

CASE NO.:
Appeal (civil) 460 of 1997

PETITIONER:
U.P. Cooperative Cane Union Federation

RESPONDENT:
West U.P. Sugar Mill Association & Ors.

DATE OF JUDGMENT: 05/05/2004

BENCH:
B.N. SRIKRISHNA.

JUDGMENT:
J U D G M E N T

With

C.A. Nos. 461/1997, 4685/1997, 932/2001, 1639-1645/1999,
1727/1999, 4602/1999, 6065/2001, 8117-8122/2001,
C.A. No. _____ @ SLP(C) No. 16851/2001,
C.A.No. _____ @ SLP(C) No. 1363/2002,
C.A.No. _____ @ SLP(C) No. 948/2003,
Transferred Case Nos. 21-22/2003 @ T.P. (C) Nos.648-649 of 2000
Contempt Petition (C) No. 63/2003 in C.A. No. 932 of 2001
I.A. No. 3 in C.A. No. 460/1997 and
I.A. Nos. 13-14 in C.A. No. 3512-13 of 1997

SRIKRISHNA, J.

I have had the benefit of going through the erudite and well considered opinion of Brother G.P. Mathur, J. I regret, I am unable to share the views expounded by him, which constrains me to write this dissenting opinion.

The facts have been succinctly reproduced in the opinion of Brother G.P. Mathur, J. and hence need no repetition, except for certain highlighting. I have also treated C.A. No. 460 of 1997 as the leading case, since most of the arguments were addressed by counsel appearing for the contending parties in this appeal.

By an Order made on 22.1.1997, a Bench of two learned Judges of this Court [Hon'ble S.P. Bharucha and Hon'ble Faizan Uddin, JJ.] took the prima facie view that under the provisions of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 and the Rules made thereunder, it appeared that the State Government is not empowered to fix the 'State Advised Cane Price' which it had purported to do. In view thereof, special leave was granted.

When this group of matters came up before another Bench of two learned Judges of this Court [Hon'ble V.N. Khare (as His Lordship then was) and Hon'ble K.G. Balakrishnan, JJ.], the Bench noticed a conflict in the opinions of two judgments of this Court in State of M.P. v. Jaora Sugar Mills Ltd., (1997) 9 SCC 207 and State of Tamil Nadu & Ors. v. Kothari Sugar & Chemicals Ltd. & Ors., (1996) 7 SCC 751 and thereafter referred the instant group of matters to a larger Bench of Three Judges.

By an order dated 15.1.2003, a Bench of three learned Judges of this Court took the view that one of the conflicting judgments had been approved by the decision in S.K.G. Sugar Ltd. v. State of Bihar & Ors, (1997) 9 SCC 362 by a Bench composed of three Judges and, therefore, thought it would be appropriate to refer this matter to a larger Bench of

Five Judges. Hence, these matters have been placed before this Bench of Five Judges.

The crucial issue involved in this group of matters is: whether under the provisions of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 read with the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 and the U.P. Sugarcane Supply & Purchase Order, 1954 [hereinafter referred to as 'the U.P. Sugarcane Act of 1953', 'the U.P. Sugarcane Rules, 1954' and 'the U.P. Sugarcane Order, 1954' respectively], the State Government has the authority to stipulate a purchase price known as 'State Advised Price' (SAP) for supply of sugarcane to sugar producers which is required to be paid over and above the minimum price and additional price for purchase of sugarcane payable under the provisions of the Sugarcane (Control) Order, 1966.

Legislative Background :-

The legislative background against which this question has arisen has been succinctly traced in the judgment of the Constitution Bench of this Court in Ch. Tika Ramji & Ors. v. The State of Uttar Pradesh & Ors, 1956 SCR 393. Some excerpts, however, may be necessary.

On 8th April, 1932, the Central Legislature, in then British India, passed the Sugar Industry (Protection) Act, 1932 [Act XIII of 1932] to provide for the fostering and development of Sugar Industry in India. This led to a large number of farmers taking up sugarcane cultivation and the establishment of a number of sugar factories coming up, particularly in the then Province of U.P. To protect the interest of the sugarcane-growers', and for the purpose of assuring them a fair price, the Central Legislature enacted on 1st May, 1934 the Sugarcane Act, 1934 [Act XV of 1934] to regulate the price at which sugarcane intended for manufacture of sugar could be purchased by or for the factories. Since, sugarcane was grown in various Provinces and the Sugarcane Act, 1934 left the declaration of controlled areas and the fixing of minimum price for the purchase of sugarcane in any controlled area to the discretion of the Provincial Governments, the Provincial Governments were also empowered to make rules for the purpose of carrying into effect the objects of the Act.

As a result of the Government of India Act, 1935, there was a distribution of legislative powers between the Dominion Legislature and the Provincial Legislatures. Consequently, the entire subject matter of Act XV of 1934 fell within the Provincial Legislative List. It was felt that Act XV of 1934 was not sufficiently comprehensive for dealing with the problems of the sugar industry. The Governments of U.P. and Bihar decided to introduce legislation on similar lines in both the provinces since, between them, they accounted for nearly 85 % of production of sugar in India.

The U.P. Legislature enacted on 10th February, 1938 the U.P. Sugar Factories Control Act, 1938 [U.P. Act I of 1938]. This Act provided for (i) licensing of sugar factories, (ii) regulation of the supply of sugarcane intended for use in such factories, (iii) the minimum price for sugarcane, (iv) the establishment of Sugar Control Board and Advisory Committee, and (v) a tax on the sale of sugarcane intended for use in factories. Though this Act was to remain in force initially until 30th June, 1947, its life was extended from time to time and finally up to 30th June 1952. Parallel developments during this period were the outbreak of the Second World War and the legislative measures taken to meet the situation by the then Government of India for controlling the

production, regulation of distribution and supply of essential commodities. The Dominion Legislature acquired the power to make

laws for the Provinces with respect to any of the matters enumerated in the Provincial Legislative List. Under the Defence of India Act, sugar was made a controlled commodity in the year 1942 and its production and distribution as well as the fixation of sugar prices were regulated by the Sugar Controller. The proclamation of emergency was revoked by the Governor General on 1st April 1946. Simultaneously, the laws made by the Dominion Legislature in the field of the Provincial Legislative List were to cease to be effective after 30th September 1946.

On 26th March 1946, the British Parliament enacted the India (Central Government and Legislature) Act, 1946 [9 & 10 Geo.6, Chapter 39] which provided that, notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall during the periods specified in Section 4 of the Act have the power to make laws with

respect, inter alia, to 'foodstuffs'. Though the period provided in Section 4 was one year from the expiration of the declaration of the emergency by the Governor General, this period was extended from time to time and would have ended on 31st March 1948

On 18th July 1947, the Indian Independence Act came to be passed leading to the Indian (Central Government and Legislature) Act, 1946 which by way of adaptation provided that the powers of the Dominion Legislature shall be exercised by the Constituent Assembly. With the Constitution coming into force on 26th January 1950, Article 369 invested Parliament with the power for a period of 5 years from the commencement of the Constitution to make laws with respect to some of the matters as if they were enumerated in the Concurrent List. One such matter was "trade and commerce within a State in, and the production, supply and distribution of,foodstuffs (including edible oil seeds and oil),"

On 7th October 1950, the Central Government, in exercise of the powers conferred upon it by Section 3 of the Act, promulgated the Sugar and Gur Control Order, 1950 which, inter alia, empowered it to prohibit movement of sugarcane from any area and also to direct that no gur or sugar should be manufactured from sugarcane except under and in accordance with a licence issued by it. Power was also given to the Central Government to fix the minimum price of sugarcane and no person was to sell or agree to sell sugarcane to a producer and no producer was to purchase or agree to purchase sugarcane at a price lower than that notified. This power of fixing the price of sugarcane was exercised by the Central Government from time to time by issuing notifications which fixed the minimum price to be paid by the producer of sugar by vacuum pan process. An Act for similar purposes, by name, Bihar Sugar Factories Control Act VII of 1937 came to be enacted in the State of Bihar. As a result of the recommendations of the Khaitan Committee, the report of the Indian Tariff Board in the year 1938 and the

U.P. Sugar Industry Enquiry Committee, 1951 [Swaminathan Committee], it was desired that the U.P. Act I of 1938 should be amended in order to make regulation of the supply of sugarcane possible.

