grouped with the factories in Maharashtra, it would have created several problems and difficulties particularly with reference to all the taxes, duties etc. which are levied by each State and also the wages which are payable to the workers in the different States which admittedly vary from State to State.

Coming to clause (c) of question No. 2, the allegations regarding discrimination are more or less general based on the various disparities already noticed. In Writ Petition No. 279/72 more detailed allegations have been made which may be referred to briefly. Before the constitution of 15 price zones, all the southern States were getting the same price except the Nizam factory and the Nizamabad Cooperative factory Which were in a different zone (i.e. Zone 1) though situate in Andhra Pradesh. According to the Tariff Commission, 1969, the cost structure depends mainly on the recovery and duration but the impugned order prescribes a higher selling price in the case of Maharashtra, Mysore, Gujarat, Tamil Nadu, Uttar Pradesh etc. than Andhra Pradesh although the duration and recovery are higher in the former States than the latter State. Even according to the Tariff Commission report the cost of production in Andhra Pradesh worked to Rs. 103.07 for 1969-70 for which a levy price of Rs i5O.25 was fixed whereas for Tamil Nadu the cost of production worked out to Rs. 97.83 while the levy price has been fixed at Rs. 166.16. Thus the classification has not been made on a

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rational basis having any nexus with the object sought to be achieved, i.e. fixation of a fair price. It is further stated that in case of factories with longer crushing season where labour works for 8 to 10 months, the retaining allowance payable is negligible or nil. This is the case with units in Maharashtra, Gujarat, Mysore, Uttar Pradesh etc. In states like Andhra Pradesh where duration' is much less, the management has to pay the wages to the seasonal staff by way of retaining allowance. This adds to the costs.

In reply it has been pointed out that the prices were fixed in the different zones on the basis of the Tariff Commission's recommendations. If there is any variation in the prices fixed from zone to zone it is the result of the different schedules recommended for valid reasons by the Tariff Commission. The incidence of retaining allowance and other costs on the working of the factories in the different zones have been taken into consideration by the Commission.

In the elaborate arguments on behalf of the sugar producers. hardly any serious attempts was made to press the question of alleged discrimination, particularly if the adoption of the zonal system could not be demolished. Once it is recognised that prices could be fixed according to the zones the cost schedules that have been worked out by the Commission have necessarily to be different for each zone. The various items which go into cost differ from zone to zone. It is not possible to take out only a few items and find discrimination, disregarding all the other items or components of costs on the basis of which price determination has to be made. We are unable to hold that while

classifying zones or geographical-cum-agro-economic consideration, any discrimination was made or that the price fixation according to each zone taking into account all the relevant factors would give rise to such discrimination as would attract Art. 14 of the Constitution.
While examining question No. 3 learned Solicitor General has reminded us that "cost-plus" cannot always be the proper basis for price fixation. Even if there is no price control each unit will have to compete in the market and those units which are uneconomic and whose cost is unduly high will have to compete with others which are more efficient and the cost of which is much lower. It may be that uneconomic units may suffer losses but what they cannot achieve in the open market they cannot insist on where price has to be fixed by the government. The Sugar Enquiry Commission in its 1965 report expressed the view that "cost-plus" basis of price fixation perpetuates inefficiency in the industry and is, therefore, against the long-term interest of the country.
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In the book of Cost Accounting by John G. Blocker and W. Keith Weltmer it has been stated that even from the point of view of the management, there are three important defects in the older types of cost analysis; the importance attributed to actual costs, the historical aspect of the cost figures and the high cost of compiling actual costs. Management is led to believe that actual costs are the result of efficient operation, when in reality actual costs_may include excessive quantities of material, defective parts, ineffective use of labour and an unnecessary amount of time in production. In other words the cost analysis may not be an indicator of efficient plant operation. Therefore. pre-determined standard material, labour and overhead costs are an important aid in formulating price policies in planning production and in measuring efficiency..
In the book titled "Price Fixation in Indian Industries"-a study prepared in collaboration with the Institute of Chartered Accountants of India-it has been stated at page XV of the introduction that "costs alone do not determine the prices. Cost is only one of the many complex factors which together determine prices. The only general principle that can be stated is that in the end there must be some margin in prices over total costs, if capital is to be unimpaired and production maximised by the utilisation of internal surpluses". It is further stated at page (XVI) that "while the "cost plus" pricing method is the most common, it may be argued that it is not the best available method because it ignores demand or fails to adequately reflect competition or is based upon a concept of cost which is not solely relevant for pricing decision in all cases. What is essential is not so much of current or past costs but forecast of future cost with accuracy...... Generally pricing should be such as to increase production and sales, and secure an adequate return on capital employed". At page 3 the problem of selection of units for cost study has been considered. The general practice is to select units of average size from different centers. Another determining factor in the selection of units is the availability of cost data of the units to be selected. In India one hardly comes across standardised cost acCounting in the manufacturing units. In general it may be said that the selection of units should be done on the basis of availability of data, structure of industry and the objective for which the study is being made.
Sub-section 3C itself lays down the various components of determining the price of sugar. Clauses (a), (b) and (c)

