U.P.Co-Operative Cane Unions ... vs West U.P.Sugar Mills Association And ... on 5 May, 2004

Author: G.P.Mathur

Bench: S.Rajendra Babu, K.G.Balakrishnan, B.N.Srikrishna, G.P.Mathur

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           CASE NO.:
Appeal (civil)  460-61 of 1997

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

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

DATE OF JUDGMENT: 05/05/2004

BENCH:
S.Rajendra Babu CJI & K.G.Balakrishnan & B.N.Srikrishna & P.Venkatarama
Reddi & G.P.Mathur

JUDGMENT:
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JUDGMENT Judgement Delivered By:

G.P.MATHUR, J.

B.N.SRIKRISHNA, J.

P. VENKATARAMA REDDI, J.

WITH C.A.NOS.4685/1997, 1639-1645, 1727 and 4602/1999, 6065 and 8117-8122/2001, SLP(c) Nos. 16851/2001, 1363/2002 and 948/2003 and T.C.(C)21-22/2003 Con. Petn. (C) No. 63/2003 in C.A. No. 932/2001 and I.A. Nos. 13-14 in C.A. Nos. 3512-3513 of 1997 G.P. Mathur, J.

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

The power of the State Government to fix higher sugarcane price was recognised in Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. v. State of Maharashtra &

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

We will first deal with Civil Appeal Nos.460 of 1997, 461 of 1997, 1727 of 1999 and 4602 of 1999 which arise from State of U.P. and are directed against the judgment and orders of two benches of Allahabad High Court wherein conflicting views have been taken. The Central Government by the order dated 11.3.1996 fixed the statutory premium price of sugarcane payable by the sugar factories for 1996-97 sugar season at Rs.45.90 per quintal linked to a basic recovery of 8.5 per cent sugar subject to a premium of Rs. 0.57 for every 0.1 percentage point increase in the recovery above that level. According to Sugar Mills Association the average minimum statutory price for the whole of U.P. came to about Rs.50.33 per quintal and the additional price under Clause 5-A of Sugarcane (Control) Order 1966 came to about Rs.7 per quintal and thus they were liable to pay Rs.57.33 per quintal. The State Government by the order dated 15.11.1996 fixed the State Advised Price at Rs.72 per quintal for ordinary quality and Rs.75 per quintal for fast ripening quality of sugarcane to be delivered at the gate of the factory. In case the sugarcane was delivered at the purchase centre the sugar mills were entitled to deduct about Rs.3 per quintal towards transportation cost. Writ Petition No.36889 of 1996 was filed by West U.P. Sugar Mills Association, Central U.P. Sugar Mills Association, East U.P. Sugar Mills Association and 32 sugar mills for quashing the order dated 15.11.1996 of U.P. Government whereby State Advised Cane Price was fixed and for restraining the respondent authorities (State of U.P. and Cane Commissioner U.P.) from taking any coercive steps to enforce the payment of the said State Advised Price. A declaration was also sought that the writ petitioners are liable to pay only the minimum price fixed by the Central Government under Clause 3 of Sugarcane (Control) Order 1966 plus the additional cane price determined under Clause 5-A of the said Order. A Division Bench of the High Court allowed the writ petition by the judgment and order dated 11.12.1996. The order of the State Government dated 15.11.1996 was quashed and the respondent authorities were restrained from enforcing the State Advised Price. It was, however, directed that where an agreement in Form B or Form C of the Appendix to the U.P. Sugarcane Supply and Purchase Order, 1954 had been reached between occupiers of the factory and the cane growers or cane growers' cooperative society then the occupiers of the factory will have to pay the price in accordance with such agreement.

The Cane Commissioner U.P. issued a recovery certificate on 13.2.1997 for recovery of State Advised Sugarcane price from Agota Sugar and Chemicals Ltd. and on the basis of the aforesaid recovery certificate Tehsildar Bulandshahr sent a citation dated 21.2.1997 for recovery of the amount. Agota Sugar and Chemicals Ltd. then filed Writ Petition No. 775 (M/B) of 1997 before the Lucknow Bench

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

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

Shri Rakesh Dwivedi, learned senior counsel for the appellant U.P. Co- operative Cane Unions Federation has submitted that the Central Government fixes only the minimum price under Clause 3(1) of Sugarcane (Control) Order, 1966 (hereinafter referred to as 1966 Order) and such fixation of minimum price does not exhaust the field of determination of price of sugarcane. In the matter of fixation of price the concept of minimum price, fair price and maximum price are well known and, therefore, even after fixation of minimum price by the Central Government it is always open for the State Government to fix a higher price for the sugarcane. Learned counsel has submitted that the State Government can not only fix a higher price but can also advise sugarcane growers and sugar factories to agree at a higher price. The State Government can fix the higher price in exercise of its regulatory power under UP Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as 1953 Act). The Sugarcane grower or the sugarcane growers' co-operative society and the occupiers of sugar factories have to compulsorily enter into an agreement in accordance with UP Sugarcane (Supply and Purchase) Order, 1954 (hereinafter referred to as 1954 Order) and the State Government can issue directions for recording of State Advised Price in the agreements which have to be executed for supply of sugarcane. Shri Dwivedi has also urged that parchas are issued to the sugarcane growers and in exercise of the power conferred by 1953 Act, the State Government can direct that the State Advised Price be recorded in the parchas which are issued to sugarcane growers. Learned counsel has also submitted that the Central Government does not take into

consideration the various bye- products like molasses, bagasse and press mud which are produced during the course of production of sugar and the sugar mills make considerable amount of money from the sale of aforesaid bye-products especially since molasses has been decontrolled after 1991. The State Government, having regard to the local conditions and also the amount earned by the sugar factories from the aforesaid bye-products, fixes the price of the sugarcane which is more realistic. Learned counsel has further submitted that there is no repugnancy between the minimum price fixed by the Central Government and the State Advised Price fixed by the State Government and the view to the contrary taken by the High Court is clearly erroneous in law.

Shri P. Chidambaram, learned senior counsel appearing for the State of U.P. has submitted that there are many facets of price like minimum price, minimum support price, fair price and maximum price. Section 3 of Essential Commodities Act, (hereinafter referred to as EC Act) empowers the Central Government to make orders for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices or for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. The Central Government has made Sugarcane (Control) Order, 1966 (hereinafter referred to '1966 Order') in exercise of the said power and Clause 3 of the Order provides for fixation of minimum price of sugarcane payable by the producer of sugar to the grower of sugarcane. The price is fixed having regard to, inter alia, (a) the cost of production of sugarcane; (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities; and (c) availability of sugar to the consumer at a fair price. Learned counsel has submitted that the main purpose of the 1966 Order, was to ensure that sugarcane supplies are maintained and sugar is available at fair price and, therefore, the order must be construed in the context of the policy of the Central Government to appropriate a part of the production of sugar mills as "levy sugar" and sell levy sugar at controlled price through the public distribution system (ration shops). The statutory minimum price as fixed by the Central Government is basically linked to fixation of the price of levy sugar and is not linked with the actual price of the sugarcane. Hence deliberately the Central Government kept the minimum price of sugarcane at a low level. The additional price payable under clause 5-A of the 1966 Order is factory specific and has co- relation only with the profits of the sugar factory and, therefore it is only a matter of chance for a sugarcane grower to get some additional amount. If at all the factory makes profit, the amount paid to a sugarcane grower will be pitiably low or illusory. Learned counsel has also submitted that sugarcane occupies land for a longer period than any other crop and it needs larger investment in the inputs. The farmers can raise only one crop of sugarcane in a year. Price is the main incentive in any economy and the best incentive to the sugarcane grower is remunerative price for his produce. The minimum price fixed by the Central Government under Clause 3 of 1966 Order is not a remunerative price, as the definition shows that it is only a minimum price. It does not take into account higher costs and higher risks involved in raising sugarcane. If there is a higher investment and higher risk, the sugarcane grower is entitled to higher return but the said fact is not taken into consideration while fixing the minimum price by the Central Government. Learned counsel has submitted that power to fix remunerative price must reside in some authority and therefore such a power must vest with the State Government as the field for the same remains open and unoccupied. Shri Chidambaram has further submitted that 1953 Act has been enacted to regulate the distribution, sale and purchase of cane. Section 16 of this Act empowers the State Government to regulate the distribution, sale or purchase of cane in any reserved or

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

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

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

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

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

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

> 2(g) "price" means the price or the minimum price fixed by the Central Government, from time to time, for sugarcane delivered -
>
> (i) to a sugar factory at the gate of the factory or at a sugarcane purchasing center; or
>
> (ii) to a khansari unit;
>
> (i) "producer of sugar" means a person carrying on the business of manufacturing sugar by vacuum pan process
>
> 3. Minimum price of sugarcane payable by producer of sugar -(1) The Central Government may, after consultation with the authorities, bodies or associations as it may deem fit, by notification in the official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them, having regard to -
>
> (a) the cost of production of sugarcane;
>
> (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;
>
> (c) the availability of sugar to the consumers at a fair price;

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

(e) the recovery of sugar from sugarcane:

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

Explanation - (1) Different prices may be fixed for different areas or different qualities or varieties of sugarcane. (2) No person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause (1). (3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane grower's co- operative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or sugarcane growers' co-

operative society or that fixed under sub-clause (1),as the case may be, either at the gate of factory or at the cane collection center or transfer or deposit the necessary amount in the Bank account of the seller or the co- operative society, as the case may be.

The 1966 Order has been amended several times by the Central Government. Sub-clause 3 of Clause 3 was substituted on 18.5.1968, Clause 3-A relating to rebate that can be deducted from the price paid for the sugarcane was inserted on 24.9.1976 and Clause 5-A was inserted on 25.9.1974. The definition of 'price' given in Clause 2(g) shows that it can either be the price or the minimum price fixed by the Central Government. Clause 3(3) deals with payment of the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or sugarcane growers' co-operative society or that fixed under sub-clause (1) as the case may be. Clause 3-A which deals with rebate that can be deducted from the price paid for sugarcane also refers to either the minimum price of sugarcane fixed under Clause 3 or the price agreed to between the producer and the sugarcane grower or the sugarcane growers' co-operative society. So far as the power of the Central Government is concerned, under Clause 3(1) it can fix only the "minimum price" of sugarcane to be paid by producers of sugar for the sugarcane purchased by them. This is the lowest permissible rate. The effect of Clause 3(2) is that a producer of sugar can under no circumstances purchase sugarcane at a price lower than the minimum price fixed under Clause 3(1) and there is a similar prohibition on the cane grower and he cannot sell or agree to sell sugarcane to a producer of a sugar below the said price. But the 1966 Order, in view of definition of "price" given in Clause 2(g) and also the language used in Clauses 3 and 3- A, clearly contemplates that there can be a price other than the "minimum price" of sugarcane fixed under Clause 3(1), namely, the "price agreed to between the producer and the sugarcane grower or the sugarcane growers' co- operative society". Clause 5-A lays down that where a producer of sugar purchases sugarcane from a grower of sugarcane during each

sugar year, he shall in addition to the minimum sugarcane price fixed under Clause 3 pay to the sugarcane grower an additional price, if found due in accordance with the provisions of the Second Schedule This additional price is to be calculated in accordance with the formula given in Second Schedule and is dependent upon the value of the sugar produced and the profits made and in effect it is a sharing of profits. Sub-clause (5) of Clause 5-A lays down that no additional price determined under sub-clause (2) shall become payable by a producer of sugar who pays a price higher than the "minimum sugarcane price" fixed under Clause 3 to the sugarcane grower, if the same is not less than the total of the price fixed under Clause 3(1) and additional price determined under Clause 5-A (2). This provision again contemplates payment of price higher than the minimum price fixed under Clause 3 (1). A whole reading of the 1966 Order would, therefore, show that the Central Government shall fix the minimum price of sugarcane but there can be a price higher than the minimum price which may be in the nature of agreed price between the producer of sugar and the sugarcane grower or the sugarcane growers' co-operative society. So the field for a price higher than the minimum price is clearly left open in the 1966 Order made by the Central Government.