Industries (Development and Regulation) Act, 1951 [Act LXV of 1951] was brought into effect from 8th May 1952. In view of this Act coming into force, certain provisions of the U.P. Act I of 1938 became

inoperative. The U.P. Legislature passed on 29th June, 1952, the U.P. Sugar Factories Control (Amendment) Act, 1952, deleting those provisions and putting the amended Act permanently on the Statute Book. The U.P. Act I of 1938, thus amended, continued in force till it was repealed by the U.P. Sugarcane Act, 1953. The object of the enactment of the 1953 Act is stated thus : "With the promulgation of the Industries (Development and Regulation) Act, 1951 with effect from 8th May 1952, the regulation of the sugar industry has become exclusively a Central subject. The State Governments are now only concerned with the supply of sugarcane to the sugar factories. The Bill is being introduced in order to provide for a rational distribution of sugarcane to factories, for its development on organised scientific lines, to protect the interests of the cane-growers and of the industry and to put the new Act permanently on the Statute Book" [See - Statement of Objects and Reasons published in the U.P. Gazette Extraordinary dated 15th July, 1953]. In exercise of the rule making power conferred by Section 28 of the Act, the U.P. Government made the U.P. Sugarcane Rules, 1954 and also in exercise of the powers conferred by Section 16 of the Act, promulgated the U.P. Sugarcane Order, 1954.

On 1st April 1955, Parliament enacted the Essential Commodities Act, 1955 [Act X of 1955] to provide in the interests of the general public "for the control of production, supply and distribution of, and trade and commerce in, certain commodities". This Act defines 'essential commodity' in Section 2(a)(v) to be any "foodstuffs, including edible oilseeds and oils". By clause (b), "food-crops" is defined to include crops of sugarcane. By clause (xi), the definition of 'essential commodity' extends to any other class of commodity which the Central Government may declare to be an essential commodity for the purpose of the Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution.

Section 3(1) empowers the Central Government, if necessary or expedient to do so "for maintaining or increasing the supplies of any essential commodity or for securing their equitable distribution and availability at fair prices", by an order to provide "for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein." Under clause (c) of sub-section (2) of Section 3, such an order may provide for controlling the price at which essential commodity may be bought or sold.

In exercise of the powers conferred by Section 3 of the Essential Commodities Act, the Central Government promulgated on 27th August 1955, the Sugar Control Order, 1955 and the Sugarcane Control Order, 1955. Clause 3(a) of the Sugarcane Control Order, 1955 empowers the Central Government, after consultation with appropriate authorities, to fix in respect of any area 'the price or the minimum price' to be paid by a producer of sugar for sugarcane purchased by him in that area. It also empowers fixation of different prices for different areas or different qualities of sugarcane or on the basis of recovery of sugar from sugarcane having regard to various factors enumerated therein. Clause 3(2) provides that no person shall sell or agree to sell sugarcane to a producer of sugar or factory and no producer or factory shall purchase or agree to purchase sugarcane at a price lower than that notified under this clause. Clause (4) empowers the Central Government to prohibit or restrict or otherwise regulate the export of sugarcane from any area for supply to different factories and also to direct that no gur or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in a licence issued in this behalf. Clause (5) requires every producer or factory to comply with the directions made under the order. By clause (7) of this order, the Sugar and Gur Control Order, 1950 was repealed.

On 16.7.1966, the Central Government notified the Sugarcane

(Control) Order, 1966. Clause 2(g) defines 'price' to mean the price or the minimum price fixed by the Central Government, from time to time, for sugarcane delivered, inter alia, to a sugar factory. Clauses 3 and 3-A bear reproduction and read thus :-

Clause 3 : Minimum price of sugarcane payable by producer of sugar-

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

- (a) the cost of production of sugarcane;
- (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;
- (c) the availability of sugar to the consumer at a fair price;
- (d) the price at which sugar produced from sugarcane is sold by producers of sugar; and
- (e) the recovery of sugar from sugarcane :

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

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

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

(3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a Sugarcane-grower's Co-operative Society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane-grower or Sugarcane-growers' Co-operative Society or that fixed under sub-clause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the bank account of the seller or the co-operative society, as the case may be. [Subs. by G.S.R. 945, dated 18.5.1968]

(3-A) Where a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days of the date of delivery, he shall pay interest on the amount due at the rate of 15 per cent per annum for the period of such delay beyond 14 days. Where payment of interest on delayed payment is made to a cane-growers' society, the society shall pass on the interest to the cane-growers concerned after deducting administrative charges, if any, permitted by the rules of the said society. [Ins. by G.S.R. 62(E) dated 2.2.1978].

(4) Where sugarcane is purchased through an agent, the producer or the agent shall pay or tender payment of such price within the period and in the manner aforesaid and if neither of them has so paid or tendered payment, each of them shall be deemed to have contravened the provisions of this clause.

(5) At the time of payment at the gate of the factory or at the cane collection centre, receipts, if any, given by the purchaser, shall be surrendered by the cane-grower or co-operative society.

(6) Where payment has been made by transfer or deposit of the amount to the bank account of the seller or the co-operative society as the case may be, the receipt given by the purchaser, if any, to the grower or the co-operative society if not returned to the purchaser, shall become invalid.

(7) In case, the price of the sugarcane remains unpaid on the last day of the sugar year in which cane supply was made to the factory on account of the suppliers of cane not coming forward with their claims therefore or for any other reason, it shall be deposited by the producer of sugar with the Collector of the district in which the factory is situated, within three months of the close of the sugar year. The Collector shall pay, out of the amount so deposited, all claims, considered payable by him and preferred before him within three years of the close of the sugar year in which the cane was supplied to the factory. The amount still remaining undisbursed with the Collector, after meeting the claims from the suppliers, shall be credited by him to the Consolidated Fund of the State, immediately after the expiry of the time limit of 3 years within which claims therefore could be preferred by the suppliers. The State Government shall, as far as possible, utilise such amounts, for development of sugarcane in the State.

Clause 3-A : Rebate that can be deducted from the price paid for sugarcane - A producer of sugar or his agent shall pay, for the sugarcane purchased by him, to the sugarcane-grower or the sugarcane-growers' co-operative society, either the minimum price of sugarcane fixed under Clause 3, or the price agreed to between the producer or his agent and the sugarcane-grower or the sugarcane-growers' co-operative society, as the case may be (hereinafter referred to as the agreed price)..... [Subs. by G.S.R. 815(E) dated 24.9.1976]

Clause 4 empowers the Central Government 'or a State Government, with the concurrence of the Central Government', to fix the minimum price or the price of sugarcane to be paid by producers of the khandsari sugar for the sugarcane purchased by them with the proviso that the minimum price or the price of sugarcane so fixed shall not exceed the minimum price of sugarcane fixed by producers of sugar in the region with a further proviso that no person shall sell or agree to sell sugarcane to a producer of khandsari sugar or his agent, and no such producer or his agent shall purchase or agree to purchase sugarcane, 'at a price lower than that fixed under clause (4)'.

Clause 5-A provides that where a producer of sugar purchases sugarcane, from a sugarcane-grower during each sugar year, he shall be liable to pay, in addition to the minimum sugarcane price fixed under Clause 3, an additional price, if found due in accordance with the formula enumerated in Second Schedule to the Order.

Under sub-clause (2) of Clause 5-A, an appropriate authority may be authorised to determine the additional price payable under sub-clause (1) who shall intimate the same in writing to the producer of sugar and the sugarcane-grower.

Under sub-clause (4), the manner of payment of the additional price may be prescribed as directed by the Central Government or the State Government, from time to time.

Under sub-clause (5), no additional price determined under sub-clause (2) or sub-clause (3) is required to be paid by a producer of sugar who pays a price higher than the minimum price fixed under Clause 3 to the sugarcane-grower, provided that, "the price so paid is not less than the total price comprising the minimum sugarcane price fixed under Clause 3 and the additional price determined under sub-clause (2) or sub-clause (3)."