relate to the total cost which consists of the minimum price of sugar-cane as fixed by the government, the manufacturing cost and the duty or tax. Clause (d) relates to the return on the capital
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employed. The very fact that clause (a) provides that the minimum price fixed for the sugarcane has to be taken into account shows thatthe actual cost is immaterial. Moreover under this sub-sectionprice can be fixed according to certain zones. While doing so it is altogether impossible to take the actual cost of each manufacturer or producer and fix the price accordingly. In such a case the methods followed by the Tariff Commission have stood the test of time and the sub-section itself incorporates or embodies the principles which have been followed in price fixation of sugar. It is not therefore possible to say that the principles which the Tariff Commission followed in fixing the prices for different zones are either not recognised as valid principles for fixing prices or that simply because in case of some factories the actual cost was higher than the one fixed for the zone in which that factory was situate the fixation of price became illegal and was not in accordance with the provisions of sub-s. (3C). It has not been denied that the majority of sugar producers have made profits on the whole and have not suffered losses. It is only some of them which assert that their actual cost is far in excess of the price, fixed. That can hardly be a ground for striking down the price fixed for the entire zone provided it has been done in accordance with the accepted principles. The methods employed by the Tariff Commission 1969 in preparing the cost schedules as also the formulae for working out cost schedules for the future are fully set out in the Commission's report and have been also discussed in the connected case (supra). We need not go over the same matters again.
There is one matter on which the criticism on behalf of the sugar producers is legitimate and the force of which even the learned Solicitor General could not deny. The Tariff Commission had said in para 9.14 that after taking all factors into consideration it had been discovered that factories with capacities of less than 1000 tonnes had a disadvantage of the order of Rs. 3/- per quintal and those above 1500 had a relative advantage of the order of Rs. 2/- per quintal compared to the conversion charges of the average capacity range which had been adopted in formulating the basic cost schedule. The Commission proceeded to say :

> "Having regard to the fact that we have recommended fixation of uniform prices on the basis of zonal averages it is not practicable to make the necessary adjustment for rectifying the disparity in the ex-factory price structure. We would, however, suggest that as a measure of neutralising these relative, cost advantages related to capacity a graded slab system of excise duty may be introduced in place of the present flat rate".

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This recommendation was not accepted by the government and it was stated that a decision on this recommendation was being deferred. It is high time that the government took a decision on this vital recommendation. It cannot be denied nor has thee learned Solicitor General made any attempt to do so that the aforesaid recommendation of the Commission is based on sound reasoning and deserves to be accepted and implemented. But as the government was not bound to accept