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

> Section 2(a) "assigned area" means an area assigned to a factory under Section 15;
>
> Section 2(n) "Reserved area" shall mean the area reserved for a factory under an Order for reservation of Sugarcane areas made under Rule 125-B of the Defence of India Rules, 1962, and when no such order is in force, the area specified in an order made under Section 15.
>
> "15. Declaration of reserved area and assigned area - (1) Without prejudice to any order made under Clause (d) of sub- section (2) of Section 16, the Cane Commissioner may, after consulting the Factory and Cane-growers Co- operative Society in the manner to be prescribed -
>
> (a) reserve any area (hereinafter called the reserved area), and
>
> (b) assign any area (hereinafter called an assigned area), for the purposes of the supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned.
>
> (2) Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.
>
> (3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for

sale to the factory, as may be determined by the Cane Commissioner.

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

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

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

(b) purchase of cane in any area other than a reserved or assigned area. (2) Without prejudice to the generality of the foregoing powers such order may provide for -

(a) the quantity of cane to be supplied by each Cane-grower or Cane-

growers' Cooperative Society in such area to the factory for which the area has so been reserved or assigned;

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

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

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

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

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

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

In exercise of the power conferred by Section 28 of the 1953 Act, the State Government has made U.P. (Regulation of Supply and Purchase) Rules, 1954 (for short 'the Rules'). Rule 21 lays down that the occupier of a factory shall by August 31, each year, apply to the Cane Commissioner in Form I,

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

In exercise of power conferred by Section 16 of the Act, the State Government has made UP Sugarcane (Regulation of Supply and Purchase) Order, 1954 (hereinafter referred to as 1954 Order). Clause 3-A of this Order provides for purchase of cane in reserved area and Clause 4 provides for purchase of cane in an assigned area. Clause 3(2) lays down that a cane grower or a cane growers' co-operative society may within 14 days of the issue of an order reserving an area for a factory, offer to supply cane grown in the reserved area to the occupier of the factory in Form A of the Appendix. Clause 3(3) and Clause 4 (1) lay down that the occupier of the factory for which an area has been reserved or assigned shall within fourteen days of the receipt of the order enter into an agreement in Form B or Form C of the Appendix, with the cane grower or the cane growers' co- operative society, as the case may be, in respect of the cane offered. Clause 5 (1) lays down that cane grown in the reserved or assigned area shall not, except with the permission of the Cane Commissioner, be purchased by any person without the previous issue of requisition slips and identification cards to the growers by the occupier of the factory. Sub- clauses (2) and (3) of Clause 5 mandate that the requisition slips and identification cards to the members of cane growers' co-operative society shall not be issued except by such society and records of the same have to be maintained by the occupier of the factory and also by the cane growers' co-operative society. Clause 5(4) lays down that purchase of cane shall be spread over the entire crushing season in an equitable manner and Clause 5(7) lays down that no person shall transfer or abet the transfer of requisition slips for the cane of a grower to another person.

The proforma of the agreement regarding sale and purchase of cane which is to be executed between a cane grower and the occupier of a factory is given in Form B and that between cane growers'

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

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

A sugar factory normally runs in shifts for the whole day during the crushing season and it needs a continuous supply of freshly harvested sugarcane according to its daily crushing capacity which should be spread over the entire crushing season of about six months. The U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 and the U.P. Sugarcane Supply and Purchase Order, 1954, have been made to achieve that object. Any shortfall in supply of sugarcane to sugar factory will seriously affect its production resulting in huge losses. Therefore, the first and foremost requirement for the profitable running of the sugar factory is that it should get adequate quantity of sugarcane everyday throughout the crushing season and for ensuring this, a system of reserving or assigning an area in favour of sugar factory has been evolved under Section 15 of the Act. The reservation of an area ensures the supply of the entire sugarcane grown therein to the factory in whose favour it has been reserved. Similarly the assignment of an area ensures the supply of such quantity of sugarcane to the factory in whose

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

The provisions referred to above have been made for the benefit of the sugar factory so that it is assured of and gets a continuous supply of freshly harvested sugarcane in quantity according to its crushing capacity and for the whole duration of the crushing season. No doubt the cane grower also gets some advantage in the sense that purchase of his yield is assured but at the same time many limitations and restrictions are imposed upon him. In view of the aforesaid statutory provisions, the position of a cane grower becomes entirely different from that of a farmer producing any other kind of agricultural crop where there are absolutely no restrictions upon him. He is at absolute liberty to harvest his crop at his convenience without being dictated by a third party, to sell it to anyone whomsoever he likes and whenever he wants. It is in this scenario, which is not the creation of the cane grower but of the statutory provisions operating in the field, that we have to examine the question whether the State has any authority or power to fix the price of the sugarcane supplied to a producer of sugar (sugar factory).

The preamble of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is - an Act to regulate the supply and purchase of sugarcane for use in sugar factories, gur, rab or khandsari sugar

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

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

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

Again in K. Ramanathan v. State of Tamilnadu & Anr. it was held that the word 'regulati on' cannot have any rigid or inflexible meaning so as to exclude prohibition. It is a word of broad import, having a broad meaning and is very comprehensive in scope. It was further held that the power to regulate carries with it full power over the thing subject to regulation and in absence of restrictive

words, the power must be regarded as plenary over the entire subject. It implies the power to rule, direct and control, and involves the adoption of a rule or guiding principle to be followed or the making of a rule with respect to the subject to be regulated. It has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation.

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

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

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

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

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

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

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

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

In Popatlal Shah v. State of Madras 1953 SCR 677 it was held by a Constitution Bench that the expression "sale of goods" is a composite expression consisting of various ingredients or elements. There are the elements of a bargain or contract of sale, the payment or promise of payment of price, the delivery of goods and the actual passing of title and each one of them is essential to a transaction of sale though the sale is not completed or concluded unless the purchaser becomes the owner of property. In State of Madras v. Gannon Dunkerley 1958 SCR 379 (at page 397) it was observed that according to the law both of England and of India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to the goods which, of course, presupposes capacity to contract, that it must be supported by money consideration and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale. The law is, therefore, well settled that in a matter relating to sale of movable property or goods, price is an essential element of the transaction.

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

It has been urged by learned counsel for respondents that the expression "at the minimum price notified by Government" used in the proforma of the agreement which is to be executed between a canegrower and the occupier of the factory as given in Form B and that which is to be executed between a canegrowers' cooperative society and the occupier of the factory as given in Form C in the appendix to 1954 Order indicates that it is only the minimum price fixed by the Central Government which can be the consideration or price for the sale of sugarcane to the sugar factory. Strong reliance in support of this submission has been placed upon certain observations made by this Court in Ch. Tika Ramji & Ors. v. State of Uttar Pradesh & Ors., 1956 SCR 393. The proforma of agreement viz. Forms B and C are contained in the appendix to U.P. Sugarcane Supply and Purchase Order, 1954. This Order has been made by U.P. Government in exercise of the power conferred by Section 16 of the 1953 Act, which provides that the State Government may for maintaining supplies by Order regulate the distribution, sale or purchase of cane in any reserved or assigned area, etc. The Order having been made by the State Government in exercise of a power conferred by an Act made by U.P. legislature, the only logical inference which can be drawn is that the word "Government" refers to State Government. There is no indication in the proforma of the agreement or in the 1954 Order that

the word "Government" would refer to Central Government. If the State Government is prescribing a proforma of an agreement which is to be executed by a canegrower or a canegrowers' cooperative society and the occupier of the factory regarding sale and purchase of sugarcane wherein the word "Government" is used, it can only mean the State Government and not the Central Government unless there is clear indication to the contrary.

The observations made in Tika Ramji (supra), strong reliance on which is placed by learned counsel for the respondents, have to be understood in the context in which they were made. It may be noted that the writ petitions in the said case were filed in this Court in the year 1954 and the judgment was delivered on 24.4.1956. At the relevant time, it was the Sugarcane (Control) Order, 1955 which was in operation. Clause 3 of this Order empowered the Central Government to fix the price or the minimum price to be paid by a producer of sugar for sugarcane purchased by him. The 1955 Order has been repealed by Sugarcane (Control) Order, 1966 and Clause 3 of this Order provides that the Central Government may fix the minimum price of sugarcane to be paid by producers of sugar. There is a difference between "the price" which is a fixed amount and "the minimum price" which only indicates the lowest permissible rate. The 1966 Order which itself was made by the Central Government more than a decade after the judgment was rendered in Tika Ramji was amended in 1978 and Clauses 3(3) and 3-A thereof contemplate an "agreed price" which in view of the mandate of Clause 3(2) is bound to be higher than the "minimum price" fixed under Clause 3(1). Naturally it is this "agreed price" which is to be mentioned in the agreements for sale and purchase of sugarcane in Forms B and C otherwise the very purpose of entering into agreements would be defeated. The State Government had not fixed any price for the sugarcane under its regulatory power by the time Tika Ramji (supra) was decided by this Court in April, 1956 and only the Central Government had taken a step for fixing the price. It was in these circumstances that it was observed that the "price fixed by the Government" would mean "the Central Government". The observations relied upon by the learned counsel for the respondents were made while considering the question whether there was any repugnancy between the provisions of the Sugarcane Control Order 1955 and the 1953 Act, the Rules and 1954 Order and they should be understood in that context. The relevant portion of the judgment on page 434 is being reproduced below :

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

find its place in the Sugarcane Control Order, 1955."