Under sub-clause (6), it is provided that any extra price paid by the producer of sugar to the sugarcane-grower over and above the minimum sugarcane price fixed under Clause 3, shall be adjusted against the additional sugarcane price determined under sub-clause (2) or sub-clause (3) and the balance, if any, shall be paid to the sugarcane-grower.

Sub-clause (7) provides that, additional price shall be payable to the sugarcane-grower if he, in performance of his agreement with a producer of sugar, has supplied not less than 85% of the sugarcane so agreed.

Clause 6 empowers the Central Government to: (i) reserve areas where sugarcane is grown to determine the quantity of sugarcane which a factory will require for crushing during any year; (ii) to fix, with respect to any specified sugarcane-grower or sugarcane-growers generally in a reserved area, the quantity or percentage of sugarcane which he by himself or as a member of a co-operative society of sugarcane-growers operating in such area, shall supply to the factory concerned; (iii) direct a sugarcane-grower or a sugarcane-growers' co-operative society, supplying sugarcane to a factory, and the factory concerned, to enter into an agreement to supply or purchase the quantity of sugarcane fixed; (iv) direct that no gur or khandsari sugar shall be manufactured from sugarcane except in accordance with the conditions specified in the licence; and (v) "prohibit or restrict or otherwise regulate" the export of sugarcane from any area (including a reserved area) except under and in accordance with a permit issued in his behalf. Sub-clause (2) makes it obligatory on every sugarcane-grower, Sugarcane-growers' Co-operative Society and factory, to whom an order is issued under sub-clause (1), to supply or purchase the quantity of sugarcane covered by the agreement entered into. Any wilful failure on the part of the sugarcane-grower, sugarcane-growers' co-operative society and factory to do so, is constituted a breach of the provisions of the Order.

Under Clause 11, the powers under the Order shall, subject to specified conditions, be exercisable also by an officer or authority of the Central Government and the State Government or any officer or authority of the State Government.

As a matter of practice, it has been found that in the States such as U.P., A.P., Bihar, Tamil Nadu and Haryana, the State Governments have been pressurising the sugar producers to enter into agreements for payment of purchase price of sugarcane at a rate higher than that decided under the Sugarcane (Control) Order, 1966. In the case of Tamil Nadu, it has been frankly conceded that there is no statutory basis and that the State Advised Price was merely an executive act intended to resolve a dispute between the contending parties. As far as the States of U.P., Haryana and Bihar are concerned, counsel for the respective States and the sugarcane suppliers contend that the State is fully empowered under the State Legislation to fix a price for sale/purchase of sugarcane to sugar producers as a 'remunerative price' which would take into account several local factors. This price is popularly described as 'State Advised Price' (SAP) and arrived at by calling for a meeting at the highest level, and after hearing the representatives of the contending parties.

In order to appreciate the contentions urged at the bar, I would take up the cases arising under the U.P. Sugarcane Act, 1953.

Mr. Shanti Bhushan, learned Senior Counsel appearing on behalf of the West U.P. Sugar Mills Association (the association of sugar producers), questioned the power of the State Government under the U.P. Sugarcane Act, 1953 and the subordinate legislation made thereunder to fix any price for sale of sugarcane by the sugarcane-

growers to the sugarcane factories.

Before we attempt a detailed analysis of the provisions of the Acts, Rules and Orders, we straightaway notice that in none of them is there any reference to the so-called 'State Advised Price', which appears to be a term coined for convenience, either by the State Government, or by the parties, and popularised by usage. Even if such an expression is to be found absent in the concerned legislations, the question is whether there is a statutory basis for the 'State Advised Price'.

The U.P. Sugarcane Act, 1953, as its preamble indicates, is "an Act to regulate the supply and purchase of sugarcane required for use in sugar factories and Gur, Rab or Khandsari Sugar Manufacturing Units and other connected matters'. Chapter II of this Act establishes certain administrative machinery called 'the Sugarcane Board and the Development Council'. The functions of the Sugarcane Board are indicated in Section 4 and pertain to advising the State Government on the following matters :-

- (a) matters pertaining to the regulation of supply and purchase of cane for sugar factories;
- (b) the varieties of cane which are suitable or unsuitable for use in sugar factories;
- (c) the maintenance of healthy relations between occupiers or managers of factories, cane-growers, Cane-growers' Constitution-operative Societies, Cane Development Council; and
- (d) such other matters as may be prescribed.

The functions of the Development Council are indicated in Section 6(1) as under :-

- (a) to consider and approve the programme of development for the zone;
- (b) to devise ways and means for the execution of the development plan in all its essentials such as cane varieties, cane seed, sowing programme, fertilizers and manures;
- (c) to undertake the development of irrigation and other agricultural facilities in the zone;
- (d) to take necessary steps for the prevention and control of diseases and pests and to render all possible help in the soil extension work;
- (e) to impart technical training to cultivators in matters relating to the production of cane;
- (f) to administer the funds at its disposal for the execution of the development scheme subject to the general or special directions of the Cane Commissioner; and
- (g) to perform other prescribed functions pertaining and conducive to the general development of the zone.

Chapter III which deals with "Supply and Purchase of Cane" contains the fasciculus of Sections 12 to 19. Under Section 12, an officer known as Cane Commissioner makes estimates of requirements of the quantity of cane, which will be required by any factory after getting appropriate information from the factory. Sections 13 and 14 deal with the manner of keeping information as to the cane-growers and Cane-growers' Co-operative Society by registers and by surveys carried out by the State Government. Section 15 empowers the Cane Commissioner

to reserve and assign any area for the purposes of supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified. It also empowers him to cancel such order or alter the boundaries of the area so reserved or assigned. Under sub-section (2) of Section 15, where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, 'which is offered for sale to the factory'. According to sub-section (3), where any area has been declared as assigned area for a factory, the occupier of such factory 'shall purchase such quantity of cane grown in that area and offered for sale to the factory' as may be determined by the Cane Commissioner. There is an appeal provided to the State Government against the order of the Cane Commissioner passed under sub-section (1).

Then comes Section 16 on which most of the addressed arguments turn. It reads thus :-

"16. Regulation of purchase and supply of cane in the reserved and assigned areas -

(1) The State Government may, for maintaining supplies, by order, regulate -

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

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

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

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

(b) the manner in which cane grown in the reserved area of the assigned area, shall be purchased by the factory for which the area has been so reserved or assigned and the circumstance in which the cane grown by a cane-grower shall not be purchased except through Cane-growers' Co-operative Society;

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

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

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

(ii) for the sale of cane grown in a reserved or assigned area to a Gur,

Rab or Khandsari Manufacturing Unit
or any person or factory other than the
factory for which the area is reserved
or assigned;

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

The contention assiduously canvassed by the State Governments and the counsel for the cane-growers is that the power of the State Government under Section 16 is a wide power intended for maintenance of supplies empowering the State Government by order to 'regulate, inter alia, the distribution, sale or purchase of any cane in any reserved or assigned area'. The contention is that the power to regulate a sale or a purchase of cane in a reserved or assigned area would necessarily take within its scope the power to fix the price at which such sale or purchase can be effected.

The contention is sought to be buttressed by highlighting that the object of reservation of sugarcane area is to ensure that there is no interruption to the supply of sugarcane leading to disruption of the production of sugar, which has been declared to be an essential commodity. Unlike other raw-materials, sugarcane needs to be grown for a specific period and harvested at a specific time to maintain its sugar content so that it will yield the maximum sugar when crushed. This determines the imperative necessity for continuous supply of sugarcane to the sugar factories depending on their crushing capacity and crushing program. It is contended that the economy of the U.P. State and its revenues depend, to a very great extent, on the crushing of sugarcane and production of sugar. Molasses, which is the bye-product, is utilised by distilleries for manufacturing rectified spirit, which in turn is used for the manufacture of potable liquor and other chemical products. It is also urged that crushing of sugarcane results in the bye-product of bagasse, which is used as fuel or by paper mills. Hence, the counsel contended that, in view of the crucial importance of timely supply and crushing of sugarcane, the 1953 Act has conferred upon the State Government the power of regulation of sale and purchase of sugarcane under Section 16 and the power under Section 17 to ensure speedy payment of cane price. This power the Government exercises by calling for a tripartite meeting wherein conflicting points of view are put forward and ultimately a decision is arrived at as to what should be the higher price payable which is termed as the 'State Advised Cane Price'. It is contended, that this power of the State Government to fix a price higher than the minimum price fixed by the Central Government is discernible in the State's power to 'regulate the sale and purchase of sugarcane' with a view to maintaining supplies. It is also contended that the word 'regulate' has been held to be a very wide power even empowering fixation of royalty, higher tariff for electricity, fixing rates for cinema and so on as evidenced in the following judgments :-

