West U.P. Sugar Mills Association vs The State Of Uttar Pradesh on 22 April, 2020

Equivalent citations: AIRONLINE 2020 SC 515

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Bench: Aniruddha Bose, M.R. Shah, Indira Banerjee, Arun Mishra

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION
CIVIL APPEAL NO. 7508 OF 2005

WEST U.P. SUGAR MILLS ASSOCIATION
& ORS. .. APPELLANTS

VERSUS

THE STATE OF UTTAR PRADESH & ORS. .. RESPONDENTS

WITH
C.A. No. 7509-7510/2005
CONMT. PET. (C) NO. 169/2006 IN C.A. NO. 7508/2005
C.A. NO. 150/2007
CONMT. PET. (C) NO. 254/2007 IN C.A. NO. 7508/2005
CONMT. PET (C) NO. 253/2007 IN C.A. NO. 7508/2005
C.A. NO. 2664/2007, C.A. NO. 4026/2009
C.A. NO. 4014-4023/2009, C.A. NO. 4024/2009
C.A. NO. 4025/2009, C.A. NO. 3911-3912/2009
C.A. NO. 3925/2009, C.A. NO. 3996-3997/2009
SLP (C) NO. 18681/2008, SLP (C) NO. 19183/2008
SLP (C) NO. 20206/2008, SLP (C) NO. 20205/2008

SLP (C) NO. 21576-21581/2008,

SLP (C) NO. 26026/2008,
CONTMP. PET (C) NO. 263–264/2008 IN C.A. NO. 3996–3997/2009
CONTMP. PET (C) NO. 267–268/2008 IN C.A. NO. 3996–3997/2009
CONTMP. PET (C) NO. 265–266/2008 IN C.A. NO. 3996–3997/2009
C.A. No. 4764/2009 and T.C. (C) NO. 96/2013

JUDGMENT

M. R. Shah, J.

1. Having noted that there is a clear conflict between the two decisions of this Court, one in the case of Ch. Tika Ramji & Others, Etc. vs. The State of Uttar Pradesh & Others [AIR 1956 SC 676 = 1956 SCR 393 = 1956 SCJ 625] and another subsequent decision in the case of U.P. Cooperative Cane Unions Federations vs. West U.P. Sugar Mills Association and Others [(2004)5 SCC 430], a three Judge Bench of this Court has referred the matter to a larger Bench proposing the following questions of law to be considered by the larger Bench, preferably of a Bench consisting of seven Judges of this Court:

> (1) Whether by virtue of Article 246 read with Schedule VII List III Entry 33 of the Constitution the field is occupied by the Central legislation and hence the Central Government has the exclusive power to fix the price of sugarcane?
>
> (2) Whether Section 16 or any other provision of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 confers any power upon the State Government to fix the price at which sugarcane can be bought or sold?
>
> (3) If the answer to this question is in the affirmative, then whether Section 16 or the said provision of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is repugnant to Section 3(2)(c) of the Essential Commodities Act, 1955 and Clause 3 of the Sugarcane (Control) Order, 1966 [hereinafter referred to as "1966 Order"]? And if so, the provisions of the Central enactments will prevail over the provisions of the State enactment and the State enactment to that extent would be void under Article 254 of the Constitution of India.
>
> (4) Whether the SAP fixed by the State Government in exercise of powers under

Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is arbitrary, without any application of mind or rational basis and is therefore, invalid and illegal?

(5) Does the State Advised Price (for short "SAP") constitute a statutory fixation of price? If so, is it within the legislative competence of the State?

(6) Whether the power to fix the price of sugarcane is without any guidelines and suffers from conferment of arbitrary and uncanalised power which is violative of Articles 14 and 19(1)(g) of the Constitution of India?

2. The core issue is whether the State of U.P. has the authority to fix the State Advised Price (SAP) [hereinafter referred to as "SAP"], which is required to be paid over and above the minimum price fixed by the Central Government?

3. At the outset it is required to be noted that in Tika Ramji case (supra), a Bench of five Judges of this Court held as under:

(i) That, section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 [hereinafter referred to as "1953 U.P. Act"] does not include the power to fix a price;

(ii) That, the price of cane fixed by the U.P. Government only mean the price fixed by the appropriate Government which would be the Central Government, under Clause 3 of the Sugarcane (Control) Order, 1955 [hereinafter referred to as "1955 Order"];

(iii) That, even the provisions in behalf of the agreement contained in Clauses 3 and 4 of the U.P. Sugarcane (Regulation of Supply and Purchase) Order, 1954 [hereinafter referred to as "1954 U.P. Order"] provided that the price was to be the minimum price to be notified by the Government subject to such deduction, 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 whatsoever;

(iv) That, there is no power to fix a price for sugarcane under the U.P. Sugarcane Act or Rules and the Orders made thereunder;

It is to be noted that in Tika Ramji case(supra), this Court did not comment on whether a power which the State Government exercised under Section 16 of the 1953 U.P. Act would be repugnant to the Central legislation, since this Court found no such power exercised by the State Government.

4. However, subsequently, another five Judges Bench of this Court in the case of U.P. Coop. Cane Unions Federations (Supra) has specifically gone into the question of repugnancy and held that the inconsistency or repugnancy will rise if the State Government fixes a price which is lower than that

fixed by the Central Government. But, if the price fixed by the State Government is higher than that fixed by the Central Government, there will be no occasion for any inconsistency or repugnancy as it is possible for both the orders to operate simultaneously and to comply with both of them. A higher price fixed by the State Government would automatically comply with the provisions of clause 3(2) of 1966 Order. Therefore, any price fixed by the State Government which is higher than that fixed by the Central Government cannot lead to any kind of repugnancy.

In the case of U.P. Coop. Cane Unions Federations (Supra), this Court held that the State Government has power to fix the price which may be higher than the minimum price fixed by the Central Government.

This Court in the reference order observed that to the aforesaid extent there is a difference of opinion and/or conflict.

5. We have called upon the learned Counsel appearing on behalf of the respective parties to first address on whether in fact there is any conflict between the decisions of this Court in the case of Tika Ramji (Supra) and U.P. Coop. Cane Unions Federations (Supra) or not and whether there is a need to refer the matter to a larger Bench of seven Judges?

6. Shri Jayant Bhushan, learned Senior Advocate appearing on behalf of the appellants has submitted that this case raises the following important issues.

(1) Whether the State Government / Cane Commissioner has any power or authority under the 1953 U.P. Act or the Rules and the Orders made thereunder to fix the sugarcane price?

(2) If the State of U.P. had such a power, would such legislation be repugnant to the Central legislation i.e. Essential Commodities Act and the 1966 Order?

(3) Whether there is any conflict between the Constitution Bench judgment of this Court in the case of Tika Ramji (Supra) and in the case of U.P. Coop. Cane Unions Federations (Supra)?

6.1 So far as the question No.1 is concerned, it is submitted that the power to regulate the distribution, sale or purchase of cane under Section 16 of the 1953 U.P. Act does not include the power to fix the price. It is submitted that this aspect has been comprehensively dealt with in the case of Tika Ramji (Supra) which analyzed the legislative history of laws relating to sugar and sugarcane both Central and State and came to the specific conclusion that the power reserved to the State Government to fix the minimum price of sugarcane which existed in U.P. Act 1 of 1938 was deleted from the 1953 U.P. Act since that power was being exercised by the Centre under Clause 3 of Sugar and Gur Control Order, 1950. Reliance is placed upon paragraph 34 of decision in the case of Tika Ramji (Supra).