every recommendation of the Tariff Commission it is not possible for us to strike down the Price Control Order. It is for the Government to take an early decision with regard to the above recommendation of the Tariff Commission.
On the question of return which has been allowed of Rs. 10.50 per quintal a great deal of argument has been addressed on behalf of. the sugar producers. Firstly it has been submitted that according to the report of Tariff Commission this figure which was to be, static was to be effective for a period of 3 years only and the prices cannot be fixed on the basis of a static figure for all times. The rate on which money can be borrowed from the banks it is pointed out, has gone up from 9 % to II%. There are other charges like bank commitment charges etc which the 1969 Commission has not taken into account. The value of the fixed assets has also gone up and that fact has been ignored by the Commission. The main criticism is founded on the figure of Rs. 10.50 per quintal which, it is said, was worked out when the cost was in the region of about Rs. 96 per quintal in 1966-67. Even according to the government figures the cost has gone up much higher. The return, therefore, of Rs. 10.50 per quintal which was fixed on the basis of cost of Rs. 96.20 per quintal could not possibly furnish the figure of an adequate return which was contemplated to be 12.5% on the capital employed. The figures worked out by the learned counsel for the producers and those of the government hardly agree and it is difficult to reach any definite conclusion whether the basis on which the Commission recommended that a fixed return of Rs. 10.50 per quintal should be allowed by way of return was unrealistic and could not be adopted for the future. The Commission was fully in possession of all the figures of the price as also the working capital on which the return had to be determined. It was satisfied that the requirements of the sugar industry could be more equitably met by the departure from the conventional method, namely, of giving a return on the basis of certain percentage on the capital employed and by adopting instead a uniform amount per quintal as the margin to be added to the other cost in arriving at a fair price of the sugar. According to the calculations made by the Commission that would provide a relatively efficient unit an amount sufficient to declare a dividend of the order of 7 to 8% on paid
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up share capital after meeting its other commitments such as interest and taxation. It was stated in arriving at this decision the Commission had made proforma calculation for return applying 12-1/2% to the zonal averages of the capital employed and the results are tabulated in Appendix 37. The variations ranged from 8.23 to Rs. 15.73 per quintal. Adding to this the element of depreciation, the over all difference ranged from Rs. 10.01 to Rs. 21.96. By adopting the standardised figure of Rs. 10.50 per quintal the range of variation had been narrowed down from Rs. 11. 88 to Rs. 16.94. This was considered to be a more satisfactory alternative not only from a producer's but also the consumer's point of view.It was observed that in the areas where large number of low cost units subsist this amount of return available in terms of money per unit of sugar produced would be relatively higher. This should provide the needed impetus for further capital formation for rehabilitation, expansion and modernisation. According to the statements furnished by some of the producers, e.g. in Writ Petition No. 297 (Standard Refinery) the actual payment on account of interest and financial charges had come to

15.28% per quintal. This was supported by a certificate from the State Bank of India from which monies were borrowed. Similarly in the case of Writ Petition No. 298/72 (Jagatjit Sugar Mills) it was claimed that the actual interest charges incurred worked out at the rate of Rs. 10.40 per quintal which entirely wiped out the provision for a return of Rs. 10.50 per quintal on the capital employed.
The cases of individual units can hardly furnish a guide for standardising items of cost, the capital employed and the return in the matter of price fixation for a zone or a region as a whole. Nor can charges on account of interest incurred by some units in the entire zone reflect a proper working and management of all the units in that zone. When prices have to be fixed not for each unit but for a particular region or zone the method employed by the Commission was the only practical one and even if some units because of circumstances peculiar to them suffered a loss the price could not be so fixed as to cover their loss. That cannot possibly be the intention of the Parliament while enacting sub-s.3C of s.3 of the Act. If that were so the price fixation on zonal or regional basis would have to be completely eliminated. In other words the entire system of price control which is contemplated will break down because fixation of price for each unit apart from being impractical would have no meaning whatsoever and would not be conducive to the interest of the consumer. We may point out that in the case of Premier Automobiles v. Union of India(1) 16% return on the capital employed was considered to be reason-

(1) A.I.R. 1972 S.C. 1690.

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able. But, it must be remembered that unfortunately whenever that decision has been discussed no one has taken care to under stand and appreciate that out of the return the car manufacturer were made liable to pay the minimum bonus of 4%, the interest of borrowings, financial charges, warranty charges and in some cases the gurantee commission. In the return which has been allowed to the sugar producers neither the minimum bonus not additional amounts of warranty and guarantee charges are payable by them.
In the letter of 8th October 1970 the Commission pointed out that the order to arrive at the figure of the return on the capital employed of Rs. 10.50 per quintal the. Commission had made a study of the various figures in respect of the costed period average of 5 years' duration and recovery and proforma calculation for the capital employed. Thereafter the capital employed had been computed on a uniform basis taking into account the written down value of assets and working capital equal to six months' cost of production including depreciation. After deducting the average net fixed assets- from the capital employed the working capital came to Rs. 55 per quintal. It was stated that instead of the figures indicated in para 9.13 of the 1969 report the working capital should be taken at the figure of Rs. 55 per quintal for regulating additional interest due to carrying on larger stock on account of increased production. It may be, mentioned that in the 1969 report the figure of Rs. 42.40 per quintal had been calculated by way of working capital (vide para 9.13 of the report). This meets the criticism made on behalf of the producers that although the rate of interest has increased, the Commission has not allowed any addition on that account.
Coming to question No. 4 a good deal of attack has been made on the depreciation allowed by the Commission. Depreciation is essentially a part of the conversion costs. Under the