1. Adoni Cotton Mills Ltd. & Ors. v. A.P. State Electricity Board & Ors.
(1976) 4 SCC 68 [para 7]
2. State of Tamil Nadu v. M/s. Hind Stone & Ors.
(1981) 2 SCC 205 [para 10]
3. K. Ramanathan v. State of Tamil Nadu & Anr.
(1985) 2 SCC 116 [paras 11, 15, 18-20 & 23]
4. D.K. Trivedi & Sons and Ors. v. State of Gujarat & Ors.
1986 (Supp) SCC 20 [paras 30 & 31]
5. Jiyajeerao Cotton Mills Ltd. & Anr. v. M.P. Electricity Board & Anr.
1989 Supp (2) SCC 52 [para 32]

6. Deepak Theatre, Dhuri v. State of Punjab & Ors.
1992 Supp (1) SCC 684 [paras 3-10]
7. Quarry Owners' Association v. State of Bihar & Ors.
(2000) 8 SCC 655 [paras 25, 26, 31 & 61(c)]

Counsel for the sugarcane-growers' and the State also contended that the expression 'regulate' is used in Section 16 in the context of maintaining supplies and "sale or purchase". The expression 'sale or purchase' would necessarily include all aspects or ingredients of sale as it cannot be gainsaid that price is certainly an important ingredient of sale. The provisions of the Sale of Goods Act, Contract Act, Transfer of Property Act, Article 366(29) of the Constitution of India and a number of authorities were relied upon to contend that price is an essential ingredient of sale and that the State could regulate it.

That the power to regulate production, supply and distribution of a commodity may, in an appropriate context, be wide enough to include the power to fix the price, is incontestable. However, the background against and the context in which the power of regulation has been given and the scheme of the Statute determine the content of such power. The counsel for the sugar factories urge that the background, context and evolution of the Statute belie such a construction. From the Sugarcane Act of 1934 down to the U.P. Sugarcane Act, 1953, it would appear that after 1938 there has been a distinct shift and the power of price fixation of sugarcane was taken over by the Central Government for larger reasons of policy. They point out that in *Ch. Tika Ramji & Ors., etc. v. The State of Uttar Pradesh & Ors.*, 1956 SCR 393, the very Act, namely, the U.P. Sugarcane Act, 1953, was challenged as unconstitutional on several grounds including the ground that it was inconsistent with the provisions of the Essential Commodities Act, 1955. After elaborate consideration of the legislative history of the Act and an analytical contrast of the provisions of the Essential Commodities Act with the U.P. Sugarcane Act, 1953, the Constitution Bench of this Court came to the specific finding that the power to fix minimum price of sugarcane, which existed under the U.P. Act I of 1938 had been deleted from the U.P. Sugarcane Act, 1953 since it was being exercised by the Centre under Clause 3 of the Sugar and Gur (Control) Order, 1950. In fact, the Constitution Bench of this Court in *Ch. Tika Ramji's case (supra)* came to the conclusion that there was no repugnancy between the Essential Commodities Act, 1955 and the U.P. Sugarcane Act, 1953 as they operated in different spheres, there being no conflict or overlapping in the matter of price fixation. Counsel rely heavily on the following observations from *Ch. Tika Ramji's case (supra)* :-

(a) "Even the power reserved to the State Government to fix minimum prices of sugarcane under Chapter V of the U.P. act of I of 1938 was deleted from the impugned Act the same being exercised by the Centre under clause 3 of sugar and Gur Control Order, 1950, issued by it in exercise of the powers conferred under Section 3 of Act XXIV of 1946. The prices fixed by the Centre were adopted by the State Government and the only thing which the State Government required under rule 94 was that the occupier of a factory or the purchasing agent should cause to be put up at each purchasing centre a notice showing the minimum price of cane fixed by the Government meaning thereby the Centre. The State Government also incorporated these prices which were notified by the Centre from time to time in the forms of the agreements which were to be entered between the cane growers, the cane-growers' co-operative societies, the factories and their purchasing agents for the supply and purchase of sugarcane as provided in the U.P. Sugarcane Supply and Purchase Order, 1954.

The only provision which was retained by the State Government in the impugned Act for the protection of the sugarcane growers was that contained in Section 17 which provided for the payment of price of sugarcane by the occupier of a factory to the sugarcane growers. It could be recovered from such occupier as if it were an arrear of land revenue. This comparison goes to show that the impugned Act merely confined itself to the regulation of the supply and purchase of sugarcane required for use in sugar factories and did not concern itself at all with the controlling or licensing of the sugar factories, with the production or manufacture of sugar or with the trade and commerce in, and the production, supply and distribution of, sugar.

If that was so, there was no question whatever of its trenching upon the jurisdiction of the Centre in regard to sugar industry which was a controlled industry within Entry 52 of List I and the U.P. Legislature had jurisdiction to enact the law with regard to sugarcane and had legislative competence to enact the impugned Act." (pp. 422-423)

(b) ".....the only question which remained to be considered was whether there was any repugnancy between the provisions of the Central legislation and the U.P. State legislation in this behalf. As we have noted above, the U.P. State Government did not at all provide for the fixation of minimum prices for sugarcane nor did it provide for the regulation of movement of sugarcane as was done by the Central Government in clauses (3) and (4) of the Sugarcane Control Order, 1955.

The impugned Act did not make any provision for the same and the only provision in regard to the price of sugarcane which was to be found in the U.P. Sugarcane Rules, 1954, was contained in Rule 94 which provided that a notice of suitable size in clear bold lines showing the minimum price of cane fixed by the Government and the rates at which the cane is being purchased by the centre was to be put up by an occupier of a factory or the purchasing agent as the case may be at each purchasing centre. The price of cane fixed by Government here only meant the price fixed by the appropriate Government which would be the Central Government, under clause 3 of the Sugarcane Control Order, 1955, because in fact the U.P. State Government never fixed the price of sugarcane to be purchased by the factories. Even the provisions in behalf of the agreements contained in clauses 3 and 4 of the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, provided that the price was to be the minimum price to be notified by the Government subject to such deductions, if any, as may be notified by the Government from time to time meaning thereby the Central Government, the State Government not having made any provision in that behalf at any time whatever. The provisions thus made by the Sugarcane Control Order, 1955, did not find their place either in the impugned Act or the Rules made thereunder or the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, and the provision contained in Section 17 of the impugned Act in regard to the payment of sugarcane price and recovery thereof as if it was an arrear of land revenue did not find its place in the Sugarcane Control Order, 1955. These provisions, therefore, were mutually exclusive and did not impinge upon each other there being thus no trenching upon the field of one Legislature by the other." (vide 433-434)

(c) "Suffice it to say that none of these provisions do overlap, the Centre being silent with regard to some of the provisions which have been enacted by the State and the State being silent with regard to some of the provisions which have been enacted by the Centre. There is no repugnancy whatever between these provisions and the impugned Act and the Rules framed thereunder as also the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 do not trench upon the field covered by Act X of 1955. There being no repugnancy at all, therefore, no question arises of the operation of Article 254(2) of the Constitution and no provision of the impugned Act and the Rules made thereunder is invalidated by any provision contained in Act LXV of 1951 as amended by Act XXVI of 1953 or Act X of 1955 and the Sugarcane Control Order, 1955 issued thereunder."
(p. 435)

These observations of the Constitution Bench in Ch. Tika Ramji's case (supra) do support the arguments of the respondents-sugar producers. A distinction is sought to be made that Ch. Tika Ramji's case (supra) does not decide the issue as to the content of the regulatory power under the U.P. Sugarcane Act, 1953 and, therefore, these observations are not of any avail. This argument cannot be accepted. The question posed before the Constitution Bench was one of inconsistency between Central Legislation and State Legislation, the State Legislation being the U.P. Sugarcane Act, 1953. The basis for the decision in Tika Ramji (supra) is that the two operated on separate planes and that the provisions "were mutually exclusive and did not impinge on each other" there being no trenching upon the field of one legislature by the other. I cannot impute to the Constitution Bench an incomplete analysis of the provisions of the U.P. Sugarcane Act, 1953 when it made these observations. The observations necessarily suggest to me that the full extent of the State's power under the 1953 Act was reckoned with and compared against the power of the Central Government under the Central Legislation after which only the Constitution Bench arrived at its finding that there was no conflict and upheld the constitutional validity of the U.P. Sugarcane Act, 1953. There was no tentativeness or ad hocism in the observations; nor were they made only pro tem.