6.1.1 It is submitted that in the aforesaid decision it has specifically been held that the 1953 U.P. Act or the Rules and the Orders made thereunder made no provision for fixation of price of sugarcane whatsoever and therefore, there was no question of repugnancy with the Central law. It is submitted

that in the case of U.P. Coop. Cane Unions Federations (Supra), this Court did not quote paragraph 34 and relevant paragraphs of the decision in the case of Tika Ramji (Supra) and erroneously holds that Tika Ramji (Supra) only held that the State did not in fact exercise the power to fix the price.

6.1.2 It is submitted that the argument that Tika Ramji (Supra) only hold that the State Government did not fix the price as this was fixed for the first time in 1973, is totally misplaced. It is submitted that Tika Ramji case has specifically held that there was no power to fix the price for sugarcane under the 1953 U.P. Act or the Rules and the Orders made thereunder. It is submitted that although the judgment in Tika Ramji (Supra) does not specifically quote section 16 of the 1953 U.P. Act, it is clear from the judgment that every section and every Rule was examined to see whether there was any power to fix cane price or any provision relating to price of cane. It is urged that the only provision that was found on detailed scrutiny of the 1953 U.P. Act and the Rules was Rule 94 which provided for a notice showing the minimum price fixed by the Government, which was held by the Constitution Bench to mean price fixed by the Central Government.

6.2 Now, so far as question No.2 is concerned, it is argued that even if such a power exists under Section 16 of the 1953 U.P. Act, such power would be totally repugnant to the power of Central Government to fix the minimum price under Clause 3 of the 1955 Order and thereafter under 1966 Order. It is submitted that although Tika Ramji case (supra) has not commented on whether such a power with the State Government would be repugnant to the Central Legislation, since it found no such power exercised by the State Government, the majority in the later Constitution Bench judgment in the case of U.P. Coop.

Cane Unions Federations (Supra) held that this would not be repugnant to the Central Legislation. It is argued that basis for holding that there is no repugnancy is that it is possible for both the orders to operate simultaneously and to comply with both of them. It is argued that in the case of U.P. Coop. Cane Unions Federations (Supra), subsequently it is held that any price fixed by the State Government which is higher than that fixed by the Central Government cannot lead to any kind of repugnancy. It is argued that this conclusion and its use for determining repugnancy is incorrect and contrary to the earlier Constitution Bench judgment including in the case of Tika Ramji (Supra). It is argued that therefore this issue also needs to be referred to a larger Bench to resolve the conflict. Reliance is placed on some of the observations in the case of Tika Ramji (Supra); in the case of State of Orissa vs. M.A. Tulloch & Co. [1964 (4) SCR 461] and in the case of M. Karunanidhi vs. Union of India [(1979)3 SCC 431].

6.2.1 It is argued that therefore there cannot be two minimum prices, one fixed by the Central Government as minimum price and other fixed by the State Government as SAP, which is also a minimum price. It is submitted that once the Centre has fixed a minimum price, any other price whether minimum price or SAP would be repugnant to the Centre's decision and the Centre's power and such power of the State Government would therefore have to yield to the Central legislation under Article 254 of the Constitution, both legislations being under the Concurrent List.

6.3 It is urged that there is a direct conflict between the Constitution Bench Judgment of this Court in the case of Tika Ramji (Supra) on one hand and the later Judgment also of the Constitution Bench

in the case of U.P. Coop. Cane Unions Federations (Supra), which needs to be referred to the larger Bench of seven Judges.

7. On the other hand, Shri Krishnan Venugopal, learned Senior Advocate appearing on behalf of the State of U.P. has vehemently argued that as such there is no apparent conflict between the two decisions of Constitution Bench of this Court in the case of Tika Ramji (Supra) and U.P. Coop. Cane Unions Federations (Supra). In support, he has made the following submissions.

(1) That, there is a sea change in the law prevailing and considered by this Court in the case of Tika Ramji (Supra) and thereafter in the case of U.P. Coop. Cane Unions Federations (Supra);

(2) That, by the time of the challenge to the 1953 U.P. Act and the 1954 U.P. Order made under Section 16 of the 1953 U.P. Act in the U.P. Coop. Cane Unions Federations (Supra), there was a fundamental change in the substratum on which Tika Ramji case was decided to the extent that the Central Government had repealed and substituted the 1955 Order by the 1966 Order. The 1966 Order issued under Section 3 of the Essential Commodities Act, 1955 expressly left room for the State to advise a price higher than the minimum price fixed by the Central Government under Clause 3(1) of the 1966 Order at which agreements for cane procurement could be reached between farmers or cooperative societies, especially in the context of the reservation of cane growing areas for exclusive procurement by sugar factories.

(3) That, the ratio of Tika Ramji (Supra) is not premised solely on the complete absence of power under the 1953 U.P. Act to fix prices. It is submitted that if so, there was no need for this Court to hold premise its reasoning on the “fact” that the State of U.P. had not actually fixed the price for sugarcane.

(4) That, in the case of Tika Ramji (Supra), though there is a brief mention of section 16 of the impugned 1953 U.P. Act, neither was the issue raised and the issue No.(iii) was whether section 16 of the Essential Commodities Act read with clause 7 of 1955 Order could have purported to repeal Section 16 of the 1953 U.P. Act and the 1954 U.P. Order in light of the proviso to Article 254(2) of the Constitution of India, neither was the issue raised nor was there any argument or discussion on the effect or implications of section 16 of the 1953 U.P. Act on the fixation of the “minimum price” under the 1955 Order in the context of the discussion of repugnancy of 1953 U.P. Act.

(5) That, there has been a sea change in the law relating to repugnancy between Central law and State law in the context of laws made under the Concurrent List, List III in the VII Schedule to the Constitution of India, where both, the Union and the States have power to make law.

(6) That, being fully aware of the judgment of this Court in the case of Tika Ramji (Supra), the Central Government retreated from the field of fixing “the price” of sugarcane and only retain the power to fix “the minimum price” while permitting an agreement for fixing higher price for sugarcane. It is submitted that therefore, the Central Government left it open for the State to fix the price above the minimum price for purposes of the agreement to be reached between the sugarcane growers and sugarcane cooperative society, on the one hand, and the sugarcane factories, on the

other. It is submitted that therefore the Central Government expressly indicated its intent to vacate a particular portion of the field of price fixation in relation to sugarcane and left it open to the State, the doctrine of occupied field has no application whatsoever.

(7) It is submitted that the reliance placed upon the decision of this Court in the case of M.A. Tulloch & Co. (Supra) on the occupied field doctrine shall not be applicable to the facts of the case on hand as that case relates to regulation of mines and mineral development and the regulation which involves the relationship between the Entry 23 in List II and Entry 54 in List I of the Seventh Schedule, both of which make it clear that the field of legislation can be taken over by Parliament by making the declaration to that effect.

7.1 Shri Venugopal, learned Senior Advocate appearing for the respondent □State of U.P. has made following submissions in support of his submission that there has been a fundamental change in the provisions of the 1955 Order to the extent that it was repealed by the 1966 Order.

(1) That, Clause 3 of the 1955 Order empowered the Central Government to fix "the price or the minimum price" to be paid by a producer of sugar for sugarcane purchased by him. The 1955 Order has been repealed by the 1966 Order and clause 3 of the 1966 Order provides that the Central Government may fix "the minimum price" of sugarcane to be paid by producers of sugar.

(2) That, there is a difference between "the price" which is a fixed amount and "the minimum price" which only indicates the lowest □permissible rate. The 1966 Order was further amended in 1976 and 1978 and clauses 3(3) and 3□A were introduced, which now contemplated an "agreed price". In view of the prohibition in clause 3(2) on transacting below the minimum price, the "agreed price" necessarily had to be higher than the "minimum price" fixed under clause 3(1).

(3) That, it is evident from the amended provisions of the 1966 Order, as amended in 1976 and again in 1978, that the Central Government intentionally vacated space in favour of the State Legislature to regulate the price at which agreements could be reached between sugarcane farmers and cooperative societies of sugarcane farmers for procurement of sugarcane, especially in the context of reservation of areas for procurement by sugar factories.