terms of reference the Tariff Commission 1969 was asked to indicate the basis on which the provision for depreciation should be made. The question was whether depreciation to be allowed in the cost structure should be calculated on replacement value or on written down value of the assets and how individual factories which modernise the plant or expand their capacity should be compensated for the investment made. The Sugar Enquiry Commission 1965 had recommended depreciation on written down value but had also suggested rehabilitation within a specified period. On the general question of depreciation the Boothalingam Committee in its report on rationalisation and simplification of tax structure came to the conclusion that over the period of years depreciation should be allowed in such a way that 20% more than the original cost is provided for. The
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various bodies which either appeared or sent representations to the Tariff Commission 1-969 put forward different points of view. The Commission after referring, to the practice followed in other countries pointed out in para 9.9.4 that in the past a few departures from the normal practice of allowing depreciation on the written down value adopted for income, tax assessment had been made. For instance, in the case of steel prices report 1962 the Commission adopted a standard block and a straight line method. In the report on Rubber Tyre and Tube 1965 special depreciation was allowed in addition to the normal amount. 'In para 9.9.6 the Commission stated that the majority, of units in sugar industry were more than 30 years old. At 9% depreciation for plant and machinery and 21% for buildings most of the original 'assets have been written off. To calculate the amount of depreciation that would have accrued to individual units during the course of the last 30 years or so on replacement basis year by year and simultaneously to revalue the assets in order to arrive at the present assets was not an easy task. After taking the necessary figures the Commission found that comparatively speaking a large number of units required rehabilitation having depreciation much lower than the average of the industry. The, Commission felt that as it was making recommendation only for a period of three years it would not be advisable to work out depreciation on replacement value for that short period when that practice had not been followed in the past. The Commission decided in favour of continuing the existing method of computing the quantum of depreciation on the basis of zonal averages of the costed units. It was added that the figure so adopted was automatically to undergo an upward revision if and when the revision contemplated by The darft rules seeking to liberalise the depreciation to be earned under the Income tax law was brought into effect.

On behalf of the sugar producers it has been stated that the Tariff Commission has merely taken the formulae under the Income tax law of the written down value but has made no provision for adding the value of new improvements or additions.

It appears from the letter of the Traiff Commission dated July 29, 1970 from which extracts have been furnished 'to us by the learned Solicitor General that in accordance with what was said in para 9.4.6 of 1969 report the commission has recalculated the figure in respect of depreciation in accordance with the amended provisions of the income tax law and the rates have been revised for different class of assets for the period of the estimate. On behalf of the government a statement has been furnished to us showing the

impact of variation as a result of introduction of new rates of depreciation under the
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Income tax Rules per quintal of sugar over the basic cost schedule in the 1969 report. It is quite clear, from that statement that the increase in depreciation has- been allowed in accordance with the new rate of depreciation under the Income tax Rules and the criticism on behalf of the, producers on this point does not appear to be, valid. It is pertinent to note that in the case of Premier Automobiles case (supra) also this Court upheld depreciation being allowed on the basis provided for by the income tax law and did not accept the contention of the car manufacturers that depreciation allowance should be calculated on replacement cost. The following observations may be reproduced :

> "The depreciation which is allowed under the tax laws is very liberal and we see no reason to pass on the burden to the present consumer who, is not likely to get any benefit out of the replacement proposed to be provided for by the manufacturers".