The very Statute (U.P. Sugarcane Act, 1953) having the subject matter of construction and interpretation by the Constitution Bench, it is not open, for this Bench at least, to take a different view with regard to its construction.

The respondents seek to counter these arguments by seeking to read Ch. Tika Ramji's case (supra) in a different manner. According to them, the contrast made by Ch. Tika Ramji's case (supra) between the Central Legislation and the U.P. State Legislation was not on the general issue of price, but only with regard to 'minimum price' on which, there being no provision in the State Act, no conflict was discovered. The counsel for growers contend that Ch. Tika Ramji's case (supra) had no occasion to examine repugnance from the stand point of higher price, nor was there an examination of the scope of Section 16 of the 1953 Act and the ambit of State's regulatory power in Ch. Tika Ramji's case (supra).

A number of arguments were addressed to impress upon us that there is no repugnance between the Essential Commodities Act, 1953 read with Sugarcane (Control) Order, 1966 and the U.P. Sugarcane Act, 1953. It was argued that the Central Act does not occupy the whole gamut of price fixing and as the field of 'price' was not fully occupied, leaving plenty of room available for exercise of legislative power by the State. In my view, it is unnecessary to go into this question. Even

assuming that the field of price is not fully covered by the Essential Commodities Act, 1955, the question is whether the Statute before us empowers the State government to fix a price of sale/purchase of sugarcane at a price higher than the price fixed under the Sugarcane

(Control) Order, 1966? The only legislation upon which the sugarcane-growers' rely is the U.P. Sugarcane Act, 1953. This very Act was the subject matter of consideration and interpretation by the Constitution Bench of this Court in Ch. Tika Ramji's case (supra). After comparing this with the provisions of the Essential Commodities Act of 1955 and the Sugarcane (Control) Order, 1966 made thereunder, the Constitution Bench found that the two did not operate on a collision course because the provisions dealt with subjects which are "mutually exclusive and did not impinge on each other" there being no trenching upon the field of one legislature by the other. Whether the State Legislature has the power at all of fixing a purchase price for sugarcane at a price higher than the minimum price fixed under the Sugarcane (Control) Order, 1966, is a question that need not detain me. As and when such an issue arises before some court, it will be considered by the court. For the nonce, I am concerned with the interpretation of Section 16 and 17 of the U.P. Sugarcane Act, 1953 which must necessarily proceed on the basis of what has been found in Ch. Tika Ramji's case (supra) after an examination of its provisions and the Statement of Objects and Reasons appended to the Bill which preceded the said Act of 1953.

Two further points of distinction were sought to be drawn as to why the ratio of Ch. Tika Ramji's case (supra) would not apply to the present case. First, that Ch. Tika Ramji's case (supra) did not have the benefit of examining the Sugarcane (Control) Order, 1966. Second, that Ch. Tika Ramji's case (supra) was only concerned with comparing the power to fix the minimum price and did not concern itself with the power of the State Government to fix any higher price. In my view, these distinctions are purely chimerical.

A comparison between the Sugarcane (Control) Order, 1955 and Sugarcane (Control) Order, 1966 brings out the hollowness of the first distinction. Under the Sugarcane (Control) Order, 1955, clause (1)(2)(c) defined 'price' to mean the price fixed by the Central Government from time to time, for sugarcane delivered at the factory gate. It then empowered the Central Government vide clause (3) to fix in respect of any area 'the price' or 'the minimum price' to be paid for the sale/purchase of sugar. The only change made in the Sugarcane (Control) Order, 1966 is that the expression 'price' has been defined in clause (2)(g) to mean "the price or the minimum price fixed by the Central Government from time to time", for sugarcane delivered, inter alia, to a sugar factory. Clause (3) empowers the fixation of minimum price of sugarcane. Sub-clause (2) of clause (3) prohibits the sale/purchase or agreement to sell/purchase sugarcane at a price lower than fixed under sub-clause (1). Sub-clause (3), however, requires the producer of sugar who purchases sugarcane from a grower, unless there is an agreement in writing to the contrary, to pay within 14 days from the date of delivery of the sugarcane or tender within the same period the price of the cane sold "at the rate agreed to between the producer and the sugarcane-grower or Sugarcane-growers' Co-operative Society or that fixed under sub-clause (1), as the case may be". Consequently, if the parties have agreed upon a higher price, the Sugarcane (Control) Order, 1966 recognises that and obligates such amount to be paid. This is also recognised by clause (3-A) dealing with the rebate that can be deducted. Under this clause, the producer of sugar is required to pay "either the minimum price of sugarcane fixed under clause (3) or the price agreed to between the producer or his agent or the sugarcane grower or the Sugarcane-growers' Co-operative Society, as the case may be (hereinafter referred to as 'the agreed price')".

In addition, Section 5 and 5-A deal with the additional amount to be paid by the producer of the sugar 'in addition to the minimum sugarcane price fixed under clause (3)'. The distinction that is sought to be drawn, therefore, has no basis in my view. The Sugarcane (Control) Order of 1955 talked only in terms of minimum price and did not deal with additional price. The Sugarcane (Control) Order, 1966, after enumerating the mechanism for fixation of minimum price, goes on to indicate that, if the parties agree upon it, a rate higher than that minimum rate would become payable and deals with the matter of enforcement of such payment, calculation of the rebate under clause (3-A), set-off available of the additional amounts against advances and such other issues.

I am, therefore, unable to accept the first distinction made for and I think that the observations in Ch. Tika Ramji's case (supra), though made in the context of Sugarcane (Control) Order, 1955, are equally applicable in the context of the Sugarcane (Control) Order, 1966. Now to the second distinction. Ch. Tika Ramji's case (supra) was considering the conflict between the provisions of the Central Legislation, namely, the Essential Commodities Act, 1955 and the U.P. Sugarcane Act, 1953. Under Section 3 of the Essential Commodities Act, 1955, the Central Government is specifically empowered, inter alia, to 'regulate' the production supply and distribution of the essential commodity or trade and commerce therein and also may provide for controlling the 'price' at which the essential commodity may be bought or sold. The power to 'control the price' is of the widest amplitude and takes into its fold the power to fix the minimum price, the fair price, the remunerative price or even the maximum price. It was this power which was contrasted with the power of the State Government under the U.P. Sugarcane Act, 1953. After making such a contrast, Ch. Tika Ramji's case (supra) came to the specific conclusion that the State Act did not, in any way, impinge upon the area covered by the Central Act as the provisions of the two Acts are "mutually exclusive and did not impinge on each other" there being no trenching upon the field of one legislature by the other. While contrasting this power of the Central Government and its exercise under the Sugarcane (Control) Order, 1955, as against the powers of the State Government under the provisions of the U.P. Sugarcane Act, 1953, Ch. Tika Ramji's case (supra) discerned no power for price fixation in the State Government under the provisions of 1953 Act and that is why its constitutional validity was upheld. In fact, when Ch. Tika Ramji's case (supra) fails to discover any provision in the State Legislation for minimum price fixation with regard to sale/purchase of sugarcane, and upholds its constitutional validity on that very ground, it would be futile to attempt to discover in the State Act a power to fix a price higher than the minimum price.