(4) That, therefore, it is clear that as long as the State Advised Price fixed by the State Government of Uttar Pradesh by exercising powers under Section 16 of the 1953 U.P. Act remains over and above the minimum price fixed by the Central legislature under the 1966 Order, there is no repugnancy to the extent that both laws can be obeyed without infringing the other.

7.2 It is further argued that in the case of U.P. Coop. Cane Unions Federations (Supra), this Court has rightly observed and held that so long both, the Union law and the State law can be obeyed, the State law does not become repugnant to the Union law when both the laws can operate in the same field without conflict. In support, heavy reliance has been placed upon the decision of this Court in the case of Dr. Preeti Srivastava vs. State of M.P. [(1999) 7 SCC 120].

7.3 It is further argued that in the case of M. Karunanidhi (Supra), while examining the issue of repugnancy with respect to State enactment of Tamil Nadu Public Men (Criminal Misconduct) Act, 1973 in light of the Central enactments of Indian Penal Code, 1860, Prevention of Corruption Act, 1988 and the Criminal Law (Amendment) Act, 1952 and after considering the relevant Entries in List I, List II and Concurrent List – List III and Article 254 of the Constitution of India, it is held that so far as Clause (1) of Article 254 is concerned, it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by the Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. It is submitted that it is further held that so far as the Concurrent List is concerned, both, Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1). It is submitted that in the aforesaid decision it is held that (1)Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy; (2) Where, however a law passed by the State comes into collision with a law passed by the Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254; (3) Where, a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List an entrenchment, if any, is purely incidental or inconsequential; (4) Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

7.4 It is submitted that therefore applying the law laid down by this Court in the case of M. Karunanidhi (Supra) to the facts of the case on hand, it is clear that in the present case, as the Essential Commodities Act and the 1966 Order, on the one hand, and 1953 U.P. Act and the 1954 U.P. Order, have both been enacted under the Concurrent List, and there is no direct conflict between the fixation of the minimum price by the Central Government under Clause 3 of the 1955 Order and the fixation of a higher SAP by the State of U.P., there is no real and irreconcilable conflict between the provisions of the two Acts to the extent that both can be obeyed without violating the order.

Therefore, it is submitted that the decision of this Court in the case of U.P. Coop. Cane Unions Federations (Supra) must be upheld as there is no conflict with the decision in the case of Tika Ramji (Supra).

8. While considering whether there is any apparent conflict between the decisions of the Constitution Bench of this Court in the case of Tika Ramji (Supra) and U.P. Coop. Cane Unions Federations (Supra) and whether the matter requires to be referred to the larger Bench of seven Judges, the legislative history as well as the chronology of lists and events which led to the controversy in the case of Tika Ramji (Supra) and U.P. Coop. Cane Unions Federations (Supra) and the relevant provisions which fell for consideration before this Court are required to be referred to, which are noted in U.P. Coop. Cane Unions Federations (Supra) , as under:

> a. On 8th April, 1932, the Central Legislature, in the then British India, passed the Sugar Industry (Protection) Act, 1932 [Act 13 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, 1934 [Act 15 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.
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> b. 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 15 of 1934 fell within the Provincial Legislative List. It was felt that Act 15 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.
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> c. 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.

d. 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.

e. 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), ..." f. 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 7 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.

g. The Industries (Development and Regulation Act, 1951 [Act 65 of 1951] was brought into effect from 8 th 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" 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.

h. On 1st April 1955, Parliament enacted the Essential Commodities Act, 1955 [Act 10 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 (a)(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.

i. 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. j. 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.

k. On 16th July, 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 :□"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.

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)*** [Ins. 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.

8.1 The provisions of Section 16 of the Act of 1953 read as under:

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

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

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

(i) for the purchase of cane grown in reserved or assigned area by a [Gur, Rab or Khandsari Manufacturing Unit or any person or factory] (Substituted by UP ACT IV of 1964) 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] (Substituted by UP ACT IV of 1964) 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.

9. Thus, from the legislative history and the relevant provisions of Essential Commodities Act, 1953 U.P. Act, 1954 U.P. Order, 1955 Order, 1966 Order which fell for consideration by this Court in the case of Tika Ramji (Supra) and U.P. Coop.

Cane Unions Federations (Supra), it appears that as such there has been a sea change in the law and the relevant provisions which can be summarized as under:

a. That, the Central Government repealed and substituted the 1955 Order by 1966 Order;

b. That, in the 1966 Order issued under Section 3 of the Essential Commodities Act, from the word “price and the minimum price”, word “price” came to be deleted and the power to fix “minimum price” came to be retained;

c. Clause 3 of the 1955 Order empowered the Central Government to fix “price” or “minimum price” to be paid by the producer of sugar for sugarcane purchased by him. However, 1955 Order came to be repealed by the 1966 Order and Clause 3 of 1966 Order provides that the Central Government may fix the “minimum price” of sugarcane to be paid by the producers of the sugar;

d. That, 1966 Order came to be further amended in 1976 and 1978 and Clauses 3(3) and 3□A came to be introduced which now contemplates “agreed price”;

9.1 Considering the Clause 3 of the 1955 Order by which the Central Government was empowered to fix “price” or the “minimum price” which fell for consideration by this Court in the case of Tika Ramji (Supra) and as even the time when the matter was decided by this Court in the case of Tika Ramji (Supra), no price was determined and/or fixed by the State and therefore, having felt there is no repugnancy and/or conflict, this Court in the case of Tika Ramji (Supra) did not as such enter into the question of repugnancy. Therefore, as such in the case of Tika Ramji (Supra), this Court considered Clause 3 of 1955 Order which specifically empowered the Central Government to fix the “price or minimum price” and also considered that the State Government has not exercised the power by fixing the price and therefore, the question of conflict does not arise. However, in the case of U.P. Coop. Cane Unions Federations (Supra), this Court was considering the subsequent change in law more particularly the 1966 Order and Clause 3 of the 1966 Order and other relevant Clauses of 1966 Order.

10. The relevant observations and findings recorded by this Court in the case of Tika Ramji (Supra) and in the case of U.P. Coop. Cane Unions Federations (Supra) are as under:

10.1 RELEVANT EXTRACTS AND OBSERVATIONS IN THE CASE OF TIKA RAMJI “.....It is clear, therefore, that all the Acts and the notifications issued thereunder by the Centre in regard to sugar and sugarcane were enacted in exercise of the concurrent jurisdiction. The exercise of such concurrent jurisdiction would not deprive the Provincial Legislatures of similar powers which they had under the Provincial Legislative List and there would, therefore, be no question of legislative incompetence qua the Provincial Legislatures in regard to similar pieces of legislation enacted by the latter. The Provincial Legislatures as well as the Central Legislature would be competent to enact such pieces of legislation and no question of legislative competence would arise. It also follows as a necessary corollary that, even though sugar industry was a controlled industry, none of these Acts

enacted by the Centre was in exercise of its jurisdiction under Entry 52 of List I. Industry in the wide sense of the term would be capable of comprising three different aspects: (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. The raw materials would be goods which would be comprised in Entry 27 of List II. The process of manufacture or production would be comprised in Entry 24 of List II except where the industry was a controlled industry when it would fall within Entry 52 of List I and the products of the industry would also be comprised in Entry 27 of List II except where they were the products of the controlled industries when they would fall within Entry 33 of List III. This being the position, it cannot be said that the legislation which was enacted by the Centre in regard to sugar and sugarcane could fall within Entry 52 of List I. Before sugar industry became a controlled industry, both sugar and sugarcane fell within Entry 27 of List II but, after a declaration was made by Parliament in 1951 by Act LXV of 1951, sugar industry became a controlled industry and the product of that industry, viz., sugar was comprised in Entry 33 of List III taking it out of Entry 27 of List II. Even so, the Centre as well as the Provincial Legislatures had concurrent jurisdiction in regard to the same. In no event could the legislation in regard to sugar and sugarcane be thus included within Entry 52 of List 1. The pith and substance argument also cannot be imported here for the simple reason that, when both the Centre as well as the State Legislatures were operating in the concurrent field, there was no question of any trespass upon the exclusive jurisdiction vested in the Centre under Entry 52 of List 1, the only question which survived being whether, putting both the pieces of legislation enacted by the Centre and the State Legislature together, there was any repugnancy, a contention which will be dealt with hereafter.