As regards rehabilitation the Government of India had appointed a committee in June 1963 to examine the question of rehabilitation and modernisation of the old and uneconomic units in the sugar industry under the Chairmanship of Shri S. N. Gundu Rao. That Committee submitted its report in 1965 and recommended on various matters including the assessment of need for rehabilitation modernisation and expansion of uneconomic units. The Sugar Enquiry Commission 1965 agreed with the report of the Gundu Rao Committee that there was need for providing special loan assistance to the industry for the purpose of rehabilitation and modernisation. 'It was suggested that the Government could provide finances for rehabilitation and modernisation through the existing financial institutions such as Industrial Development Bank and Industrial Finance Corporation. In the 1959 report of the Tariff Commission the principle that a uniform allowance for rehabilitation to all units in the sugar industry had been held to be unwarranted since such a provision, according to the Commission, while giving necessary resources to the needy ones would accrue as an extra element of profit to others. The reason given was that generally the average life of a sugar plant and machinery is 20 to 25 years. Therefore the units which had gone into production in recent times should have no problem of rehabilitation for some years to come. Those units which had carried out substantial expansion and had in the process effected renovation and modernisation of their existing equipment would not require the same amount for further rehabilitation as the units which were established in prewar years and had carried out no expansion and no rehabilitation. The Commission had found that the industry had done well during the four years preceding the
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report It had, therefore, resources which could have been utilised for rehabilitation and modernisation of the old plant and, equipment. In other words in 1959 it was considered that nothing need be given by way of uniform allowance for rehabilitation in the fair selling price of sugar. The government, it was suggested, should make the necessary arrangement for making available financial assistance lo the units in sugar industry on similar lines as those made for the cotton and jute textile manufacturing industry for the purpose of renovation and modernisation of

their plant and equipment.
Before the 1969 Tariff Commission the Sugar industry had pressed for the grant of rehabilitation allowance equivalent to the amount of difference between the replacement value and the historical depreciation. After giving the various figures in para 9.10.2 the Commission considered that the depreciation rate would come to Rs. 4.22 per quintal. The Commission, however, proceeded to say that rehabilitation should not be linked to the replacement cost or the difference between depreciation at replacement and historical cost. At the same time it was necessary to ensure that in the interest of the maintenance of continuity of sugar production at an appropriate level such of the units which could be brought to a standard of normal efficiency should be helped to rehabilitate themselves. In the assessment of prices by region as well as fixation of price on the basis of zonal schedules it was not possible to take into consideration the needs of individual units. The best that could be done was to provide for a join fund for the entire industry. In para 9.10.4 the Commission accepted the case for allowing for the next 3 to 5 years at least half this amount or Rs. 2/- per quintal in round figures by way of rehabilitation grant to the industry either by way of direct addition to the controlled price or if so preferred, in the interest of the consumer indirectly by suitable adjustment in the burden of taxation. With the amount so generated a fund could be, established only for meeting the cost including the cost of finance for.creation of additional assets to improve the productive efficiency of the deserving units. In the cost schedules which were prepared the amount of Rs. 2/- per quintal was added by way of rehabilitation for determining the ex-works price of sugar.
In the resolution dated February 20, 1970 of the Government of India the above recommendation was noticed but it was stated that a decision on that matter had been deferred pending consultation with the concerned interests. Apart from relying on the discussion in the reports of 1959 and 1965 the Solicitor General has referred to the observations of this Court in the Premier Automobiles case (supra) in which while considering the question of depreciation the principle that it should be allowed on replacement basis was not accepted. According to report of the Car Prices
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Enquiry Commission if the manufacturers were to keep apart not only the amount of depreciation but also the development rebate and other reserves to. which they were entitled under various tax and other laws and invest them separately or even in their business, depreciation funds with the amount thus provided for could be built up and these could be invested whether inside or outside the business.
It is unfortunate that nothing has been done to implement the recommendation of the Commission in respect of rehabilitation presumably, we are told, because the question of nationalisation of sugar industry was under consideration. The conditions which prevailed at the time of the 1959 report and the 1965 report were different and the latest view expressed in the 1969 report ought to have received serious consideration. But we are unable to hold that merely because Rs. 2 per quintal as recommended by the Commission has not been taken into account while fixing the price of levy sugar the price as fixed should be struck down. The non-inclusion of this amount is in no way violative of the provisions of sub-s. 3A of s. 3 of the Act. We have however, no doubt that the government will give

serious and immediate consideration to this matter and take a decision on it without any further delay.