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

Learned counsel for the respondent has also submitted that in order to constitute a valid agreement, the consent of the parties thereto should be a voluntary consent and not a consent obtained under any kind of compulsion or duress. It has been submitted that after the State Government makes an announcement of a State Advised Price, the occupiers of the sugar factories are compelled to enter into agreements with the canegrowers and canegrowers' cooperative societies in Forms B and C, wherein the State Advised Price is mentioned. The same price is also mentioned in the parchas issued to the canegrowers. It has been urged that the sugar factories cannot be compelled to pay such State Advised Price even though it may have been mentioned in the Forms or in the parchas. It is not possible to accept the contention raised. As discussed earlier, the State Government in exercise of its regulatory power can fix the price of the sugarcane. The mere fact that this price is not to the liking of the sugar factory does not mean that it cannot form the basis for supply of sugarcane by the canegrowers or canegrowers' cooperative society to the sugar factory. It is well settled that even a compulsory sale does not lose the character of a sale. This question has been examined in considerable detail by a Constitution Bench in Indian Steel & Wire Products Ltd. v. State of Madras,. The appellant in this case supplied certain steel products to various persons at the instance of the Steel Controller, who exercised powers under the Iron and Steel (Control of Production & Distribution) Order, 1941, which was issued under the Defence of India Act, 1939. The appellant challenged the assessment of sales tax made on its turnover under Madras General Sales Tax Act. The contention of the appellant was that it was the Controller who determined the persons to whom the goods were to be supplied, the price at which they were to be supplied, the manner in which they were to be transported and the mode in which payment of price was to be made. In short it was said that every facet of the transaction was prescribed by the Controller and, therefore, they could not be considered as sales. Sub-clause (1) of Clause 11-B of the Control Order provided that the Controller may, by notification in the Gazette, fix the maximum price at which any iron or steel may be sold and Sub-clause (3) of the same clause provided that no producer or stockholder shall sell or offer for sale (and no person shall acquire) any iron or steel at a price exceeding the maximum price fixed under Sub-clause (1) or (2). After review of number of authorities, the Court held as under :

> "For the reasons already stated, we are unable to accept the contention that the transactions with which we are concerned in these cases are not sales. Out of the four elements mentioned earlier, three were admittedly established, namely, the parties were competent to contract, the property in the goods was transferred from the seller to the buyer, and price in money was paid. The only controversy was whether there was mutual assent. Our finding is that there was mutual assent in several respects. Hence, we agree with the High Court that the transactions before us are sales."

In Andhra Sugar Mills Ltd. v. State of Andhra Pradesh, the question of compulsion by law to enter into an agreement was considered by a Constitution Bench. Under the Andhra Pradesh (Regulation of Supply and Purchase) Act, 1961, the occupier of a sugar factory had to buy sugarcane from canegrowers in conformity with the directions from the Cane Commissioner. Under Section 21 of the aforesaid Act, the State Government had power by notification to tax purchasers of sugarcane for use, consumption or sale in a sugar factory and the tax was leviable subject to a maximum rate per metric ton. The petitioner sugar factories filed writ petitions under Article 32 of the Constitution challenging the validity of Section 21 mainly on the ground that as the petitioners were compelled by law to buy cane from canegrowers, their purchases were not made under agreements and were not taxable under Entry 54 List II having regard to Gannon Dunkerley's case. The contention was repelled after a thorough analysis of the legal position and the following observations on page 711 of the Report show that the challenge raised by the respondents here has no substance :

> "Under Section 4(1) of the Indian Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. By Section 3 of this Act, the provisions of the Indian Contract Act, 1872 apply to contracts of sale of goods save in so far as they are inconsistent with the express provisions of the later Act. Section 2 of the Indian Contract Act provides that when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal. When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. Every promise and every set of promises forming the consideration for each other is an agreement. There is mutual assent to the proposal when the proposal is accepted and in the result an agreement is formed. Under Section 10, all agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not by the Act expressly declared to be void. Section 13 defines consent. Two or more persons are said to consent when they agree upon the same thing in the same sense. Section 14 defines free consent. Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake as defined in Sections 15 to 22. Now, under Act No.45 of 1961 and the Rules framed under it, the cane grower in the factory zone is free to make or not to make an offer of sale of cane to the occupier of the factory. But if he makes an offer, the occupier of the factory is bound to accept it. The resulting agreement is recorded in writing and is signed by the parties. The consent of the occupier of the factory to the agreement is not caused by coercion, undue influence, fraud, misrepresentation or mistake. His consent is free as defined in Section 14 of the Indian Contract Act though he is obliged by law to enter into the agreement. The compulsion of law is not coercion as defined in Section 15 of the Act. In spite of the compulsion the agreement is neither void nor voidable. In the eye of the law, the agreement is freely made. The parties are competent to contract. The agreement is made for a lawful consideration and with a lawful object and is not void under any provisions of law. The agreements are enforceable by law and are contracts of sale of sugarcane as defined in Section 4 of the Indian Sale of

> Goods Act. The purchases of sugarcane under the agreement can be taxed by the State legislature under Entry 54 List II."

Again at page 712, the Court made the following observation :

> "..... It is now realised that in the public interest, persons exercising certain callings or having monopoly or near monopoly powers should sometimes be charged with the duty to serve the public and, if necessary, to enter into contracts. Thus, Section 66 of the Indian Railways Act, 1890 compels the railway administration to supply the public with tickets for travelling on the railway upon payment of the usual fare. Section 22 of the Indian Electricity Act, 1910 compels a licensee to supply electrical energy to every person in the area of supply on the usual terms and conditions. Cheshire and Fifoot in their Law of Contract, 6th Edn. p. 23 observe that for reasons of social security the State may compel persons to make contracts. One of the objects of Act No.45 of 1961 is to regulate the purchase of sugarcane by the factory owners from the canegrowers. The canegrowers scattered in the villages had no real bargaining power. The factory owners or their combines enjoyed a near monopoly of buying and could dictate their own terms. In this unequal contest between the canegrowers and the factory owners, the law stepped in and compelled the factory to enter into contracts of purchase of cane offered by the canegrowers on prescribed terms and conditions."

A similar question was examined by a Bench of Seven Judges in Salar Jung Sugar Mills Ltd. v. State of Mysore & Ors., 1971 (1) SCC 23. The contention was that there was no mutual assent by and between the sugar mills and the growers of the sugarcane and, therefore, there was no purchase or sale of sugarcane and consequently no tax under Mysore Sales Tax Act could be levied. It was held that Statutory Orders regulating the supply and distribution of goods by and between the parties under Control Orders in a State do not absolutely impinge on the freedom to enter into contract. Legislative measures or statutory provisions fixing the price, delivery, supply, restricting areas for transactions are all within the realm of planning economic needs, ensuring production and distribution of essential commodities and basic necessities of community. The individual freedom is to be reconciled with adequate performance by the Government of its functions in a highly organized society. In para 44 of the Reports it was held as under :

> "The parties choose the term of delivery. They have choice of obtaining a supply exceeding 95% of the yield. They can stipulate for a price higher than the minimum. They can have terms for payment in advance as well as in cash. A grower may not cultivate and may not have any yield. A factory may be closed or wound up, and may not buy any sugarcane. A factory can reject goods on inspection. A combination of all these features indicate that the parties entered into agreements with mutual assent and with olition for transfer of goods in consideration of price. The transactions amount to sales within the meaning of the Mysore Sales Tax Act."

In Sukhnandan Saran Dinesh Kumar v. Union of India & Ors., after considering the provisions of 1966 Order and 1953 Act made by U.P. Legislature the Court clearly ruled that in order to protect the sugarcane growers who are not in a position to negotiate, the Government can prescribe terms in a contract which they have to enter into with the occupiers of sugar factories. After elaborate discussion of the relevant provisions, the Court expressed its view in following words in para 22 of the Reports:

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

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

Learned senior counsel for the respondents has strenuously urged that the Central Government having made the 1966 Order which contains a specific provision for fixation of price of sugarcane, under Clause 3(1) thereof, the regulatory power under the 1953 Act cannot embrace within its fold the same power of fixation of price as this will be clearly repugnant to a law made by the Parliament and would be void in view of Article 254(1) of the Constitution. In Ch. Tika Ramji (supra) it has been held that the E.C. Act under which the Central Government made the 1966 Order and the 1953 Act

made by U.P. Legislature have been enacted with reference to Entry 33 of List III of the Seventh Schedule. The constitutional validity of the 1953 Act was upheld by the Constitution Bench in the said decision. On page 437 of the Reports the Court quoted with approval the following passage from the judgment of Sulaiman J. in Shyamakant Lal Vs. Rambhajan Singh 1939 FCR 188 (at 212) for the principle of construction in regard to repugnancy :

> "When the question is whether a Provincial legislation is repugnant to an existing Indian law, the onus of showing its repugnancy and the extent to which it is repugnant should be on the party attacking its validity. There ought to be a presumption in favour of its validity, and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other; and care should be taken to see whether the two do not really operate in different fields without encroachment. Further, repugnancy must exist in fact, and not depend merely on a possibility....."

And then went to hold :

> "In the instant case, there is no question of any inconsistency in the actual terms of the Acts enacted by Parliament and the impugned Act. The only questions that arise are whether Parliament and the State Legislature sought to exercise their powers over the same subject-matter or whether the laws enacted by Parliament were intended to be a complete exhaustive code or, in other words, expressly or impliedly evinced an intention to cover the whole field."

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 :

> "1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.
>
> 2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
>
> 3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into

collision with each other, no repugnancy results.

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

The same question was examined in considerable detail in M/s Hoechst Pharmaceuticals Ltd. v. State of Bihar, and it was held that one of the occasion where inconsistency or repugnancy arose was when on the same subject matter one would be repugnant to the other and, therefore, in order to raise a question of repugnancy, two conditions must be fulfilled. The State law and the Union law must operate on the same field and one must be repugnant or inconsistent with the other and these are cumulative conditions. In National Engineering Industries Ltd. v. Sri Kishan Bhageria & Ors., Sabyasachi Mukharji, J. opined that the best test of repugnancy is that if one prevails, the other cannot prevail.

In S. Satyapal Reddy & Ors. v. Govt. of A.P. & Ors., the question was examined in the context of prescription of a higher qualification by the State Government. The service rule made by the Central Government prescribed a diploma in Mechanical Engineering as the minimum qualification for appointment on the post of Assistant Motor Vehicles Inspector while the rule made by the State Government required a degree in Mechanical Engineering or certain other alternative qualifications. The challenge made by the diploma holders was negatived and it was held that prescribing a higher qualification did not give rise to any inconsistency or repugnancy as both the rules could operate harmoniously and effect could be given to both of them. Similarly, in Dr. Preeti Srivastava v. State of M.P. & Ors, it was held that laying down higher eligibility qualification by the State Government for admission to Post Graduate Medical Courses did not lead to any kind of repugnancy.

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.