".....A more effective answer is furnished by comparison of the terms of the U.P. Act I of 1938 with those of the impugned Act. Whereas the U.P. Act I of 1938 covered both sugarcane and sugar within its compass, the impugned Act was confined only to sugarcane, thus relegating sugar to the exclusive jurisdiction of the Centre thereby eliminating all argument with regard to the encroachment by the U.P. State Legislature on the field occupied by the Centre. The U.P. Act I of 1938 provided for the establishment of a Sugar Control Board, the Sugar Commissioner, the Sugar Commission and the Cane Commissioner. The impugned Act provided for the establishment of a Sugarcane Board. The Sugar Commissioner was named as such but his functions under rules 106 and 107 were confined to getting information which would lead to the regulation of the supply and purchase of sugarcane required for use in sugar factories and had nothing to do with the production or the disposal of sugar produced in the factories. The Sugar Commission was not provided for but the Cane Commissioner was the authority invested with all the powers in regard to the supply and purchase of sugarcane. The Inspectors appointed under the U.P. Act I of 1938 had no doubt powers to examine records maintained at the factories showing the amount of sugarcane purchased and crushed but they were there with a view to check the production or manufacture of sugar whereas the Inspectors appointed under the impugned Act were, by rule 20, to confine their activities to the regulation of the supply and purchase of sugarcane without having anything to do with the further process of the manufacture or production of sugar. Chapter 3 of U.P. Act I of 1938, dealing with the construction and extension of sugar factories, licensing of factories for crushing sugarcane, fixing of the price of sugar, etc., was deleted from the impugned Act. The power of licensing new industrial undertakings was thereafter exercised by the Centre under Act LXV of 1951 as amended by Act XXVI of 1953, vide sections 11(a), 12 and 13, and the power of fixation of price of sugar was exercised by

the Centre under section 3 of Act XXIV of 1946 by issuing the Sugar Control Order, 1950. Even the power reserved to the State Government to fix minimum prices of sugarcane under Chapter V of U.P. Act 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." ".....It was next contended that the provisions of the impugned Act were repugnant to the provisions of Act LXV of 1951 and Act X of 1955 which were enacted by Parliament and, therefore, the law made by Parliament should prevail and the impugned Act should, to the extent of the repugnancy, be void. Before dealing with this contention it is necessary to clear the ground by defining the exact connotation of the term "repugnancy". Repugnancy falls to be considered when the law made by Parliament and the law made by the State Legislature occupy the same field because, if both these pieces of legislation deal with separate and distinct matters though of a cognate and allied character, repugnancy does not arise." ".....We are concerned here with the repugnancy, if any, arising by reason of both Parliament and the State Legislature having operated in the same field in respect of a matter enumerated in the Concurrent List, i.e., foodstuffs comprised in Entry 33 of List III." ".....The Calcutta High Court in G. P. Stewart v. B. K. Roy Chaudhury had occasion to consider the meaning of repugnancy and B. N. Rau, J. who delivered the judgment of the Court observed at page 632:

> "It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one says 'do" and the other "don't", there is no true repugnancy, according to this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is too narrow a test:

there may well be cases of repugnancy where both laws say “don't” but in different ways. For example, one law may say, “No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time” and another law may say, “No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time”. Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified”.

The learned Judge then discussed the various authorities which laid down the test of repugnancy in Australia, Canada, and England and concluded at page 634:

“The principle deducible from the English cases, as from the Canadian cases, seems therefore to be the same as that enunciated by Isaacs, J. in the Australian 44 hour case (37 C.L.R. 466) if the dominant law has expressly or impliedly evinced its intention to cover the whole field, then a subordinate law in the same field is repugnant and therefore inoperative. Whether and to what extent in a given case, the dominant law evinces such an intention must necessarily depend on the language of the particular law”.

“.....In the instant case, there is no question of any inconsistency in the actual terms of the Acts enacted by Parliament and the impugned Act. The only questions that arise are whether Parliament and the State Legislature sought to exercise their powers over the same subject□matter or whether the laws enacted by Parliament were intended to be a complete exhaustive code or, in other words, expressly or impliedly evinced an intention to cover the whole field.” “.....Act X of 1955 included within the definition of essential commodity food stuffs which we have seen above would include sugar as well as sugarcane. This Act was enacted by Parliament in exercise of the concurrent legislative power under Entry 33 of List III as amended by the Constitution Third Amendment Act, 1954. Foodcrops were there defined as including crops of sugarcane and section 3(1) gave the Central Government powers to control the production, supply and distribution of essential commodities and trade and commerce therein for maintaining or increasing the supplies thereof or for securing their equitable distribution and availability at fair prices. Section 3(2)(b) empowered the Central Government to provide inter alia for bringing under cultivation any waste or arable land whether appurtenant to a building or not for growing thereon of foodcrops generally or specified foodcrops and section 3(2)(c) gave the Central Government power for controlling the price at which any essential commodity may be bought or sold. These provisions would certainly bring within the scope of Central legislation the regulation of the production of sugarcane as also the controlling of the price at which sugarcane may be bought or sold, and in addition to the Sugar Control Order, 1955 which was issued by the Central Government on 27th August, 1955, it also issued the Sugarcane Control Order, 1955, on the same date investing it with the power to fix the price of sugarcane and direct payment thereof as

also the power to regulate the movement of sugarcane." ".....Parliament was well within its powers in legislating in regard to sugarcane and the Central Government was also well within its powers in issuing the Sugarcane Control Order, 1955 in the manner it did because all this was in exercise of the concurrent power of legislation under Entry 33 of List III. That, however, did not affect the legislative competence of the U. P. State Legislature to enact the law in regard to sugarcane and 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. Our attention was drawn to the several provisions contained in the Sugarcane Control Order, 1955 and the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954 and the agreements annexed thereto and it was pointed out that they differed in material particulars, the provisions of the latter being more stringent than those of the former. It is not necessary to refer to these provisions in any detail. 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."

11. RELEVANT EXTRACTS AND OBSERVATIONS IN THE CASE OF U.P. COOPERATIVE CANE UNIONS FEDERATIONS:

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

28. The observations made in Tika Ramji, strong reliance on which is placed by learned counsel for the respondents, have to be understood in the context in which they were made. It may be noted that the writ petitions in the said case were filed in this Court in the year 1954 and the judgment was delivered on 24□4□1956. At the relevant time, it was the Sugarcane (Control) Order, 1955 which was in operation. Clause 3 of this Order empowered the Central Government to fix the price or the minimum price to be paid by a producer of sugar for sugarcane purchased by him. The 1955 Order has been repealed by Sugarcane (Control) Order, 1966 and Clause 3 of this Order provides that the Central Government may fix the minimum price of sugarcane to be paid by producers of sugar. There is a difference between "the price"

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

(AIR p.704, para 36) "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." "28.1 Having regard to the factual situation then existing that U.P. Government had not fixed the price of the sugarcane, it was held that the price of the cane fixed by the Government could only mean "Central Government". It has not been laid down as a principle of law that the words "minimum price notified by Government" must necessarily mean the minimum price fixed by the Central Government or that under no circumstances it can mean the price fixed by the State Government.