We may now refer to the escalations (question No. 5) on the wages, cost of packing, electricity duty, transport charges on cane etc. These matters are all dealt with in the latest note of the Tariff Commission on the cost increase in the sugar industry a copy of which has been produced by the Solicitor General and in which escalations have been allowed. The Tariff Commission did not consider it necessary to allow increase in the cost of power, fuel, and consumable stores as it was considered that the estimated provision of 3% increase per annum in the cost of, stores and repair should take care of the increase for the current price period. As regards the incidence due to increase in road transport cost it was stated that the Commission had taken the same into account while recommending the schedule of price for the period ending 1971-72. We have not been shown any serious inaccuracy or infirmity factually or otherwise in the escalations allowed by the Commission which have been worked out by the experts except the general 'argument which we have not accepted that the increases allowed are not commensurate with the actual cost of some of the units.

A few other matters (covered by question No. 6) may now be considered which were brought to our notice. The first is about gratuity. The first Wage Board had recommended that it should be paid by the sugar producers to its employees. The

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complaint of the producers was that no account had been taken by the Tariff Commission of this item. Our attention has been drawn to the enactment of recent legislation under which the rate of minimum bonus has been raised from 4% to 8.33%. it has been urged that when the prices were fixed by the impugned order the additional amount could not be taken into account while determining the cost of production. As the producers will be bound to pay the bonus at the enhanced rate they will be, put to a good deal of loss until some provision is made for addition ,of that amount for the purpose of working out the levy prices.. So far as gratuity is concerned it has been pointed out by the Solicitor General that in Form appearing at page 192 under 'Salaries and Wages' item 11 relates to gratuity and therefore gratuity had been included. There are hardly any clear pleadings' in the writ petitions on this point from which it can be established and gratuity has not been included. We are unable to accept the contention that payment of gratuity or liability thereof has not been taken into account while fixing the price for levy sugar.

The Payment of Bonus Amendment Ordinance 1972 which has been promulgated recently was published in the Government of India Gazette dated September 23, 1972. Section 3 of the Ordinance provides :-

s.3 "Section 10 of the principal Act shall be renumbered as. sub-section (1) thereof, and

(i)...........................

(ii)..............................

(2) Notwithstanding anything contained in subsection (1), but subject to' the provisions of section 8 and 13, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1971 a minimum bonus which shall be eight and one-third per cent of the salary or wage earned by the employee during that

accounting year or eighty rupees whichever is higher whether there are profits in that accounting year or not: Provided that..................

On behalf of the sugar producers it has been urged that the liability to pay the additional amount of minimum bonus will commence in respect of the accounting year commencing on any date in the year 1971. It will, therefore, cover the year 1971-72 for which the prices of sugar have been fixed by the impugned order. Since the additional amount has to go into the manu-
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facturing cost the price as fixed cannot be held to be valid and legal. The learned Solicitor General, on the other hand, says that since the Ordinance has come into force now it was neither practicable nor possible to take its provisions into account while fixing the prices under the impugned order and the same cannot be rendered illegal by a subsequent legislation which has come into force only recently. In our opinion the prices as fixed by the impugned order cannot be struck down because of the promulgation of the Ordinance by which the amount of minimum bonus has been raised from 4% to 8.33% of the salary or wages earned by the employees during the accounting year or Rs. 80 whichever is higher. But there can be no manner of doubt that the government will have to take some immediate action by either .making some ad-hoc provision in respect of the prices or taking some such other step which may be open to it to give the necessary relief to the sugar producers in this behalf.

As the Bonus Ordinance has been promulgated after the prices were fixed by the impugned order that Order cannot be struck ,down on the ground that the prices fixed by it did not take into account the changes in the rate of minimum bonus made by the Ordinance. Even so, in the changed circumstances, the Government ought to make modifications in the impugned order in respect of the prices of levy sugar so as to adjust them in accordance with the provisions of the Ordinance. Except for the above the writ petitions shall stand dismissed with no order as to costs. Liberty to the parties to file applications for directions in respect of the Bank Guarantees furnished by them in pursuance of stay orders passed by this Court.

V.P.S. Petitions dismissed.
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