The decisions of this Court touching the controversy in hand may now be examined. In Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. & Ors. v. State of Maharashtra & Ors. 1995 Supp. (3) SCC 475 (paras 11, 12, 21), R.M. Sahai, J. speaking for a Three Judge Bench held that the entire process of price fixation can be divided into three stages. The first is the fixation of what is known as the minimum ex-factory price by the Central Government under 1966 Order for all the sugar

factories in the country linking it with basic recovery of 8.5 per cent with a proportionate increase for every 0.1 per cent extra recovery. The second is the State Advised Price and every State has its own method to determine it. The power is assumed under the Acts of the State Legislature or Orders issued by the Government and in State of U.P. it is done by Orders issued under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953. The third is the price paid at the end of the season. The Bhargava Commission had recommended the payment of additional price at the end of the season on 50-50 profit sharing basis between growers and factories to be worked out in accordance with Second Schedule to the 1966 Order. In paragraph 21, it was observed as under :

> ".....The price is fixed, may be, by the Board of Directors or by the State Government under bye-laws but the prices are for the reserved area. The Central Government did not fix any maximum price obviously because the conditions in the agricultural sector differed from State to State. Therefore, it having fixed a minimum price expects the State to offer remunerative price to its cultivators. In a controlled economy the price fixation machinery is to be determined by the State Government or under the 1966 Order in the manner provided therein. Since in Maharashtra 95% of the sugar factories are in the cooperative sector the price is fixed by the Government as it has substantial financial stake. But so long the price fixation does not suffer from any infirmity or it is held to be prejudicial to the cane-growers so as to benefit the State or the financial institution it cannot be held to be bad....."

The next is State of M.P. v. Jaora Sugar Mills Ltd. & Ors., which has been decided by a Bench of two judges. The dispute arose on account of fixation of price under the M.P. Sugar (Regulation of Supply and Purchase) Act, 1958. The contention on behalf of the sugar factories was that Clauses 3 and 5-A of the 1966 Order determine the liability to pay the price and additional price and the Central Government having determined the price of the sugarcane under the aforesaid Order, there is no power with the State Government de hors the Order to fix any agreed price. The concept of agreed price came into force on 19.9.1976 by virtue of Clause 3-A of the said Order and until then there was no power to fix an agreed price. It was also urged that the State Government has, therefore, no power under the Act to fix any price as the field was occupied by the 1966 Order. The contention was, however, not accepted and after noticing the provisions of Clauses 3(2) and 3(3), it was held as under in para 8 of the Reports :

> "8. This would clearly indicate that despite the fixation of minimum price under clause 3(1), by agreement between the sugarcane grower and the purchaser of the sugarcane, they would be at liberty to agree to sell or purchase the sugarcane at a higher price than that fixed by the Central Government under clause 3(1). Only for postponement of payment beyond 14 days, there should be an agreement in writing between the parties obviously with the concurrence of the Central Government or authorised authority in that behalf. Thus, there is no statutory prohibition in that behalf to pay higher price. That would be further clear by clause 3(2) which speaks of the contract between the parties for payment of higher price of sugarcane fixed under ub-clause (1) of clause 3 pursuant to the agreement or pursuant to the minimum price fixed by the Central Government under clause 3(1) of the Order."

It was observed in paras 9 and 10 that there was no prohibition for the canegrowers and occupiers of the sugar factories in entering into oral agreement through the service of the Cane Commissioner, a statutory authority, who could effect such an agreement. The agreement would not be tainted with compulsion but in novation of the minimum price fixed under the 1966 Order. After noticing the provisions of the M.P. Act, which are some what similar to U.P. Act, it was held as under in para 13 of the Reports: "13. It would thus be clear that the Cane Commissioner having power to compel the cane-growers to supply cane to the factory or khandsari unit, he has incidental power and is duty bound to ensure payment of the price of the sugarcane supplied by the sugarcane grower. The price fixed or agreed is a statutory price and bears the stamp of statutory first charge on the sugar and assets of the factory over any other contracted liabilities to recover the price of the sugarcane supplied to the factory or khandsari unit."

SKG Sugar Ltd. v. State of Bihar is a decision by the Bench of three judges and deals with the effect of 1966 Control Order and the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981. It was clearly ruled that the provisions of 1966 Order do not show that there is any prohibition on the factory or the association of factories entering into an agreement to pay higher price than the minimum price prescribed under the Order and the object of the Order is to ensure that the canegrowers should not be compelled to sell their sugarcane at a price lower than the minimum price fixed by the Central Government under Clause 3. In this case an agreement had been arrived at between Sugar Factories Owners Association and sugarcane growers, wherein a higher price was agreed to be paid but this was sought to be resiled by the appellant on the ground that it was a Company, which was an independent entity in the eye of law and was, therefore, not bound by any such agreement. After noticing the provisions of the Act and the earlier decision rendered in State of M.P. v. Jaora Sugar Mills Ltd. (supra) it was held as under in para 6 of the reports :

> "It is not in dispute that under Section 31 of the Supply Act, the State Government has power to fix the reserved area, in other words, zone was carved out for the appellant for the supply of sugarcane to the factory. All the farmers who are cultivating sugarcane within that zone are bound by the State action to supply sugarcane to the factories within that reserved area. Consequently, the factory also is bound by the actions of the State Government. Obviously, pursuant to the obligation had by the State under the Supply Act, the meeting was convened by the State Government where at the Factory Owners' Association and farmers participated and agreed to fix the price at Rs.20.50 per quintal of sugarcane. As a consequence, both the cane growers as well as the owners of the factory are bound by the decision. This having been agreed upon, the price fixed by the State Government in excess of the minimum price fixed by the Central Government under clause 3 of the Order would be the price fixed for supply of sugarcane and the Government would be entitled to enforce the liability....."

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

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

Learned senior counsel for the respondents has placed strong reliance on certain observations made in State of Tamil Nadu v. Kothari Sugars and Chemicals Ltd., which is a decision by a Bench of two judges. In our opinion, this decision can be of no assistance to the respondents as the point for consideration here was entirely different, which will be evident from paras 1 and 3 of the judgment which read as under :

> "Para 1. The question for decision is :Whether for the purchase of sugarcane from the canegrowers, a purchaser is liable to pay purchase tax under the State Sales Tax Act on the amount paid by the purchaser to the canegrower over and above the price fixed under clauses 3 and 5-A of the Sugarcane (Control) Order, 1966 ?
>
> Para 3. The occasion for payment by the purchaser of the amount in excess of the aggregate of the minimum cane price and the additional cane price so fixed, arises on account of an order of the State Government dated 15.11.1980 purporting to fix a higher revised minimum cane price and directing the sugar factories in Tamil Nadu to pay that price to the canegrowers. Pursuant to the direction, each sugar factory was directed to make that payment and in compliance thereof this sugar factory paid the excess amount as an 'advance' described as under :
>
> "..... being advance payment towards cane supply during 1980-81 season, against probable additional cane price under Section 5-A of the Sugarcane (Control) Order, 1966."

It is important to note that in Tamil Nadu there is no statutory provision for regulating the supply and purchase of sugarcane for use in sugar factories or khandsari sugar manufacturing units. Therefore, the order of the State Government dated 15.11.1980 fixing higher revised minimum cane price had not been issued in exercise of any statutory power. In para 6 of the Reports, the Court observed that unless there be an agreement between the grower and the purchaser for purchase of the sugarcane at higher price, the obligation of the purchaser is to pay the grower only the aggregate of the amounts fixed under clauses 3 and 5-A. It was further observed that without any contractual or statutory basis fixing the sale price of sugarcane at an amount higher than the minimum cane price fixed under Clause 3 and the additional cane price fixed under Clause 5-A, any sum paid by the purchaser to the grower as advance prior to fixation of the additional cane price under Clause 5-A cannot form part of the price of sugarcane. It was pointed out in para 7 that the State advice to the purchasers to pay certain amount in addition to the minimum price fixed under Clause 3 in

anticipation of fixation of the additional cane price under Clause 5-A, does not have any statutory basis. The amount of advance was paid in anticipation of fixation of additional cane price under Clause 5-A, which means that in case the fixation under Clause 5-A was at a higher amount than the amount paid as advance, then the purchaser would have to pay the deficit amount. Similarly, when the amount of advance was in excess, the purchaser would be entitled to refund of the excess amount, irrespective of the fact that whether the refund was actually made or not. Any amount paid by way of advance towards a probable additional price to be worked out in accordance with the formula given in the 1966 Order could not be treated as price of sugarcane for the purpose of levy of sales tax. In fact in para 9 of the reports it was observed that for treating the entire amount paid by the purchaser as the price of the sugarcane supplied, it must be found proved as a fact that the higher price including the excess amount was paid as the price of sugarcane under an agreement between the grower and the purchaser irrespective of a lower amount being fixed as an aggregate of the price fixed under Clauses 3 and 5-A of the 1966 Order. It was further held that unless a clear finding to that effect is recorded, the amount paid by the purchaser in excess of the aggregate of the minimum price fixed under Clause 3 and the additional price fixed under Clause 5-A, as part of the amount paid in advance prior to the fixation of the additional price under Clause 5-A, cannot be treated automatically as a part of the total price of the sugarcane.

The question in issue here did not come up for consideration before the Bench and some general observations made in the course of the reasoning given in a matter dealing with liability to pay tax on some amount which was paid by sugar factory as "advance" towards the probable additional cane price under Clause 5-A cannot be construed as an expression of opinion on the merits of the matter. It is well settled that a decision is an authority for what it actually decides and not what logically flows from it. Every observation of Court are not to be interpreted or used like provisions of Statute as if they were part of an Act. It is, therefore, not possible to hold that the Court laid down any principle of law that it is not open to the State to fix higher price or that there could be no agreement between the canegrowers and the occupier of the factory for payment of higher price.

One of the main reasons given by the High Court for allowing the writ petition and quashing the order of fixation of State Advised Price is that power to fix sugarcane price had been given to the State Government under the Sugarcane Act, 1934 and hence it would be redundancy to say that the same power to fix cane price also flows from Section 16 of the 1953 Act. The High Court has also held that when the 1953 Act was enacted there was already a law, viz., the Sugarcane Act, 1934, which enabled the State Government to fix the minimum cane price and hence, it could not have been the intention of the U.P. Legislature while enacting 1953 Act that Section 16 thereof would include the power to fix the minimum cane price as such a power was already there with the State Government under Section 3(2) of the Sugarcane Act, 1934. The High Court, therefore, concluded that Section 16 of the 1953 Act only gave power to the State Government to regulate the supply and purchase of sugarcane in the narrower sense and not in the wider sense so as to include the power to fix the minimum price. This reasoning of the High Court proceeds on the footing that the Sugarcane Act, 1934 was in existence and was in operation when the 1953 Act was enacted by U.P. Legislature. It appears that the correct legal position was not brought to the notice of the learned judges. The Sugarcane Act, 1934 was repealed by U.P. Sugar Factories Control Act, 1938 (UP Act No.1 of 1938). Section 26 of U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 repealed the U.P. Sugar

Factories Control Act, 1938. With the enforcement of the Government of India Act, 1935, there was distribution of legislative powers between the Dominion Legislature and the Provincial Legislature and the entire subject matter of Sugarcane Act, 1934 fell within the Provincial Legislative list. It was in these circumstances that the U.P. Legislature enacted the U.P. Sugar Factories Control Act, 1938 which repealed the Sugarcane Act, 1934 in its application in the State of U.P. This position has been noticed in Ch. Tika Ramji & Ors. v. State of Uttar Pradesh & Ors., 1956 SCR 393 at page 400, 401 and 417. Therefore, the aforesaid reasoning given by the High Court has no legal basis.