"34. Learned Senior Counsel for the respondents has strenuously urged that the Central Government having made the 1966 Order which contains a specific provision

> for fixation of price of sugarcane, under Clause 3(1) thereof, the regulatory power under the 1953 Act cannot embrace within its fold the same power of fixation of price as this will be clearly repugnant to a law made by the Parliament and would be void in view of Article 254(1) of the Constitution. In Tika Ramji it has been held that the EC Act under which the Central Government made the 1966 Order and the 1953 Act made by U.P. Legislature have been enacted with reference to Entry 33 of List III of the Seventh Schedule. The constitutional validity of the 1953 Act was upheld by the Constitution Bench in the said decision. On p. 437 of the Reports (SCR) the Court quoted with approval the following passage from the judgment of Sulaiman J. in Shyamakant Lal v. Rambhajan Singh (FCR at p. 212 : AIR at p. 83) for the principle of construction in regard to repugnancy : (AIR p. 700, para
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> 32) "When the question is whether a Provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility:" (Emphasis supplied) And then went to hold : (AIR p. 700, para 33) "33. In the instant case, there is no question of any inconsistency in the actual terms of the Acts enacted by Parliament and the impugned Act.

The only questions that arise are whether Parliament and the State Legislature sought to exercise their powers over the same subject□matter or whether the laws enacted by Parliament were intended to be a complete exhaustive code or, in other words, expressly or impliedly evinced an intention to cover the whole field."

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

> (SCC pp.448□49, para 35) "35. 1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

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

"37. Under Sub-section (1) of Clause 3 of the 1966 Order, the Central Government can only fix a minimum price of sugarcane. This clause should be read along with Sub-clause (2) which creates an embargo or prohibition that no person shall sell or agree to sell sugarcane to a producer of sugar and no such producer shall purchase or agree to purchase sugarcane at a price lower than that fixed under Sub-clause (1). The inconsistency or repugnancy will arise if the State Government fixed a price which is lower than that fixed by the Central Government. But, if the price fixed by the State Government is higher than that fixed by the Central Government, there will be no occasion for any inconsistency or repugnancy as it is possible for both the orders to operate simultaneously and to comply with both of them. A higher price fixed by the State Government would automatically comply with the provisions of Sub-clause (2) of Clause 3 of 1966 Order. Therefore, any price fixed by the State Government which is higher than that fixed by the Central Government cannot lead to any kind of repugnancy." "39. .....that under the 1966 Order the Central Government only fixes the minimum price and it is always open to the State Government to fix a higher price. Under the enactments made by the State Legislatures areas are reserved for the sugar factories and the cane-growers therein are compelled to supply sugarcane to them and therefore the State Government has incidental power to fix the price of sugarcane which will also be statutory price. They further lay down that the Cane Commissioner can direct the cane-growers and the sugar factories to enter into agreements for purchase of sugarcane at a price fixed by the State Government and such agreements cannot be branded as having been obtained by force or compulsion." "43. One of the main reasons given by the High Court for allowing the writ petition and quashing the order of fixation of State Advised Price is that power to fix sugarcane price had been given to the State Government under the Sugarcane Act, 1934 and hence it would be redundancy to say that the same power to fix cane price also flows from Section 16 of the 1953 Act. The High Court has also held that when the 1953 Act was enacted there was already a law, viz., the Sugarcane Act, 1934, which enabled the State Government to fix the minimum cane price and hence, it could not have been the intention of the U.P. Legislature while enacting 1953 Act that Section 16 thereof would include the power to fix the minimum cane price as such a power was already there with the State Government under Section 3(2) of the Sugarcane Act, 1934. The High Court, therefore, concluded that Section 16 of the 1953 Act only gave power to the State Government to regulate the supply and purchase of sugarcane in the narrower sense and not in the wider sense so as to include the power to fix the minimum price. This reasoning of the High Court proceeds on the footing that the Sugarcane Act, 1934 was in existence and was in operation when the 1953 Act was enacted by U.P. Legislature. It appears that the correct legal position was not brought to the notice of the learned judges. The Sugarcane Act, 1934 was repealed

by U.P. Sugar Factories Control Act, 1938 (UP Act 1 of 1938). Section 26 of U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 repealed the U.P. Sugar Factories Control Act, 1938. With the enforcement of the Government of India Act, 1935, there was distribution of legislative powers between the Dominion Legislature and the Provincial Legislature and the entire subject matter of Sugarcane Act, 1934 fell within the Provincial Legislative list. It was in these circumstances that the U.P. Legislature enacted the U.P. Sugar Factories Control Act, 1938 which repealed the Sugarcane Act, 1934 in its application in the State of U.P. This position has been noticed in Tika Ramji v. State of U.P., SCR at pp. 400, 401 and 417. Therefore, the aforesaid reasoning given by the High Court has no legal basis." "44. The second reasoning given by the High Court is that even if the State Government had the power to fix the minimum cane price under Section 16 of the 1953 Act, this power came to an end in view of Article 254(1) of the Constitution on the enactment of the EC Act and the promulgation of the Sugarcane Control Order, 1955 (later replaced by the 1966 Order), which now gives exclusive power to the Central Government to fix the minimum price. As discussed earlier we are not in agreement with the aforesaid reasoning as the question of repugnancy does not arise. The High Court has also held that the Central Government, while fixing the price of the sugar under Section 3(3)(c) of the EC Act, takes into consideration the minimum price of sugarcane fixed under 1966 Order and if the sugar mills are compelled to pay a higher price than that fixed by the Central Government, it will disturb the price of the levy sugar and such an eventuality could not have been contemplated by the legislature. Over a period of time, the quota of levy sugar has gone down from 40 per cent to 10 per cent of the total production of sugar and the sugar mills are now free to sell 90 per cent of their production in open market. Under Section 3(3)(c) of the EC Act, the Central Government has to determine the price of the levy sugar having regard to several factors enumerated in the sub-section and the minimum price fixed under 1966 Order is only one of the factors. The manufacturing cost of sugar and securing of reasonable return on the capital employed in the business of manufacturing sugar are also relevant factors under Clauses (b) and (d) of Section 3(3) EC Act and, therefore, the fixation of higher price for sugarcane by the State Government by itself cannot have any major or substantial impact on the fixation of the price of the levy sugar by the Central Government."

12. The question involved in Ch. Tika Ramji & Ors., etc. v. The State of Uttar Pradesh & Ors. AIR 1956 SC 676 was concerning the validity of the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 (for short, "Act of 1953") and notifications dated 27.9.1954 and 9.11.1955 issued by the Government of Uttar Pradesh thereunder. The notification dated 27.9.1954 was issued in exercise of the powers/ conferred under sub-section 1(a) read with sub-section 2(b) of Section 16 of the Act of 1953 which provided that not less than 3/4 of the cane growers of the area of operation of a Cane Growers Cooperative Society to be members of the society. The occupier of the factory for which the area is assigned shall not purchase or enter into an agreement to purchase cane grown by a cane grower except through such Cane Growers Co-operative Society.

13. The notification dated 9.11.1955 which was issued in exercise of the powers conferred by section 15 of the Act of 1953, reserved or assigned to the sugar factories mentioned in column 2 of the Schedule annexed to it, the cane purchasing centers, with the authorities attached to them, specified against them in column 3 for the supply of sugarcane during the crushing season 1955-56. Thus, it is apparent that the notification dated 27.9.1954 related to the agency of supply of sugar cane to the

factories and the notification dated 9.11.1955 related to the creation of the zones for particular factories were questioned.

Various submissions were raised to assail the validity of the Act and the notification.