Another interesting contention advanced on behalf of the sugarcane-growers' is that there is a distinction between 'minimum price' fixed, which is exclusively within the province of the Central Government under the provisions of the Essential Commodities Act, 1955 and what the State seeks to fix is 'fair price' or 'remunerative price'. It is contended that the two are not repugnant, there being no conflict between the Centre's power to fix 'minimum price' and the State's power to fix the 'remunerative price' or the 'fair price'. In my view, the question is not one of repugnancy. The question is one of tracing the source of the power, if, at all, it exists. By merely calling it 'fair price' or 'remunerative price', one cannot wish away the consequences of non-payment thereof. The consequence of not paying the minimum price is penal liability incurred under the provisions of the Essential Commodities Act, 1955 read with the Sugarcane (Control) Order, 1966. I see no corresponding legislative provision for non-payment of the so-called 'fair price' or 'remunerative price' under the U.P. Act of 1953.

Even assuming that such a power of higher price fixation exists, the power can only be adjudicatory in nature. The minimum price is the

price which when fixed has to be paid by all purchasers of cane. Anything higher than that would require adjudication of rival claims for which I see no machinery under the U.P. Sugarcane Act of 1953 or under the delegated legislation made thereunder. There are also no guidelines indicated in the 1953 Act as to the basis on which the so-called fair price, remunerative price or State Advised Price is to be arrived at. To fix the State Advised Price much above the centrally fixed minimum price, and that too by an executive fiat, may render the constitutionality of such power open to challenge as arbitrary and hit by Article 14 of the Constitution.

Looked at from the practical point of view, if the contention of the cane-growers is accepted, what is payable in the State would, in reality, be the minimum price payable for sugarcane. Calling it as the 'fair price' or 'remunerative price' would merely be a matter of semantics and not substance. An illustration from the field of industrial adjudication may be considered. A minimum wage is payable under the Minimum Wages Act, 1948. All industries are required to pay this; or else, they have no right to exist and must necessarily close down [See in this connection Messrs. Crown Aluminium Works v. Their Workmen]. Employers are not precluded from voluntarily paying wages higher than minimum wages to the workmen. However, if the workmen want to enforce a fair wage, a rate of wage higher than the minimum wage, it can only be done by an elaborate process of adjudication envisaged under the Industrial Disputes Act, 1947. It is only by such an award adjudicated by that process which can fix a rate higher than the minimum rate of wages. In my view, this principle would equally apply to a situation of fixing of the fair price for purchase of cane. I see no adjudicatory machinery, nor guidelines, under the U.P. Sugarcane Act of 1953 for doing it. Except the bald reference to 'regulation of sale and purchase of cane', there is nothing else therein to indicate the mode, conditions under which, or the guidelines subject to which such an exercise of fixing the fair price can be exercised, and that too by a mere executive fiat. I find it extremely difficult to infer such a power of fixation of price higher than the minimum price from a Statute which is utterly bereft of any adjudicatory mechanism or guidelines, particularly when the subordinate legislation is replete with references to the 'minimum price fixed by the Government', which too was interpreted by Ch. Tika Ramji's case (supra) as the 'minimum price fixed by the Central Government'. I am, therefore, unable to accept this argument.

Based on the doctrine of contemporanea expositio, counsel for the sugarcane-growers attempted to read the State's power by reference to some provisions of the subordinate legislation made under the U.P. Sugarcane Act, 1953.

Clause 3 of the U.P. Sugarcane Order, 1956 was referred to. Under this clause, the occupier of a factory is required to estimate by 31st of October every year the quantity of cane which each grower enrolled is required to offer in Form A to supply cane grown in the reserved area to the occupier of the factory. Correspondingly, the occupier of the factory, for which the area has been reserved, is required within 14 days of the receipt of the offer to enter into an agreement in Form B or Form C of the Appendix, with the cane-grower or the Cane-growers' Co-operative Society. A reference to Form B and Form C indicate that what is contemplated therein is only an agreement by the first party cane-grower to sell cane to the second party 'at the minimum price notified by Government subject to deductions, if any, as may be notified by the Government from time to time'. There is hardly anything in this which supports the contention advanced. Thus, it would appear that the U.P. Sugarcane Order, 1954 did not contemplate anything more than the minimum price fixed by the Government to be stipulated in the form of a statutory contract.

In the U.P. Sugarcane Rules, 1954, Chapter IX deals with

payments. The only reference made in the Rules to the price, as indicated in Ch. Tika Ramji's case (supra), is in Rule 94. Rule 94(b) requires a notice to be put up by the occupier of a factory in suitable size in clear bold letters showing the 'minimum price' of cane fixed by the Government and the rates at which cane is being purchased at the centre. It is not the 'cane-growers' case before us that the State Government ever fixes the 'minimum price'. As observed in Ch. Tika Ramji's case (supra), the reference here is obviously is to the minimum price of cane fixed by the Central Government. The reference to the rates at which the cane is purchased in a particular factory could be conceivably to the agreed price between the cane-grower and the producer of sugar.

There is no doubt that the provisions of the Sugarcane (Control) Order, 1966, the U.P. Sugarcane Act, 1953 and the subordinate legislation thereto permit the sugarcane-grower and the sugar producer to agree upon a price at a rate higher than the rate fixed by the Central Government statutorily. What may be permissible consensually between the parties does not empower the State to fix a price higher than the statutory minimum price on pain of sanction for disobedience.

It is contended for the cane-growers that the Sugarcane (Control) Order, 1966 itself recognises that the parties may, by an agreement, pay a rate higher than that fixed by the Central Government and, if there is such an agreement, the agreed rate would be substituted for the minimum rate fixed by the Central Government; such an agreement need not be evidenced by any writing as it can be an oral agreement also, since oral agreements are permitted under Section 10 of the Indian Contract Act, 1872 in the absence of a law to the contrary. Such oral agreements are also capable of enforcement as much as an agreement in writing. Section 16(2)(c) of the U.P. Sugarcane Act, 1953 confers powers to prescribe forms and terms of the agreement to be executed by the occupier or manager of the factory for purchase of sugarcane. Chapter IX of the Rules prescribed thereunder deals with payment of cane price and issuance of parchas. By reason of the Rules and the U.P. Sugarcane Order, 1954, vide clause 3(3) requiring agreements to be entered into by prescribed forms, requisition, slips/parchas are issued which would indicate the cane price, total quantity of cane supplied and the total amount payable. Once such a parcha has been issued indicating the quantity of cane supplied, the rate at which the cane is supplied and the total amount payable, the agreed rate indicated becomes payable in lieu of the minimum rate fixed by the Central Government and would have the same legal efficacy as the minimum rate fixed by the Central Government.

That there is sufficient leeway for consensual payment of a rate higher than the minimum rate is beyond doubt. If such a rate has been agreed upon, orally or in writing, then that higher rate substitutes itself in the place of the minimum rate fixed by the Central Government. The question before us is not as to what can be consensually done. The question is, in the absence of consensus, does the State have the power under the 1953 Statute concerned to determine a higher rate than the minimum rate as the rate payable for the cane supplied? I am afraid, the argument begs the question and does not indicate the manner in which such a power, if it exists, can be discovered.

It is not necessary for me to notice or discuss in detail the authorities relied upon by the parties to show that there is no conflict between the provisions of the U.P. Sugarcane Act, 1953, the provisions of the Essential Commodities Act, 1955 and the subordinate legislation thereunder. This exercise has already been done by the Constitution Bench of this Court in Ch. Tika Ramji's case (supra) and it is only after this exercise was done that the constitutional validity of the Act was upheld. I, therefore, decline to go into the question of 'occupied field', on which much stress has been laid.

Another contention urged on behalf of the cane-growers' is that, under Article 162 of the Constitution, as expounded by the decision of this Court in *Rai Sahib Ram Jawaya Kapur & Ors. v. The State of Punjab*, (1955) 2 SCR 225, it is open to the State to issue executive orders even if there is no legislation in support thereof, provided the State had the power to legislate on the subject in respect of which action is taken. It is contended that the instant legislation falls within Entries 33 and 34 of List III - Concurrent List and, therefore, the State Legislature is fully competent to legislate with reference to these entries. Consequently, the executive is equally empowered to issue an order to the same extent by reason of Article 162 of the Constitution. Hence, even if there is no statutory basis for the State Advised Price, it is legal and valid by reason of the exercise of executive powers within the meaning of Article 162.