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

(b) and (d) of Section 3(3C) E.C. Act and, therefore, the fixation of higher price for sugarcane by the State Government by itself cannot have any major or substantial impact on the fixation of the price of the levy sugar by the Central Government.

Shri Shanti Bhushan, learned senior counsel, has strenuously urged that the fixation of higher price by the State Government will seriously affect the economy of the sugar factories inasmuch as the price of the sugarcane is a very major factor and contributes to the extent of 70 per cent of the price of sugar. Learned counsel has submitted that any increase in the price of sugarcane by the State Government is bound to result in a serious financial crisis for the sugar factories which are already passing through a bad phase and are suffering huge losses. He has also placed before the Court some facts and data to show that the sugar mills being run by U.P. State Sugar Corporation and those under the cooperative sector, which pay the State Advised Price for sugarcane, are running on huge losses. Reports have also been placed to show that the State Government has given heavy amounts by way of subsidy to these sugar factories in order to sustain the loss. The contention is that the payment of State Advised Price by the sugar factories will result in a virtual closure of the sugar industry. Shri Rakesh Dwivedi, learned senior counsel for appellant, has seriously disputed the aforesaid submission and has urged that the respondent sugar factories have not produced their balance sheets to show that they are in fact running on losses. He has submitted that virtually all the

factories being run by the U.P. State Sugar Corporation were established in Nineteen Thirties, have very old machinery and technology and are over-staffed and the main reason for the losses suffered by them is their poor performance on account of the frequent breakdowns, the machinery being old and employment of excessive manpower and not the price of sugarcane. The U.P. State Sugar Corporation, it is urged, could not invest money in order to improve the technology or install new machinery due to financial crunch. Shri Dwivedi has also placed before the Court data relating to some of the factories being run under cooperative sector which have made profits.

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

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

situation, is given below :

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

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

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

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

Civil Appeal No. 4685 of 1997: The State of Bihar Vs. Bihar Sugar Mills Association State of Bihar has preferred this appeal by special leave against the judgment and order dated 4..2.1997 of the Patna High Court by which the writ petition preferred by Bihar Sugar Mills Association was allowed and the order dated 29.11.1996 passed by the Sugarcane Commissioner, Bihar, fixing the price of sugarcane for crushing season 1996-97 was quashed. For doing so, the High Court basically relied upon the provisions of Sugarcane (Control) Order, 1966 issued by the Central Government and also the judgment and order dated 11.12.1996 of Allahabad High Court in CMWP no. 36889 of 1996 (West U.P. Sugar Mills Association v. State of U.P.). The High Court did not examine the provisions of Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 in order to ascertain whether under the said Act the State Government has any power to fix the price of sugarcane. We have set aside the judgment of the Allahabad High Court dated 11.12.1996. We are, therefore, of the opinion that the matter requires fresh consideration in the light of our decision in CA No. 460 of 1997 (U.P. Co- operative Cane Unions Federation v. West U.P. Sugar Mills Association). The appeal is accordingly allowed and the judgment and order dated 4.2.1997 of the High Court is set aside and the writ petition is remitted back to the High Court for fresh consideration in accordance with law. Civil Appeal No.6065 of 2001 : State of Punjab & Ors. v. Saraya Industries Ltd. & Ors. and SLP (C) No. 1363 of 2002 : State of Haryana & Ors. v. The Saraswati Industrial Syndicate Ltd. & Anr.

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

and order of High Court is set aside and the writ petitions are remitted back to the High Court for fresh consideration in accordance with law.

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

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

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

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

The State of Tamil Nadu has not made any statutory enactment for regulation of supply and purchase of sugarcane. In the counter-affidavit filed on behalf of the respondents it is admitted that the State Government is not fixing State Advised Price for sugarcane in exercise of any statutory power. In fact in para 9 of the counter-affidavit it is stated that the State Government will not make any unilateral announcement of State Advised Price as apprehended by the petitioner. It is further stated that the Government will follow the past practice of consultation with the sugar mill owners and cane growers and only after ascertaining their respective views and making them to come to an agreement on fixation of price, the State Advised Price, as an agreed price, will be recommended by the State Government. In view of the fact that there is no statutory enactment regarding regulation of supply and purchase of sugarcane, it is obvious that the State Government has no power to fix the price of the sugarcane. However, it is always open for the sugar mills to enter into agreements with the sugarcane growers to purchase sugarcane at a price higher than the statutory minimum price fixed by the Central Government. The Transfer Petitions are accordingly disposed of in the aforesaid terms. SLP (C) No. 948 of 2003 :M/s. Naraingarh Sugar Mills Ltd. v. State of Haryana & Ors.

This Special Leave Petition has been preferred against the judgment and order dated 20.12.2002 of a Division Bench of the Punjab & Haryana High Court by which interim orders passed in favour of petitioner were vacated. The main ground which weighed with the High Court for vacating the stay order was that the writ petitioner had not even paid the statutory minimum price of sugarcane to the farmers and a sum of Rs.5 crores was due from it. In the facts and circumstances of the case, we do not find any ground to interfere with the order passed by the High Court. The Special Leave Petition is accordingly dismissed.

IA No.3 of 2002 in CA No. 460 of 1997 : New Horizon Sugar Mills Ltd. Ariyur, Kandamangalam P.O., Pondicherry This application has been moved in CA No.460 of 1997 (U.P. Co- operative Cane Union Federation v. West U.P. Sugar Mills Association & Ors.). Since the main relief claimed in the application is against Government of Pondicherry which is not party to the civil appeal, it is not possible to grant the prayers made in the application. The application is accordingly dismissed.

B.N. Srikrishna, J.

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

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

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

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

By an order dated 15.1.2003, a Bench of three learned Judges of this Court took the view that one of the conflicting judgments had been approved by the decision in S.K.G. Sugar Ltd. v. State of Bihar & Ors., by a Bench composed of three Judges and, therefore, thought it would be appropriate to refer this matter to a larger Bench of Five Judges. Hence, these matters have been placed before this Bench of Five Judges.

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

Legislative Background :-

> The legislative background against which this question has arisen has been succinctly traced in the judgment of the Constitution Bench of this Court in Ch. Tika Ramji & Ors. v. The State of Uttar Pradesh & Ors., 1956 SCR 393. Some excerpts, however, may be necessary.
>
> On 8th April, 1932, the Central Legislature, in then British India, passed the Sugar Industry (Protection) Act, 1932 [Act XIII of 1932] to provide for the fostering and development of Sugar Industry in India. This led to a large number of farmers taking up sugarcane cultivation and the establishment of a number of sugar factories coming up, particularly in the then Province of U.P. To protect the interest of the sugarcane-growers', and for the purpose of assuring them a fair price, the Central Legislature enacted on 1st May, 1934 the Sugarcane Act, 1934 [Act XV of 1934] to regulate the price at which sugarcane intended for manufacture of sugar could be purchased by or for the factories. Since, sugarcane was grown in various Provinces and the Sugarcane Act, 1934 left the declaration of controlled areas and the fixing of minimum price for the purchase of sugarcane in any controlled area to the discretion of the Provincial Governments, the Provincial Governments were also empowered to make rules for the purpose of carrying into effect the objects of the Act.
>
> As a result of the Government of India Act, 1935, there was a distribution of legislative powers between the Dominion Legislature and the Provincial Legislatures. Consequently, the entire subject matter of Act XV of 1934 fell within the Provincial Legislative List. It was felt that Act XV of 1934 was not sufficiently comprehensive for dealing with the problems of the sugar industry. The Governments of U.P. and Bihar decided to introduce legislation on similar lines in both the provinces since, between them, they accounted for nearly 85 % of production of sugar in India.
>
> The U.P. Legislature enacted on 10th February, 1938 the U.P. Sugar Factories Control Act, 1938 [U.P. Act I of 1938]. This Act provided for (i) licensing of sugar factories, (ii) regulation of the supply of sugarcane intended for use in such factories, (iii) the minimum price for sugarcane,
>
> (iv) the establishment of Sugar Control Board and Advisory Committee, and

(v) a tax on the sale of sugarcane intended for use in factories. Though this Act was to remain in force initially until 30th June, 1947, its life was extended from time to time and finally up to 30th June 1952. Parallel developments during this period were the outbreak of the Second World War and the legislative measures taken to meet the situation by the then Government of India for controlling the production, regulation of distribution and supply of essential commodities. The Dominion Legislature acquired the power to make laws for the Provinces with respect to any of the matters enumerated in the Provincial Legislative List. Under the Defence of India Act, sugar was made a controlled commodity in the year 1942 and its production and distribution as well as the fixation of sugar prices were regulated by the Sugar Controller. The proclamation of emergency was revoked by the Governor General on 1st April 1946.

Simultaneously, the laws made by the Dominion Legislature in the field of the Provincial Legislative List were to cease to be effective after 30th September 1946.

On 26th March 1946, the British Parliament enacted the India (Central Government and Legislature) Act, 1946 [9 & 10 Geo.6, Chapter 39] which provided that, notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall during the periods specified in Section 4 of the Act have the power to make laws with respect, inter alia, to 'foodstuffs'. Though the period provided in Section 4 was one year from the expiration of the declaration of the emergency by the Governor General, this period was extended from time to time and would have ended on 31st March 1948 On 18th July 1947, the Indian Independence Act came to be passed leading to the Indian (Central Government and Legislature) Act, 1946 which by way of adaptation provided that the powers of the Dominion Legislature shall be exercised by the Constituent Assembly. With the Constitution coming into force on 26th January 1950, Article 369 invested Parliament with the power for a period of 5 years from the commencement of the Constitution to make laws with respect to some of the matters as if they were enumerated in the Concurrent List. One such matter was "trade and commerce within a State in, and the production, supply and distribution of, ...foodstuffs (including edible oil seeds and oil), ..."

On 7th October 1950, the Central Government, in exercise of the powers conferred upon it by Section 3 of the Act, promulgated the Sugar and Gur Control Order, 1950 which, inter alia, empowered it to prohibit movement of sugarcane from any area and also to direct that no gur or sugar should be manufactured from sugarcane except under and in accordance with a licence issued by it. Power was also given to the Central Government to fix the minimum price of sugarcane and no person was to sell or agree to sell sugarcane to a producer and no producer was to purchase or agree to purchase sugarcane at a price lower than that notified. This power of fixing the price of sugarcane was exercised by the Central Government from time to time by issuing notifications which fixed the minimum price to be paid by the producer of sugar by vacuum pan process. An Act for similar purposes, by name, Bihar Sugar Factories Control Act VII of 1937 came to be enacted in the State of Bihar. As a result of the recommendations of the Khaitan Committee, the report of the Indian Tariff Board in the year 1938 and the U.P. Sugar Industry Enquiry Committee, 1951 [Swaminathan Committee], it was desired that the U.P. Act I of 1938 should be amended in order to make

regulation of the supply of sugarcane possible.