14. Firstly, it was urged that the State of Uttar Pradesh had no power to enact the Act of 1953 as it relates to the subject of industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest within the meaning of Entry 52 of List I. The Act of 1953 was repugnant to Essential Commodities Act, 1955 and the Industries Development Regulation Act, 1951. The Act of 1953 infringes the fundamental right carved out under Article 14 as vast powers were given to the Cane Commissioner, which could be used in a discriminatory manner. The notification dated 27.9.1954 violated the fundamental right guaranteed under Article 19(1)(c). The cane growers were compelled to become a member of the society before they could sell sugarcane to a factory. The Act of 1953 and the notifications infringe the fundamental right guaranteed by Article 19(1)(f) and (g) and Article 31 of the Constitution.

15. This Court held that the State of Uttar Pradesh had the legislative competence to enact the Act, and there was no repugnancy of the Act of 1953 with the Act of 1951 or the Essential Commodities Act, 1955. This Court upheld the validity of the Act and notifications and also held that there was no unreasonable restriction imposed. There was no violation of fundamental right under Article 19(1)(f) and (g) and Article 31 of the Constitution.

16. The question of fixation of price by the State Government under the Act of 1953 did not fall for consideration in Ch. Tika Ram (supra). This Court noted that the Uttar Pradesh Government had never fixed the price of sugarcane to be purchased by the factories by the time the decision was rendered. While examining the repugnancy, passing reference has been made to the provisions contained in the Act of 1954.

17. During the pendency of petitions, the Sugar Control Order, 1955, was issued on 27.8.1955, which was referred to in the judgment. It was not even submission raised or considered that the power of regulation under Section 16 of the Act would include the power to fix the advised price of sugarcane. The concept of fixation of minimum price by Central Government vis a vis to State Advised Price to be fixed by State Government, never fell for consideration of this Court in the said decision. The ratio of decision has to be considered in the light of questions considered and answered. In Tika Ramji (supra), it was held that there was no repugnancy in the Act of 1953 with Act of 1955 or with the Act of 1951, and notifications which were impugned did not infringe the fundamental rights.

18. Thus, from the above, it is clear that the factual matrix and the relevant provisions which fell for consideration before this Court in the case of Tika Ramji (supra) and which fell for consideration by this Court in the case of U.P. Coop. Cane Unions Federations(supra) were altogether different. As observed hereinabove, Clause 3 of 1955 Order empowered the Central Government to fix “the price or the minimum price”. The aforesaid Clause 3 of 1955 Order was under consideration by this Court in the case of Tika Ramji(supra). However, subsequently, 1955 Order has been repealed by 1966 Order and Clause 3 of 1966 Order provides that the Central Government may fix “the minimum

price" of the sugarcane. Therefore, when the legislature consciously deleted the word "the price" and retained the power with the Central Government to fix "the minimum price", some meaning has to be given to such a deletion. The intention of the legislature is also required to be considered when certain words in the provisions of a statute are deleted or added and/or substituted. In the case of Tika Ramji(supra), this Court though specifically observed and held that in the field of sugar and sugarcane, both, the Parliament and the State legislature would have the concurrent Jurisdiction as the same will fall under Entry 33 in the Concurrent List of seventh Schedule. Considering the fact that the State Government did not exercise the power of fixing the price, though the powers were available and the Central Government fixed the price/minimum price which came to be adopted by the State Government, this Court in Tika Ramji's case(supra) held that in such a situation there is no conflict and the question of repugnancy does not arise. Therefore, we are of the opinion that as such there is no apparent conflict between the decisions in Tika Ramji's case and U.P. Coop. Cane Unions Federations, which require to be referred to a larger Bench of seven Judges.

19. Under clause 3 of the 1966 order, the minimum price can be fixed. Under clause 3A of the said order, as amended in 1978, the agreed price is to be mentioned in the agreement, which can be higher than the minimum price and not less than that. Under clause 3(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). Thus, the price fixed under clause 3(1) has to be treated as a minimum price. Under clause 3(A), as inserted on 2.2.1978, agreement in writing is required, and the price has to be paid as agreed to within 14 days.

20. Even otherwise and on merits and for the reasons stated hereinbelow, we are in complete agreement with the view taken by this Court in the case of U.P. Coop. Cane Unions Federations, which lays down that the inconsistency or repugnancy will arise if the State Government fixed a price which is lower than that fixed by the Central Government. But, if the price fixed by the State Government is higher than that fixed by the Central Government, there will be no occasion for any inconsistency or repugnancy as it is possible for both the orders to operate simultaneously and to comply with both of them. A higher price fixed by the State Government would automatically comply with the provisions of Sub-clause (2) of Clause 3 of 1966 Order. Therefore, any price fixed by the State Government which is higher than that fixed by the Central Government cannot lead to any kind of repugnancy.

20.1 Question of repugnancy under Article 254 of the Constitution:

> Concerning laws in List III of the Seventh Schedule of the Constitution of India, where both the Union and the States have the power to enact a law, the question of repugnancy arises only in a case where there is an actual irreconcilable conflict between the two laws. Inconsistency between the two laws is irreconcilable, then the question of repugnancy arises. It is necessary to find the dominant intention of both the legislatures, partial or incidental coverage of the same area in a different context, and to achieve a different purpose, does not attract the doctrine of repugnancy. In Rajiv Sarin v. State of Uttarakhand, (2011) 8 SCC 708, the Court held :

> "33. It is trite law that the plea of repugnancy would be attracted only if both the legislations fall under the Concurrent List of the Seventh Schedule to the Constitution. Under Article 254 of the Constitution, a State law passed in respect of a subject-matter comprised in List III i.e., the Concurrent List of the Seventh Schedule to the Constitution would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only in a situation if both the laws i.e., one made by the State Legislature and another made by Parliament cannot exist together. In other words, the question of repugnancy under Article 254 of the Constitution arises when the provisions of both laws are completely inconsistent with each other or when the provisions of both laws are absolutely irreconcilable with each other, and it is impossible without disturbing the other provision, or conflicting interpretations resulted into when both the statutes covering the same field are applied to a given set of facts. That is to say, in simple words, repugnancy between the two statutes would arise if there is a direct conflict between the two provisions and the law made by Parliament and the law made by the State Legislature occupies the same field. Hence, whenever the issue of repugnancy between the law passed by Parliament and of State Legislature are raised, it becomes quite necessary to examine as to whether the two legislations cover or relate to the same subject-matter or different.

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45. For repugnancy under Article 254 of the Constitution, there is a twin requirement, which is to be fulfilled: firstly, there has to be a "repugnancy" between a Central and State Act; and secondly, the Presidential assent has to be held as being non-existent. The test for determining such repugnancy is indeed to find out the dominant intention of both the legislations and whether such dominant intentions of both the legislations are alike or different. To put it simply, a provision in one legislation in order to give effect to its dominant purpose may incidentally be on the same subject as covered by the provision of the other legislation, but such partial or incidental coverage of the same area in a different context and to achieve a different purpose does not attract the doctrine of repugnancy. In a nutshell, in order to attract the doctrine of repugnancy, both the legislations must be substantially on the same subject." 20.2 In M. Karunanidhi v. Union of India & Anr., (1979) 3 SCC 431, the Court opined that where there is a direct collision between the law made by the State and the law made by the Parliament, State law would be void to the extent of repugnancy.

It is only when the provisions are irreconcilable. The Court held:

> "8. It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail, and consequently,

the State Act will have to yield to the Central Act. In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e., the Union List to the Seventh Schedule, Parliament alone is empowered to legislate, and the State Legislatures have no authority to make any law in respect of the Entries contained in List I. Secondly, so far as the Concurrent List is concerned, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254(1) discussed above. Thirdly, so far as the matters in List II, i.e., the State List are concerned, the State Legislatures alone are competent to legislate on them, and only under certain conditions, Parliament can do so. It is, therefore, obvious that in such matters, repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail, and the State Act will become void in view of the repugnancy.