The contention is unsound and cannot be accepted. A Constitution Bench of this Court in *State of Madhya Pradesh & Anr. v. Thakur Bharat Singh*, (1967) 2 SCR 454, was presented with the same argument and rejected it in the following words :-

"In our judgment, this argument involves a grave fallacy. All executive action which operates to the prejudice of any person must have the authority of law to support it, and the terms of Article 358 do not detract from that rule. Article 358 expressly authorises the State to take legislative or executive action provided such action was competent for the State to make or take, but for the provisions contained in Part III of the Constitution. Article 358 does not purport to invest the State with arbitrary authority to take action to the prejudice of citizens and others".

The observations in *Rai Sahib Ram's* case (supra) were also explained away in *Thakur Bharat Singh's* case (supra) by pointing out that the action taken there did not amount to infraction of the guarantee under Article 19(1)(g) of the Constitution, since no fundamental rights of the petitioners were violated by the executive act of the Government done in furtherance of their policy of nationalisation of text-books for students. This judgment in effect rejects this contention. It is obvious that fixing of a higher price of sugar, compulsorily payable, is a restriction on the fundamental right guaranteed under Article 19(1)(g) and cannot be legally done except under a law.

Much debate was carried out with regard to realisations made by the States by sale of molasses and bagasse and as to how the fixing of State Advised Price by the States at rates higher than the minimum prescribed by the Central Government had resulted in financial losses to the sugar producers. Certain amount of data was also placed on record with a view to persuading us to take the particular view which was canvassed. After scrutiny of the data on record, I am of the view that the data on record is insufficient to draw any conclusions as urged by both sides. In any event, according to me, the discovery of the State's power is a question of law, which turns upon the construction of statute in question, and not upon the consequences that may have flowed from the exercise of such power. If there is such power, then the consequences are justified; conversely, if there is none, the consequences are not justified. It is needless, therefore, to be drawn into this controversy with regard to the economic consequences of the State Advised Price.

The construction of the U.P. Sugarcane Act, 1953 has to be made against the legislative background. Under Section 3(2) of the Sugarcane Act, 1934, the State Governments were empowered to fix a minimum price or minimum prices for the purchase of sugarcane in a controlled area intended for use in any factory. In Section 21 of the U.P. Act I of 1938, there was a specific power vested with the Provincial Government to fix the minimum price. In respect of any area, the minimum price to

be paid by the occupier of the factories or purchasing agents for cane purchased in that area could be determined by a notification by the Governor, after consultation with the Board. A contrast with the provisions of the U.P. Sugarcane Act, 1953 indicates total absence of such a power to fix a price. If the 1953 Act intended to grant to the State the power to fix any price - State Advised Price, remunerative price or fair price as is called - the Statute would have in terms indicated it and not left it to guesswork or inference from the general words used in Sections 16 & 17 of the Act. A reference to the Statement of Objects and Reasons attached to the Bill which was moved supports this construction of the U.P. Sugarcane Act, 1953.

Much was urged before us as to whether the fixation of State Advised Price was merely a populist measure intended to pacify the clamour of one section of the society, namely, the cane-growers'. Despite the vehemence with which each side presented its view, it appears to me that this debate is wholly unnecessary, and misplaced, in a court of law where the provisions of the Statute have to be construed to ascertain the State's power. It was contended that the State exercises its powers by taking into account various factors as to what they are and what they ought to be. There is no indication whatsoever of these in the Statute. As far as the Statute is concerned, it lays down no guidelines for exercise of such power, if any. Against the background of legislative history, and the observations made in Ch. Tika Ramji's case (supra), I am of the view that it is difficult to discern any such power in the State to fix the State Advised Price, called by whatever name, at a rate higher than the minimum rate fixed by the Central Government, which could be made binding on the parties.

Learned counsel for the sugar producers urged that given the Central Legislation on the subject, namely, the Essential Commodities Act, 1955 and the statutory orders made thereunder, the State Government had no legislative power at all to fix the price of sugarcane. In my view, it is not necessary to consider this larger question or to answer it presently. We are, for the present, concerned with the U.P. Sugarcane Act, 1953. I see no basis for exercise of such power by the State Government in that Statute. As to whether any other suitably worded Statute investing such a power in the State Government would conflict with the Essential Commodities Act, 1953 or not, is not the question that needs to be answered presently. Hence, I refrain from expressing any opinion thereupon.

In the judgments in S.K.G. Sugar Ltd.'s case (supra) and Jaora Sugar Mill's case (supra), it was found, as a matter of fact, that there existed valid consensual agreements between the factories and the sugarcane-growers. Hence, it was held that higher price which had been agreed had to be paid by the sugar factories. In the present case before us, it is pointed out that U.P. Sugar Mills Association had written detailed letters to the Government of U.P. in September 1996 to refrain from fixing any State Advised price which, the Association declared, would not be binding on the sugar mills [see pages 109-116, Vol. II of C.A. No. 460 of 1997]. Despite such strong protest, the State Advised Price was announced by the U.P. Government on 15th November 1996. Immediately thereafter, the associations and the factories have filed their writ petitions before the High Court challenging the State Advised Price on 18th November 1996. Consequently, there was no occasion for the State Government to exercise its diplomacy and bring out a consensual price between the parties; nor was there any occasion for the State Government in U.P. to declare a State Advised Price on the basis of consensus. The Division Bench of the Allahabad High Court in the judgment impugned in C.A. No. 460 of 1997, while allowing the writ petition, has held that there was no agreement for paying the State Advised Price.

The judgment of this Court in Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. & Ors. v. State of Maharashtra & Ors., 1995

Supp. (3) SCC 475, is distinguishable, since it was decided on its peculiar facts. The distinguishing feature in that case was that the bye-laws under which the co-operative society was formed, empowered the State Government to determine the price for supply of sugarcane to be paid to the members as long as the loans advanced to the co-operative society were not fully paid. It is in exercise of the power under this bye-law that the State Government fixed what it called the 'State Advised Price'. The power of the State was thus upheld because of the peculiar provision in the bye-laws under which the sugar producer co-operative society was formed. The Bench further took the view that if the price fixed by the Government is good for members of co-operative society, who are as much cane-growers as non-members, then there is no reason to hold that such price was bad or it operated unreasonably for non-members. In view of the fact that zoning or reservation or fixation of price for each zone were interlinked, the Bench expressed its view as under :-

"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 of 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 decision of the Division Bench of this Court in Jaora Sugar Mill's case (supra), does not address the question with which we are concerned. The finding was that there was consensus ad idem to pay higher price of the sugarcane than the minimum price fixed by the Central Government and the parties acted thereupon. It was not in dispute that the sugarcane-growers had supplied the sugarcane to the sugar factories who had utilised the sugarcane for the production of sugar. In the circumstances, it was held that the said higher price was the price payable in lieu of the minimum price fixed under the Sugarcane (Control) Order, 1966.

In Kothari Sugar & Chemicals Co. Ltd.'s case (supra), the issue arose in the context of imposition of the cane purchased tax on the additional price paid over and above what was payable under clause 3 and 5-A of the Sugarcane (Control) Order, 1966. In this context, it was observed as under :-

"Thus, unless there be an agreement between the grower and the producer for purchase of the sugarcane at a higher rate, the obligation of the purchaser is to pay to the grower only the aggregate of the amounts fixed under clauses 3 and 5-A. In other words, under the Statute there is no liability of the purchaser to pay to the grower any amount in excess of this aggregate amount. Thus, without any contractual or statutory basis fixing the sale price of sugarcane at an amount higher than the minimum cane price fixed under clause 3 and the additional cane price fixed under clause 5-A, any sum paid by the purchaser to

the grower as advance prior to fixation of the additional cane price under clause 5-A cannot form part of the price of cane sugar"[See vide para 5].

Further, it was held that :-

"However, as indicated earlier, for treating the entire amount paid by the purchaser as the price of sugarcane supplied, it must be found proved as a fact that the higher price including the excess amount was paid as the price of sugarcane under an agreement between the grower and the purchaser irrespective of a lower amount being fixed as the aggregate of the price fixation under clauses 3 and 5-A of the Control Order. Unless a clear finding to that effect is recorded, the amount paid by the purchaser in excess of the aggregate of the minimum price fixed under clause 3 and the additional price fixed under clause 5-A, as a part of the amount paid as advance prior to fixation of the additional price under clause 5-A, cannot be treated automatically as a part of the total price of sugarcane."