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

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

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

In exercise of the powers conferred by Section 3 of the Essential Commodities Act, the Central Government promulgated on 27th August 1955, the Sugar Control Order, 1955 and the Sugarcane Control Order, 1955. Clause 3(a) of the Sugarcane Control Order, 1955 empowers the Central Government, after consultation with appropriate authorities, to fix in respect of any area 'the price or the minimum price' to be paid by a producer of sugar for sugarcane purchased by him in that area. It also empowers fixation of different prices for different areas or different qualities of sugarcane or on the basis of recovery of sugar from sugarcane having regard to various factors enumerated therein. Clause 3(2) provides that no person shall sell or agree to sell sugarcane to a producer of sugar or factory and no producer or factory shall purchase or agree to purchase

sugarcane at a price lower than that notified under this clause. Clause (4) empowers the Central Government to prohibit or restrict or otherwise regulate the export of sugarcane from any area for supply to different factories and also to direct that no gur or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in a licence issued in this behalf. Clause (5) requires every producer or factory to comply with the directions made under the order. By clause (7) of this order, the Sugar and Gur Control Order, 1950 was repealed.

On 16.7.1966, the Central Government notified the Sugarcane (Control) Order, 1966. Clause 2(g) defines 'price' to mean the price or the minimum price fixed by the Central Government, from time to time, for sugarcane delivered, inter alia, to a sugar factory. Clauses 3 and 3-A bear reproduction and read thus :-

> Clause 3 : Minimum price of sugarcane payable by producer of sugar-
>
> (1) The Central Government may, after consultation with such authorities, bodies or associations as it may deem fit, by notification in the official Gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them, having regard to -
>
> (a) the cost of production of sugarcane;
>
> (b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;
>
> (c) the availability of sugar to the consumer at a fair price;
>
> (d) the price at which sugar produced from sugarcane is sold by producers of sugar; and
>
> (e) the recovery of sugar from sugarcane :
>
> [Provided that the Central Government or, with the approval of the Central Government, the State Government, may, in such circumstances and subject to such conditions as specified in Clause 3-A, allow a suitable rebate in the price so fixed.] Explanation - (1) Different prices may be fixed for different areas or different qualities or varieties of sugarcane.
>
> (2) No person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub- clause (1). (3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a Sugarcane-grower's Co-operative Society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate

agreed to between the producer and the sugarcane- grower or Sugarcane-

growers' Co-operative Society or that fixed under sub-clause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the bank account of the seller or the co-operative society, as the case may be. [Subs. by G.S.R. 945, dated 18.5.1968] (3-A) Where a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days of the date of delivery, he shall pay interest on the amount due at the rate of 15 per cent per annum for the period of such delay beyond 14 days. Where payment of interest on delayed payment is made to a cane-growers' society, the society shall pass on the interest to the cane-growers concerned after deducting administrative charges, if any, permitted by the rules of the said society. [Ins. by G.S.R. 62(E) dated 2.2.1978].

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

(5) At the time of payment at the gate of the factory or at the cane collection centre, receipts, if any, given by the purchaser, shall be surrendered by the cane-grower or co-operative society. (6) Where payment has been made by transfer or deposit of the amount to the bank account of the seller or the co-operative society as the case may be, the receipt given by the purchaser, if any, to the grower or the co- operative society if not returned to the purchaser, shall become invalid. (7) In case, the price of the sugarcane remains unpaid on the last day of the sugar year in which cane supply was made to the factory on account of the suppliers of cane not coming forward with their claims therefore or for any other reason, it shall be deposited by the producer of sugar with the Collector of the district in which the factory is situated, within three months of the close of the sugar year. The Collector shall pay, out of the amount so deposited, all claims, considered payable by him and preferred before him within three years of the close of the sugar year in which the cane was supplied to the factory. The amount still remaining undisbursed with the Collector, after meeting the claims from the suppliers, shall be credited by him to the Consolidated Fund of the State, immediately after the expiry of the time limit of 3 years within which claims therefore could be preferred by the suppliers. The State Government shall, as far as possible, utilise such amounts, for development of sugarcane in the State. Clause 3-A : Rebate that can be deducted from the price paid for sugarcane

- A producer of sugar or his agent shall pay, for the sugarcane purchased by him, to the sugarcane-grower or the sugarcane- growers' co-operative society, either the minimum price of sugarcane fixed under Clause 3, or the price agreed to between the producer or his agent and the sugarcane-grower or the sugarcane-growers' co-operative society, as the case may be (hereinafter referred to as the agreed price)..... [Subs. by G.S.R. 815(E) dated 24.9.1976] Clause 4 empowers the Central Government 'or a State Government, with the concurrence of the Central Government', to fix the minimum price or the price of sugarcane to be paid by producers of the khandsari sugar for the sugarcane purchased by them with the proviso that the minimum price or the price of sugarcane so fixed shall not exceed the minimum price of sugarcane fixed by producers of sugar in the region with a further proviso that no person shall sell or agree to sell sugarcane to a producer of khandsari

sugar or his agent, and no such producer or his agent shall purchase or agree to purchase sugarcane, 'at a price lower than that fixed under clause (4)'.

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

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

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

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

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

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

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

co- operative society and factory to do so, is constituted a breach of the provisions of the Order.

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

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

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

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

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

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

> (a) matters pertaining to the regulation of supply and purchase of cane for sugar factories;
>
> (b) the varieties of cane which are suitable or unsuitable for use in sugar factories;

(c) the maintenance of healthy relations between occupiers or managers of factories, cane-growers, Cane-growers' Constitution-operative Societies, Cane Development Council; and

(d) such other matters as may be prescribed.

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

(a) to consider and approve the programme of development for the zone;

(b) to devise ways and means for the execution of the development plan in all its essentials such as cane varieties, cane seed, sowing programme, fertilizers and manures;

(c) to undertake the development of irrigation and other agricultural facilities in the zone;

(d) to take necessary steps for the prevention and control of diseases and pests and to render all possible help in the soil extension work;

(e) to impart technical training to cultivators in matters relating to the production of cane;

(f) to administer the funds at its disposal for the execution of the development scheme subject to the general or special directions of the Cane Commissioner; and

(g) to perform other prescribed functions pertaining and conducive to the general development of the zone.

Chapter III which deals with "Supply and Purchase of Cane" contains the fasciculus of Sections 12 to 19. Under Section 12, an officer known as Cane Commissioner makes estimates of requirements of the quantity of cane, which will be required by any factory after getting appropriate information from the factory. Sections 13 and 14 deal with the manner of keeping information as to the cane-growers and Cane- growers' Co-operative Society by registers and by surveys carried out by the State Government. Section 15 empowers the Cane Commissioner to reserve and assign any area for the purposes of supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified. It also empowers him to cancel such order or alter the boundaries of the area so reserved or assigned. Under sub-section (2) of Section 15, where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, 'which is offered for sale to the factory'. According to sub- section (3), where any area has been declared as assigned area for a factory, the occupier of such factory 'shall purchase such quantity of cane grown in that area and offered for sale to the factory' as may be determined by the Cane Commissioner. There is an appeal provided to the State Government against the order of the Cane Commissioner passed under

sub-section (1).

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

> "16. Regulation of purchase and supply of cane in the reserved and assigned areas -
>
> (1) The State Government may, for maintaining supplies, by order, regulate
>
> -
>
> (a) the distribution, sale or purchase of any cane in any reserved or assigned area; and
>
> (b) purchase of cane in any area other than a reserved or assigned area. (2) Without prejudice to the generality of the foregoing powers such order may provide for -
>
> (a) the quantity of cane to be supplied by each cane-grower or Cane-

growers' Co-operative Society in such area to the factory for which the area has so been reserved or assigned;

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

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

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

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

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

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

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

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

1. Adoni Cotton Mills Ltd. & Ors. v. A.P. State Electricity Board & Ors..

2. State of Tamil Nadu v. M/s. Hind Stone & Ors..

3. K. Ramanathan v. State of Tamil Nadu & Anr..

4. D.K. Trivedi & Sons and Ors. v. State of Gujarat & Ors. 1986 (Supp) SCC 20 [paras 30 & 31]

5. Jiyajeerao Cotton Mills Ltd. & Anr. v. M.P. Electricity Board & Anr. 1989 Supp (2) SCC 52 [para 32]

6. Deepak Theatre, Dhuri v. State of Punjab & Ors..

> 7. Quarry Owners' Association v. State of Bihar & Ors. (2000) 8 SCC 655 [paras 25, 26, 31 & 61(c)] Counsel for the sugarcane-growers' and the State also contended that the expression 'regulate' is used in Section 16 in the context of maintaining supplies and "sale or purchase". The expression 'sale or purchase' would necessarily include all aspects or ingredients of sale as it cannot be gainsaid that price is certainly an important ingredient of sale. The provisions of the Sale of Goods Act, Contract Act, Transfer of Property Act, Article 366(29) of the Constitution of India and a number of authorities were relied upon to contend that price is an essential ingredient of sale and that the State could regulate it.

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

> (a) "Even the power reserved to the State Government to fix minimum prices of sugarcane under Chapter V of the U.P. act of I of 1938 was deleted from the impugned Act the same being exercised by the Centre under clause 3 of sugar and Gur Control Order, 1950, issued by it in exercise of the powers conferred under Section 3 of Act XXIV of 1946.

The prices fixed by the Centre were adopted by the State Government and the only thing which the State Government required under rule 94 was that the occupier of a factory or the purchasing agent should cause to be put up at each purchasing centre a notice showing the minimum price of cane fixed by the Government meaning thereby the Centre. The State Government also incorporated these prices which were notified by the Centre from time to time in the forms of the agreements which were to be entered between the cane growers, the cane-growers' co-operative societies, the factories and their purchasing agents for the supply and purchase of sugarcane as provided in the

U.P. Sugarcane Supply and Purchase Order, 1954. The only provision which was retained by the State Government in the impugned Act for the protection of the sugarcane growers was that contained in Section 17 which provided for the payment of price of sugarcane by the occupier of a factory to the sugarcane growers. It could be recovered from such occupier as if it were an arrear of land revenue. This comparison goes to show that the impugned Act merely confined itself to the regulation of the supply and purchase of sugarcane required for use in sugar factories and did not concern itself at all with the controlling or licensing of the sugar factories, with the production or manufacture of sugar or with the trade and commerce in, and the production, supply and distribution of, sugar.