2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution.

The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

So far as the present State Act is concerned, we are called upon to consider the various shades of the constitutional validity of the same under Article 254(2) of the Constitution.

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24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

> 1. That there is a clear and direct inconsistency between the Central Act and the State Act.
>
> 2. That such an inconsistency is absolutely irreconcilable.
>
> 3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other." 20.3 Clause (1) of Article 254 of the Constitution gives primacy to central legislations in case of conflict with State laws whether enacted before or after. The central law operates only in case of repugnancy and not in a case of mere possibility when such an order might be issued under state law, as opined in Belsund Sugar Co. Ltd. v. State of Bihar & Ors., (1999) 9 SCC 620;

Punjab Dairy Development Board & Anr. v. Cepham Milk Specialities Ltd. & Ors, (2004) 8 SCC 621; Southern Petrochemicals Industries Ltd. v. Electricity Inspector and ETIO & Ors., (2007) 5 SCC 447 and Bharat Hydro Power Corporation Ltd. & Ors. v. State of Assam & Anr. (2004) 2 SCC 553.

20.4 It is apparent that in U.P. Cooperative Cane Unions Federations (supra), a Constitution Bench has rightly opined that under section 16 of the Act of 1953, there is the power to fix a price with State, which is State advised price. It cannot be said that the Central legislation occupies the field, the Essential Commodities Act, 1955, and the Order of 1966 issued thereunder deals with minimum price. The Central Government has the power to fix the minimum price in clause 3. The State Government is not denuded of the power under the Act of 1953 to fix the "State Advised Price" under section 16 as held in U.P. Cooperative Cane Unions Federations (supra). The power to regulate includes the power to fix the price. But State advised price has to be higher than the minimum price fixed by Central Government. But the exercise of the power under section 16 of the Act of 1953 to fix State Advised Price, cannot be said to be irreconcilable with the minimum price fixation under section 3(2)

(c) of the Essential Commodities Act, 1955 and clause 3 of the Sugarcane (Control) Order, 1966. The power of fixation of State advised price under section 16 of the Act of 1953 cannot be said to be arbitrary or illegal in any manner.

20.4.1 In the case of U.P. Cooperative Cane Unions Federations (supra), this Court had an occasion to consider the ambit, scope and import of Section 16 of the Act. The question involved was as to whether the State Government had the power to fix SAP for sugarcane or it was only the Central Government, which could fix the minimum price or so to say, whether the fixation of SAP was covered by the Central Legislation or was it open to the State to fix the price different than the price

fixed by the Central Government and whether there was repugnancy in view of Article 254 of the Constitution.

20.4.2 From the close scrutiny of the judgment passed by this Court in the case of U.P. Cooperative Cane Unions Federations (supra), it did appear that this Court took into consideration the effect, scope and impact of Section 16 under the Act. This Court considered in detail Section 16 of the Act – the provision to regulate purchase and supply of sugarcane in the reserved and assigned area, under which the State Government is vested with the power to regulate the distribution, sale or purchase of sugarcane in any reserved or assigned area and purchase of cane in any area other than a reserved or assigned area by issuing an order to that effect. Thereafter, this Court has held that the power to regulate includes the power to fix the SAP. This Court has also specifically observed and held that there was no repugnancy.

20.4.3 From the judgment of the Constitution Bench in the case of U.P. Cooperative Cane Unions Federations (supra), it further appears that this Court took into account the relevance, importance, purpose and object, its impact, implication and reasons for enacting Section 16 of the Act and after taking into account all the relevant considerations this Court has specifically held that the SAP is a price higher than that determined by the Central Government which is known as Statutory Minimum Price (SMP). Thus, in the case of U.P. Cooperative Cane Unions Federations (supra), this Court has specifically upheld the power of the State Government to fix the SAP under Section 16 of the Act.

20.5 Now, so far as the fixation of the SAP by the State Government is concerned, from the counter affidavit before the High Court filed in Writ Petition No. 8548 (MB) of 2007 it appears that as per the State Government, the following factors are the relevant facts for determination of SAP.

(i) The cost of cultivation of sugarcane.

(ii) The cost of transport of sugarcane by cane growers

from the field to purchase center or to mill gate as the case may be.

(iii) A reasonable return on the aforesaid amount of his produce to cane growers.

(iv) Availability of the cane area, demand of sugarcane by industries, profitability of the industries by selling sugar, and other bye products etc.

(v) The price of sugarcane paid by sugar factories in the proceeding year.

(vi) The factors necessary to avoid diversion of sugarcane from sugar industries to other consumers like Kolhu and Khandsari Units.

It also appears that determination and fixation of the SAP is a Cabinet decision which has been fixed after considering several factors, including the cost of cultivation/production of the sugarcane etc.

and after taking into consideration the relevant factors as above and including increasing of national economic growth, cost of production of sugarcane, increase in the cost of seeds, fertilizers, labour charges, irrigation etc., including the profit earned by sugar factories from the produces from bye□ products, power projects etc. Thus it appears that that authority is guided by all relevant factors while determining such price – SAP.

20.5.1 In the case of U.P. Cooperative Cane Unions Federations (supra), the Constitution Bench has upheld the power and authority of the State Government to fix the SAP after precisely observing that the Act of 1953 has been enacted to regulate the SAP and purchase of sugarcane required by the sugar factories and that the word 'regulate' would also include the right to fix the price. It has also declared that the SAP fixed by the State Government has to be higher than the minimum price fixed by the Central Government. In a given case, the SAP price may be an agreed price.

20.6 At this stage, is required to be noted that in the case of U.P. Cooperative Cane Unions Federations (supra), this Court specifically negatived the submission on behalf of the sugar factories that they cannot be compelled to enter into agreements with the cane growers and cane□growers' cooperative society in forms B and C, wherein the State□advised price is mentioned.

This Court also negatived the submission on behalf of the sugar factories that as the consent cannot be said to be a voluntary consent and as the consent was obtained under compulsion or duress and, therefore, the sugar factories cannot be compelled to pay such State□advised price even though it may have been mentioned in the forms or in the purchase and therefore it cannot be said to be a sale. Negativating the aforesaid submission and after considering the entire scheme, this Court in paragraph 33 observed and held as under:

> "33. As discussed earlier, the reservation or assignment of area is made for the benefit of a sugar factory. The agreements executed by the cane□growers or cane□growers' cooperative society in favour of occupier of a factory are also for the benefit of the sugar factory as by such agreements it gets an assurance of a continuous supply of freshly harvested sugarcane on the days indicated in the requisition slips issued by it so that there may not be any problem in getting optimum quantity of raw material throughout the crushing season. In absence of the agreements the sugar factory will also be a loser as it may face great problem in getting the supply of sugarcane according to its requirement. The occupiers of the factory are themselves keen for execution of the agreements but their only objection is to the mention of State Advised Price. The agreement is one composite transaction and it is not open to them to contend that the terms thereof which are to their advantage should be enforced but the term relating to price notified by the State Government should not be enforced as their consent in that regard was not a voluntary act. In our opinion, having regard to the advantages derived by the sugar factories, they are fully bound by the agreement wherein the State Advised Price may be mentioned and it is not open to them to assail the clause relating to price of the sugarcane on the ground that their consent was not voluntary or was obtained under some kind of duress.

It further lays down the proposition that having regard to the advantages derived from the sugar factories, they are fully bound by the agreement, wherein the State□ advised price may be mentioned and it is not open to them to assail the clause relating to price of the sugar cane on the ground that their consent was not voluntary or was obtained under some kind of duress.

20.7 As observed herein above, in the 1966 Order the word "the price" has been deleted and Clause 3 of 1966 Order provides that the Central Government may fix "the minimum price" of the sugarcane to be paid by the producer of sugar. As rightly submitted by the learned Counsel on behalf of the State, there is a difference between "the price" and "the minimum price". The aforesaid shall be apparent from the relevant Clauses of the 1966 Order.