In S.K.G. Sugar Ltd.'s case (supra), it was merely observed that there was no prohibition under clause 3 of the Sugarcane (Control) Order, 1966 read with clauses 3 and 5-A for "factories entering into an agreement to pay higher price than the minimum price prescribed under the order, the object of the order is to ensure that the cane-growers should not be compelled to sell their sugarcane at a price lower than the minimum price prescribed by the Central Government under clause 3 of the Order". As a matter of fact, it was found that there was an agreement by the Sugar Factory Owners' Association with sugarcane-growers regarding fixing of the price of sugarcane at a rate higher than the centrally fixed minimum price. In view thereof, it was held that the State Government was justified in fixing the price of cane at 20.50 per quintal, since this was agreed to in the tripartite meeting convened by the State Government in which representatives of both growers and the sugar producers participated. Hence, the Bench held that this price would be the price payable in lieu of the minimum price fixed by the Central Government.

None of these decisions is of help in deciding the question before us today.

In the result, I would summarise my conclusions as under :-

- (1) It is not necessary to opine on the question as to whether the entire field of price is occupied by the Central Legislation, namely, the Essential Commodities Act, 1955.
- (2) The source of the State's power claimed in C.A. No. 460 of 1997 is the U.P. Sugarcane Act, 1953 which has been the subject matter of careful analysis by the Constitution Bench of this Court in Ch. Tika Ramji's case (supra). Its constitutional validity was upheld on the footing that the said Act did not trench upon the field of pricing.
- (3) There is no power discernible in the provisions of the U.P. Sugarcane Act, 1953 with the State Government to fix a price for sale/purchase of sugarcane so as to make it binding on the parties or legally enforce its payment.
- (4) The Sugarcane (Control) Order, 1966 itself enables parties to consensually agree to a rate higher than the rate prescribed therein. If such higher rate is agreed, then that would become the rate which the sugar producers would be obliged to pay and would also become substituted for the minimum rate so as to enable the State Government under the provisions of the U.P.

Sugarcane Act, 1953 to enforce it in case of default by treating it as arrears of land revenue.

Hence, the following Order:-

O R D E R

STATE OF UTTAR PRADESH

In C.A. No. 460 of 1997, the Division Bench of the Allahabad High Court allowed the writ petition No. 36889/96 by its judgment dated 11.12.1996 and quashed the Government's Order fixing the State Advised Price.

I would dismiss C.A. 460 of 1997. Consequently, C.A. No. 461 of 1997 filed by the State of Uttar Pradesh and I.A. No. 3 in C.A. No. 460 of 1997 shall also stand dismissed.

C.A. No. 932 of 2001 stands dismissed.

C.A. No. 1727 of 1999 is allowed and the judgment of the Division Bench appealed against in W.P. No. 2086 (M/B) of 1997 is set aside.

C.A. No. 4602 of 1999 rendered in writ petition No. 775 of 1997 dated 1.2.1999 by Lucknow Bench of the High Court of Allahabad is allowed and the judgment of the Division Bench appealed against is set aside.

C.A. Nos. 3512-3513 of 1997 are directed against an interim orders dated 27.2.1997 and 21.3.1997 made by the Division Bench of the Allahabad High Court (Lucknow Bench) in C.W.P No. 775 (M/B) of 1997 pending before it. In view of the fact that the law has been declared by this Court, the High Court shall decide the pending writ petition in accordance therewith. There is no reason to interfere with the interlocutory orders. Hence, C.A. Nos. 3512 and 3513 of 1997 are dismissed.

C.P. No. 63 of 2003 in C.A. No. 932 of 2001 alleges contempt of the interim order dated 31.01.2001 made by this Court in Civil Appeal No. 460 of 1997. It may be placed before an appropriate Bench for hearing on merits.

STATE OF BIHAR

The applicable Statute in the State of Bihar is the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981. Sections 42 and 43 deal with the question of 'minimum price' of cane supplied to a unit. Section 42 deals with the payment of price of cane supplied to a unit. Although this Section empowers the State Government, after consulting the Board, to determine by notification the minimum price of cane payable by owners of units to the cane-growers' or co-operative societies for cane supplied, the proviso to Section 42 clearly says that 'the minimum price so determined shall not exceed the minimum price payable by the occupier of a factory under any law for the time being in force' in respect of the cane supplied. Thus, it is clear that this Section does not contemplate payment of any price more than the one paid under the Sugarcane (Control) Order, 1966. There is no other provision in the Act empowering the State Government to fix higher price for sugarcane.

The High Court was, therefore, justified in allowing the writ petition filed by the sugar producers.

C.A. No. 4685 of 1997 filed by the State of Bihar is hereby dismissed.

STATE OF ANDHRA PRADESH

The State Government's power was sought to be traced to the provisions of the Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961 which appears to be pari materia with the legislation in U.P. Following the judgment in Ch. Tika Ramji's case (supra), the Division Bench of the Andhra Pradesh High Court in its judgment dated 8.5.2001 in writ appeal No. 902 of 1999 held that no such power of fixing a higher rate for purchase of sugarcane was discerned in the State

Government under the said Act. I agree with this view.

C.A. Nos. 8117-8122 of 2001 and the Civil Appeal @ SLP (C) No. 16851 of 2001 are dismissed.

STATE OF PUNJAB

In this State, the corresponding legislation is the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 together with the Rules made thereunder. The power of the State Government to fix the price is sought to be derived from Section 3. Upon interpretation of this provision of the State Legislation, the Division Bench of the High Court of Punjab & Haryana, by its judgment dated 23.12.1998 in CWP No. 19816 of 1996, held that there was no such power in the State Government and struck down the orders for payment under the State Advised Price holding that the sugar producers cannot be compelled to pay a price for the sugarcane over and above the minimum price fixed by the Central Government. The Division Bench also took the view that this did not preclude the parties from entering into agreement for payment of higher price. The State Government, being aggrieved, is in appeal.

I would agree with the view expressed by the High Court and dismiss Civil Appeal No. 6065 of 2001.

STATE OF HARYANA

The Civil Appeal arising out of SLP (C) No. 948 of 2003 is directed only against an order in Writ Petition No. 11702 of 2002 dated 20.12.2002 by which the Division Bench of the High Court of Punjab & Haryana vacated the interim orders which had been passed in favour of the petitioner. The said writ petition is presumably pending before the High Court. The instant appeal is, therefore, dismissed. The High Court shall decide the pending writ petition in accordance with the law declared by this Court.

The Civil Appeal arising out of SLP (C) No. 1363 of 2002 is directed against the judgment of the Division Bench of the High Court of Punjab & Haryana in writ petition CWP No. 19816 of 1996 dated 23.12.1998. Here, the High Court has allowed the writ petition of the sugar producers by holding that the State Government had no power to fix the State Advised Price at a rate higher than the centrally fixed minimum price for purchase of sugarcane and that the purchasers cannot be compelled to pay such higher price except when there is an agreement between the purchasers and the cane-growers to pay such higher price.

I would dismiss the appeal arising out of SLP (C) No. 1363 of 2002.

Civil Appeal Nos.1639-45/99 are directed against the common judgment of the Punjab and Haryana High Court in C.W.P.Nos. 558/97, 3847/97, 3921/97, 16035/97,15316/97, 14761/97 and 6802/97. The High Court had in these judgments held that the appellants before us had not made full payment along with interest towards the purchase price of sugarcane supplied to the appellant by relying on the provisions of section 15A of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. The High Court rightly dismissed the writ petitions. I see no reason to interfere with the judgment of the High Court. I would, therefore, dismiss Civil Appeal Nos.1639-45 of 1999.

STATE OF TAMIL NADU

In T.C. Nos. 21-22 of 2002 arising out of T.P. (C) Nos. 648-649 of 2000, the sugar producers filed writ petitions before the High Court of Madras challenging the fixation of the State Advised Price by the State Government. In the counter-affidavits filed by the State, it is expressly admitted before the High Court that there is no statutory provision for fixation of any State Advised Price at a rate higher than the centrally fixed minimum rate for purchase of sugarcane.

The two transferred cases are remitted back to the High Court which shall dispose of the pending writ petitions in accordance with the law declared by this Court.

JUDIS