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

(pp. 422-423)

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

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

(vide 433-434)

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

(p. 435) These observations of the Constitution Bench in Ch. Tika Ramji's case (supra) do support the arguments of the respondents-sugar producers. A distinction is sought to be made that Ch. Tika Ramji's case (supra) does not decide the issue as to the content of the regulatory power under the U.P. Sugarcane Act, 1953 and, therefore, these observations are not of any avail. This argument cannot be accepted. The question posed before the Constitution Bench was one of inconsistency between Central Legislation and State Legislation, the State Legislation being the U.P. Sugarcane Act, 1953. The basis for the decision in Tika Ramji (supra) is that the two operated on separate planes and that the provisions "were mutually exclusive and did not impinge on each other" there being no trenching upon the field of one legislature by the other. I cannot impute to the Constitution Bench an incomplete analysis of the provisions of the U.P. Sugarcane Act, 1953 when it made these observations. The observations necessarily suggest to me that the full extent of the State's power under the 1953 Act was reckoned with and compared against the power of the Central Government under the Central Legislation after which only the Constitution Bench arrived at its finding that there was no conflict and upheld the constitutional validity of the U.P. Sugarcane Act, 1953. There was no tentativeness or ad hocism in the observations; nor were they made only pro tem.

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

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

A number of arguments were addressed to impress upon us that there is no repugnance between the Essential Commodities Act, 1953 read with Sugarcane (Control) Order, 1966 and the U.P. Sugarcane Act, 1953. It was argued that the Central Act does not occupy the whole gamut of price fixing and as

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

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

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

deducted. Under this clause, the producer of sugar is required to pay "either the minimum price of sugarcane fixed under clause (3) or the price agreed to between the producer or his agent or the sugarcane grower or the Sugarcane- growers' Co-operative Society, as the case may be (hereinafter referred to as 'the agreed price')".

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

I am, therefore, unable to accept the first distinction made for and I think that the observations in Ch. Tika Ramji's case (supra), though made in the context of Sugarcane (Control) Order, 1955, are equally applicable in the context of the Sugarcane (Control) Order, 1966. Now to the second distinction. Ch. Tika Ramji's case (supra) was considering the conflict between the provisions of the Central Legislation, namely, the Essential Commodities Act, 1955 and the U.P. Sugarcane Act, 1953. Under Section 3 of the Essential Commodities Act, 1955, the Central Government is specifically empowered, inter alia, to 'regulate' the production supply and distribution of the essential commodity or trade and commerce therein and also may provide for controlling the 'price' at which the essential commodity may be bought or sold. The power to 'control the price' is of the widest amplitude and takes into its fold the power to fix the minimum price, the fair price, the remunerative price or even the maximum price. It was this power which was contrasted with the power of the State Government under the U.P. Sugarcane Act, 1953. After making such a contrast, Ch. Tika Ramji's case (supra) came to the specific conclusion that the State Act did not, in any way, impinge upon the area covered by the Central Act as the provisions of the two Acts are "mutually exclusive and did not impinge on each other"

> there being no trenching upon the field of one legislature by the other. While contrasting this power of the Central Government and its exercise under the Sugarcane (Control) Order, 1955, as against the powers of the State Government under the provisions of the U.P. Sugarcane Act, 1953, Ch. Tika Ramji's case (supra) discerned no power for price fixation in the State Government under the provisions of 1953 Act and that is why its constitutional validity was upheld. In fact, when Ch. Tika Ramji's case (supra) fails to discover any provision in the State Legislation for minimum price fixation with regard to sale/purchase of sugarcane, and upholds its constitutional validity on that very ground, it would be futile to attempt to discover in the State Act a power to fix a price higher than the minimum price.

Another interesting contention advanced on behalf of the sugarcane- growers' is that there is a distinction between 'minimum price' fixed, which is exclusively within the province of the Central Government under the provisions of the Essential Commodities Act, 1955 and what the State seeks

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

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

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

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

U.P. Sugarcane Act, 1953.

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

In the U.P. Sugarcane Rules, 1954, Chapter IX deals with payments. The only reference made in the Rules to the price, as indicated in Ch. Tika Ramji's case (supra), is in Rule 94. Rule 94(b) requires a notice to be put up by the occupier of a factory in suitable size in clear bold letters showing the 'minimum price' of cane fixed by the Government and the rates at which cane is being purchased at the centre. It is not the 'cane- growers' case before us that the State Government ever fixes the 'minimum price'. As observed in Ch. Tika Ramji's case (supra), the reference here is obviously is to the minimum price of cane fixed by the Central Government. The reference to the rates at which the cane is purchased in a particular factory could be conceivably to the agreed price between the cane-grower and the producer of sugar.

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

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

quantity of cane supplied, the rate at which the cane is supplied and the total amount payable, the agreed rate indicated becomes payable in lieu of the minimum rate fixed by the Central Government and would have the same legal efficacy as the minimum rate fixed by the Central Government.

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

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

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

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

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

The observations in Rai Sahib Ram's case (supra) were also explained away in Thakur Bharat Singh's case (supra) by pointing out that the action taken there did not amount to infraction of the

guarantee under Article 19(1)(g) of the Constitution, since no fundamental rights of the petitioners were violated by the executive act of the Government done in furtherance of their policy of nationalisation of text-books for students. This judgment in effect rejects this contention. It is obvious that fixing of a higher price of sugar, compulsorily payable, is a restriction on the fundamental right guaranteed under Article 19(1)(g) and cannot be legally done except under a law.

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

The construction of the U.P. Sugarcane Act, 1953 has to be made against the legislative background. Under Section 3(2) of the Sugarcane Act, 1934, the State Governments were empowered to fix a minimum price or minimum prices for the purchase of sugarcane in a controlled area intended for use in any factory. In Section 21 of the U.P. Act I of 1938, there was a specific power vested with the Provincial Government to fix the minimum price. In respect of any area, the minimum price to be paid by the occupier of the factories or purchasing agents for cane purchased in that area could be determined by a notification by the Governor, after consultation with the Board. A contrast with the provisions of the U.P. Sugarcane Act, 1953 indicates total absence of such a power to fix a price. If the 1953 Act intended to grant to the State the power to fix any price - State Advised Price, remunerative price or fair price as is called - the Statute would have in terms indicated it and not left it to guesswork or inference from the general words used in Sections 16 & 17 of the Act. A reference to the Statement of Objects and Reasons attached to the Bill which was moved supports this construction of the U.P. Sugarcane Act, 1953.

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

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

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

The judgment of this Court in Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. & Ors. v. State of Maharashtra & Ors., 1995 Supp. (3) SCC 475, is distinguishable, since it was decided on its peculiar facts. The distinguishing feature in that case was that the bye-laws under which the co-operative society was formed, empowered the State Government to determine the price for supply of sugarcane to be paid to the members as long as the loans advanced to the co-operative society were not fully paid. It is in exercise of the power under this bye-law that the State Government fixed what it called the 'State Advised Price'. The power of the State was thus upheld because of the peculiar provision in the bye-laws under which the sugar producer co-operative society was formed. The Bench further took the view that if the price fixed by the Government is good for members of co-operative society, who are as much cane-growers as non-members, then there is no reason to hold that such price was bad or it operated unreasonably for non-members. In view of the fact that zoning or reservation or fixation of price for each zone were interlinked, the Bench expressed its view as under :-

> "It is difficult to visualise that they would opt or fix a price for the sugarcane which would be unremunerative. As explained earlier, the price fixed by the Cabinet Committee in exercise of power under the bye-law is the State Advised Price. It applies uniformly to all cane-growers irrespective of whether they are members of

> non-members and whether they are in reserved area of outside it. To confine it to the members as they having entered into agreement and being members of the cooperative societies are bound by it is ignoring the entire price mechanism. Nowhere in the country the State Advised Price is fixed for one class of growers only. In absence of any material to show that the fixation by the Government was one-sided or with a view to exploit the cane-growers the submission that it did not apply to non-members cannot be accepted. The order does not make any distinction between members and non-members. Nor does it visualise separate mechanism for price fixation for the two. The price is fixed, may be, by the Board of Directors or by the State Government under bye-laws but the prices are for the reserved area."

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

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

> "Thus, unless there be an agreement between the grower and the producer for purchase of the sugarcane at a higher rate, the obligation of the purchaser is to pay to the grower only the aggregate of the amounts fixed under clauses 3 and 5-A. In other words, under the Statute there is no liability of the purchaser to pay to the grower any amount in excess of this aggregate amount. Thus, without any contractual or statutory basis fixing the sale price of sugarcane at an amount higher than the minimum cane price fixed under clause 3 and the additional cane price fixed under clause 5-A, any sum paid by the purchaser to the grower as advance prior to fixation of the additional cane price under clause 5-A cannot form part of the price of cane sugar"[See vide para 5].
>
> Further, it was held that :-
>
> "However, as indicated earlier, for treating the entire amount paid by the purchaser as the price of sugarcane supplied, it must be found proved as a fact that the higher price including the excess amount was paid as the price of sugarcane under an agreement between the grower and the purchaser irrespective of a lower amount being fixed as the aggregate of the price fixation under clauses 3 and 5-A of the Control Order. Unless a clear finding to that effect is recorded, the amount paid by the purchaser in excess of the aggregate of the minimum price fixed under clause 3 and the additional price fixed under clause 5-A, as a part of the amount aid as

advance prior to fixation of the additional price under clause 5-A, cannot be treated automatically as a part of the total price of sugarcane."

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

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

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

(1) It is not necessary to opine on the question as to whether the entire field of price is occupied by the Central Legislation, namely, the Essential Commodities Act, 1955.

(2) The source of the State's power claimed in C.A. No. 460 of 1997 is the U.P. Sugarcane Act, 1953 which has been the subject matter of careful analysis by the Constitution Bench of this Court in Ch. Tika Ramji's case (supra). Its constitutional validity was upheld on the footing that the said Act did not trench upon the field of pricing.

(3) There is no power discernible in the provisions of the U.P. Sugarcane Act, 1953 with the State Government to fix a price for sale/purchase of sugarcane so as to make it binding on the parties or legally enforce its payment.

(4) The Sugarcane (Control) Order, 1966 itself enables parties to consensually agree to a rate higher than the rate prescribed therein. If such higher rate is agreed, then that would become the rate which the sugar producers would be obliged to pay and would also become substituted for the minimum rate so as to enable the State Government under the provisions of the U.P. Sugarcane Act, 1953 to enforce it in case of default by treating it as arrears of land revenue.

Hence, the following Order:-

ORDER STATE OF UTTAR PRADESH In C.A. No. 460 of 1997, the Division Bench of the Allahabad High Court allowed the writ petition No. 36889/96 by its judgment

dated 11.12.1996 and quashed the Government's Order fixing the State Advised Price.

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

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

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

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

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

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

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

The High Court was, therefore, justified in allowing the writ petition filed by the sugar producers. C.A. No. 4685 of 1997 filed by the State of Bihar is hereby dismissed.