20.7.1 The provision of State advised price has been made to protect the interests of the sugarcane growers who are not in a position to negotiate. In Sukhnandan Saran Dinesh Kumar & Ors. v. Union of India & Ors., (1982) 2 SCC 150, this Court opined:

"22. The statutory prescription of quantum of rebate for binding material has been prescribed for the benefit of sugarcane growers. Producers of sugar and khandsari sugar constitute a powerful trade lobby, the fact of which one can take judicial notice. Sugar being an essential commodity occasionally kept in short supply and being a commodity needed for consumption by almost the entire population, the powerful industry magnates in this field are in a position to dominate both the growers of sugarcane as also the consumers of the essential commodity. Number of regulations have been enacted almost since the dawn of independence to regulate this powerful combination of manufacturers of sugar and khandsari sugar all over the country for the ultimate benefit of consumers on the one hand and on the other hand the farmers and the growers of sugarcane with their small holdings and raising a perishable food crop. The marginal farmers are unable to stand up against the organised industry. It does not require long argument in this predominantly agricultural society that the farmers having small holdings need protection for selling at fair price their meagre agricultural produce. As far back as 1953, the U.P. Legislature enacted U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, for rational distribution of sugarcane to factories, for its development on the organised scientific line, to protect the interest of cane growers and of the industry, etc. Constitutionality of this Act was challenged on various grounds including one under Article 19(1)(g). In Ch. Tika Ramji v. State of U.P. this Court repelled the challenge under Article 19(1)(g) holding that the restriction which is imposed upon the cane growers in regard to sale of their sugarcane to the occupiers of factories in areas where the membership of the cane growers' cooperative society is not less than 75 per cent of the total cane growers within the area, is a reasonable restriction in the public interest designed for safeguarding the interest of the large majority of growers of sugarcane in the area and works for the greatest good of the greatest number. The proposition is now beyond the pale of controversy that the State can impose a restriction in the interest of

> general public on the right of a party to contract where in the opinion of the Government the contracting parties are unable to negotiate on the footing of equality. Constitutional validity of statutes prescribing minimum wages has been founded on this proposition. The principle can be effectively extended to the powerful sugar industry and the cane growers because the cane growers admittedly are at a comparative disadvantage to the producers of sugar and khandsari sugar who were described in the course of arguments as sugar barons. It does not require an elaborate discussion to reach an affirmative conclusion that sugarcane growers who are farmers cannot negotiate on the footing of the equality with the producers of sugar and khandsari sugar. The State action for the protection of the weaker sections is not only justified but absolutely necessary unless the restriction imposed is excessive." 20.7.2 Clause 3(1) empowers the Central Government to fix the minimum price of sugarcane to be paid by the producers of sugar or their agents for the sugarcane purchased by them.

Clause 3(2) provides that 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).

As per Clause 3(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.

Clause (3-A) provides that a producer of sugar or his agent shall pay, for the sugarcane purchased by him, to the sugarcane grower or the sugarcane growers' coopearative 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' cooperative society, as the case may be (agreed price). Agreed Price to be paid under the Agreement may be even SAP fixed and/or determined by the State Government. 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. Sub-clause (2) of Clause 5-A authorizes the appropriate authority to determine the additional price. Sub-clause (5) further provides that 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)."

21. As held by this Court in the case of U.P. Cooperative Cane Unions Federations (supra), the State has the competence to determine and fix the State Advised Price fixed under section 16 and therefore fixation of SAP by the State Government cannot be said to be beyond the purview of

legislative competence. Once the fixation of State Advised Price has been done, the Cane Commissioner can direct the parties to follow the same as held in U.P. Cooperative Cane Growers Federation (supra). It cannot be said that fixation of price under the regulatory measure provided in section 16 suffers from arbitrariness, nor can it be termed to be uncanalised power. Thus, we are of the considered opinion that the decision in Tika Ramji (supra) is not in conflict with the decision in U.P. Cooperative Cane Unions Federations (supra) and the decision in the latter case is not required to be revisited by a larger Bench of seven Judges.

22. Thus, considering the entire scheme of 1966 Order, it provides for "the minimum price" and "the additional price" or "the advised price". Considering the aforesaid provisions under 1966 Order, there cannot be any sugarcane price (advised price) below "the minimum price". As per the agreement entered into the "advised price" necessarily had to be higher than the "minimum price". Thus, there is a difference between "the price" and the "the minimum price". As per Clause 3 of 1966 Order, it empowers the Central Government to fix the "minimum price" and the State Government is authorized to fix the Advised Price which as observed hereinabove is always higher than the "minimum price" fixed by the Central Government. Therefore, as rightly observed by this Court in the case of U.P. Coop. Cane Unions Federations, there is no conflict in exercise of powers by the Central Government in fixing the "minimum price" and in fixing the "advised price" by the State Government which is higher than the "minimum price" fixed by the Central Government. Therefore, as rightly observed by this Court in the case of U.P. Coop. Cane Unions Federations, there is no inconsistency or repugnancy in fixing the "advised price" or "remunerative price" by the State Government and the "minimum price" fixed by the Central Government. As rightly held, if the price fixed by the State Government is higher than that fixed by the Central Government, there will be no occasion for any inconsistency or repugnancy as it is possible for both the orders to operate simultaneously and to comply with both of them.

23. Thus, it is held that the view taken by the Constitution Bench of this Court in the subsequent decision in the case of U.P. Coop. Cane Unions Federations (supra) is the correct law.

There is no conflict between the two decisions of this Court in the case of Tika Ramji and in the case of U.P. Coop. Cane Unions Federations and therefore, there is no necessity to refer the matter to the larger Bench consisting of seven Judges.

Therefore, our final conclusions are as under:

> a. By virtue of Entries 33 and 34 List III of seventh Schedule, both the Central Government as well as the State Government have the power to fix the price of sugarcane. The Central Government having exercised the power and fixed the "minimum price", the State Government cannot fix the "minimum price" of sugarcane. However, at the same time, it is always open for the State Government to fix the "advised price" which is always higher than the "minimum price", in view of the relevant provisions of the Sugarcane (Control) Order, 1966, which has been issued in exercise of powers under Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953;

b. The Sugarcane (Control) Order, 1966 which has been issued under Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 confers power upon the State Government to fix the remunerative/advised price at which sugarcane can be bought or sold which shall always be higher than the minimum price fixed by the Central Government;

c. Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is not repugnant to Section 3(2)(c) of the Essential Commodities Act, 1955 and Clause 3 of the Sugarcane (Control) Order, 1966 as, as observed hereinabove, the price which is fixed by the Central Government is the "minimum price" and the price which is fixed by the State Government is the "advised price" which is always higher than the "minimum price" fixed by the Central Government and therefore, there is no conflict. It is only in a case where the "advised price" fixed by the State Government is lower than the "minimum price" fixed by the Central Government, the provisions of the Central enactments will prevail and the "minimum price" fixed by the Central Government would prevail. So long as the "advised price" fixed by the State Government is higher than the "minimum price" fixed by the Central Government, the same cannot be said to be void under Article 254 of the Constitution of India.

d. The view taken by the Constitution Bench of this Court in the case of U.P. Cooperative Cane Unions Federations vs. West U.P. Sugar Mills Association and Others is the correct law.

24. The Reference is answered accordingly. Now the Registry to notify all these matters before the Court taking up such matters forthwith, for disposal.

……..……J. (ARUN MISHRA) ……J. (INDIRA BANERJEE) .....J. (VINEET SARAN) .....J. (M.R. SHAH) .....J. (ANIRUDDHA BOSE) New Delhi, April 22, 2020