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

sugarcane was discerned in the State Government under the said Act. I agree with this view.

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

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

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

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

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

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

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

STATE OF TAMIL NADU In T.C. Nos. 21-22 of 2002 arising out of T.P. (C) Nos. 648-649 of 2000, the sugar producers filed writ petitions before the High Court of Madras challenging the fixation of

the State Advised Price by the State Government. In the counter-affidavits filed by the State, it is expressly admitted before the High Court that there is no statutory provision for fixation of any State Advised Price at a rate higher than the centrally fixed minimum rate for purchase of sugarcane.

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

P. Venkatarama Reddi, J.

To put it in a nut shell, the three questions that broadly arise for consideration are : 1) the legal status and binding nature of 'State advised cane price', 2) the power of the State Government to fix sugarcane price under the provisions of U.P. Sugarcane (Regulation and Purchase) Act 1953 (hereinafter referred to as U.P. Act) and 3) in case such power exists and is exercised, whether the State law fixing the price becomes repugnant to the provisions of the Central Law, namely the Sugarcane Control Order of 1966 framed under E.C.Act. As pointed out by Srikrishna, J. the third question need not be answered in case no power to fix the price is discernible from the provisions of the U.P. Act of 1953.

Turning to first question, I find no statutory basis for the 'State advised cane price'. The very expression 'advised' connotes that the State advised price has no statutory flavour. If the fixation has been done in exercise of statutory power traceable to any provision in the U.P. Act, it would be most inapt to describe it as 'advised price'. The statutorily fixed price can never take the form of advice. It binds, enforces obedience by providing for punishment or penal consequences and does not look for volition of the persons concerned for its compliance. But, that is not the case here. From year to year, the State Government has been announcing the 'advised price' in the hope and expectation that the sugar factories in the private sector will also agree to pay that price. It is worth quoting a typical order/communication issued by the Government and the Cane Commissioner. The following is the communication dt. 15.11.96 addressed by Principal Secretary to Govt. to the Cane Commissioner of U.P. :-

> "As is evident, that for every crushing season State Advised Cane Prince is announced by the State Government. Accordingly, I have been directed to inform you on the above subject, that the State Advised Cane Price payable by all sugar factories for the season 1996-97 has been fixed as under:
>
> a) For early maturing varieties at mill gate - 76.00b) For general varieties at mill gate - 72.00

2. I have also been directed to inform you that during crushing seasons 1996-97 the transport deduction for cane supplied to the sugar factories at their out centres will continue to be Rs.3/- per quintal.

3. Above orders will be applicable for crushing season 1996-97.

4. Please take immediate action in the above matter."

(Sd.) Principal Secretary *** *** *** Office order dt.15.11.96 issued by Cane Commissioner, U.P. "The State Advised Cane Price is announced by the State Government for every crushing season. Keeping this in view, the sugar factories have been paying cane price to the cane growers. Accordingly, the State Government has announced the State Advised Price payable by factories as under:

a) For early maturing varieties at mill gate - 76.00

b) For general varieties at mill gate - 72.00"

The above price is for the mill gate and for supply at outcentres. Transport deduction will be separate.

(Sd.) Cane Commissioner, U.P. The order of the Cane Commissioner is marked to several officials, organisations and occupiers of sugar factories.

Even in the counter-affidavits filed in the writ petitions, no categorical stand has been taken by the Government that the 'State advised price' is the statutorily fixed price which is legally binding on all concerned. On the other hand, the averments in the counter-affidavit give a fair indication that it is nothing but advised price in its literal sense. The following excerpts from the counter-affidavit filed in writ petition No. 36889 of 1996 (the corresponding Civil Appeal No. being 460 of 1997) make this position clear.

"So far as the State of U.P. is concerned, there are 118 sugar mills out of which 70 sugar mills belong to either the Sugar Corporation which is the instrumentally of the State or the cooperative sector in which the State Government has major share holding and only 48 sugar mills belong to private sector. Thus, the State Government is fully justified in law to provide a price of sugarcane for its own mills and since the private sugar factories are also aware that the cane growers will not supply sugarcane at a lower price, they have also in the previous years agreed to pay the aforesaid price without any objection. The State Advised cane price also ensures that there is parity in the price of sugarcane throughout the state and it removes the element of disparity in any manner."

*** *** *** "It has already been stated above that since 1973 the policy of State Advised cane price is in existence in the State of U.P. and it is in existence in all other sugar producing areas of the country. The aforesaid policy has been invoked merely for the purposes of ensuring that the sugarcane continues to be a cash crop and that the cane growers do not resort to any other alternative crop. It is for this purpose that the State Government intervenes and advise a price which

is remunerative and is comparable to the prices of sugar in the State during the relevant period."

I may also refer to the order issued by the Government in the State of A.P. where the provisions similar to U.P. Act exist and the averments in the counter-affidavit filed on behalf of the Government in Writ Petition 2876/99 (corresponding to SLP (c) 16851/01). The relevant particulars of GOMS No. 420 (Industries & Commerce, (Sugar) Department) dated 4.12.98 are as follows :

> "The Government of India has announced the statutory Minimum Price of Rs.527.00 per M.T. linked to a basic recovery of 8.5% to be paid by the sugar factories to the cane suppliers, for the year 1998-99.
>
> 2. In the context of ensuring payment of fair and reasonable cane price to the farmers, who supply sugarcane to the sugar factories, the Government elicited the views of sugar cane growers and management of sugar factories.
>
> 3. The Government after carefully examining the views and various issues connected with it, it accordingly advise all the sugar factories, including khandasari units, whether situated within or outside the zone of sugar factories in the State, to pay a minimum price of Rs.652.50 per M.T. linked to a basic recovery of 8.5% or 19997-98 year's price, whichever is higher by each factory/khandaasari Unit for the sugar cane purchased by it for the year 1998-99 season as against the statutory minimum price of Rs.527.00 per M.T. fixed by the Government of India.
>
> 4. All the sugar factories and khandasari units in the State have to pay the State Advised cane price without any monetary assistance from the State Government. The payment of sugarcane price shall be adjusted against the ultimate price payable under price sharing formula under clause 5(A) of Sugarcane (control) Order, 1966."

In the counter-affidavit, it is made clear "that the State Government only advised the sugar factories to pay certain price to the cane suppliers which is fair and reasonable after eliciting the views of the representatives of sugarcane growers and managements of sugar factories. It is not true to state that the State Government have compelled the sugar factories to pay the SAP to cane suppliers but sugar factories have to pay the purchase tax at Rs.60 per M.T." Again at paragraph 7, it is stated in emphatic terms that the State Government only advises the payment of cane price for the welfare of sugar industry and cane growers. In fact, in the course of arguments before the High Court, the learned Advocate General appearing for the State rightly took the stand that the State advice price is not an 'Imposition'.

The stand taken by the State Governments in the cases previously decided by this Court, viz., Jaora Sugar Mills and SKG Sugars, which has been accepted by the Court was that efforts were made by the official machinery of the State to convene the meetings and to arrive at an agreed price which was notified as the State advised price. Thus, the real basis for compliance with the State advised price is the agreement but not its statutory authority or binding force. The apparent reason for not notifying the price under the provisions of the statute, namely, U.P. Act of 1953 seems to be the

doubt cast on the State's power to fix such price in the light of the observations made in Tika Ramji's case and, it may also be attributable to the difficulty arising on account of lack of criteria or guidelines under the Act and Rules regarding fixation of price. Be that as it may, the fact remains that the 'State advised price' cannot be said to have been fixed in purported exercise of any statutory power and it cannot be elevated to the level of a statutory price fixation order. The decisions of this Court referred to supra did not hold that the State advised price is a statutorily fixed price and is legally binding on the sugar factories on its own force. The observation in Jaora Sugar Mills case at paragraph 14 to the effect that "the price fixed or agreed is a statutory price" does not mean that State advised price was construed as statutorily determined price. Apparently, the learned Judges were referring to the two concepts of price envisaged by the Sugar Control Order as discussed in paragraph 8 of the said decision. But, it does not appear to have reference to the 'State Advised Price' as such. However, I would like to clarify that the question posed by the Court at paragraph 12 i.e. "whether the State Government had entered into such a contract" is not accurate and does not fit in with the actual decision in the case.

In the light of my conclusion that the State Advised Price has no statutory basis and legal force, is it necessary to strike down the orders communicating the State Advised Price? That is the next question. In my considered opinion, it is not necessary or appropriate to do so. The State advised price, though lacking the sanction of law and its compliance cannot be ensured against the will of the factory owner, it can still serve as a framework within which an agreed price over and above the minimum price fixed under the Central Control Order can be brought about. The law does not prohibit the concerned authorities of the State Government from advising or recommending a price for adoption by the sugar factories. The authorities entrusted with the various functions under the Act conceived in the interests of both growers and producers can certainly play a role, as has been pointed out in Jaora Sugar Mills in bringing the parties to a negotiating table and forging a mutual settlement leading to the payment of the State advised price. The very fixation of State advised price cannot be legally faulted so long as its compliance is ensured by a voluntary process by which the State advised price can very well become an agreed price.

The next and more important controversy is about the State Government's power to fix the price. Such power is traced to Section 16 of the U.P. Act by the learned counsel appearing for the State and the Cooperative Cane Unions. There is almost a similar provision in the corresponding enactments in force in the States of Andhra Pradesh, Punjab and Haryana. In Bihar and Tamilnadu, there is no such provision. In fact, Section 42 of the Bihar Act lays down that the minimum price determined under the Act shall not exceed the minimum price payable under any law for the time being in force.

It would suffice to confine the discussion to the provisions of U.P. Act. Section 16 of U.P. Act carries the heading 'Regulation of purchase and supply of cane in the reserved and assigned areas'. Sub-Section(1) empowers the State Government, "for the purpose of maintaining supplies", to regulate (a) "the distribution, sale or purchase of cane in any reserved or assigned area" and (b) "purchase of cane in any area other than a reserved or assigned area". After thus laying down the broad parameters of regulatory power, it is followed by sub-Section (2) spelling out the specific areas to which such power can extend. The fixation of price of cane is not one of them. However, sub-Section(2) does not exhaust the field of operation of the regulatory power. The price fixation

could still come under the generality of the power reserved under sub-Section (1). It is contended with much force that the power to regulate the sale or purchase of sugarcane comprehends within its scope the power to fix the price of sugarcane. The wide meaning given to the expression 'regulate' in various cases coupled with the fact that price is an essential component of sale is harped upon to preserve the power of the State Government to fix the price. Mathur, J. has also highlighted the fact that the fixation of a remunerative price for sugarcane supplied to factories would go a long way in accomplishing the objective of maintaining supplies. The peculiarities associated with harvesting and marketing of sugarcane have been pointed out. The need to protect the interests of sugarcane growers has also been stressed. These are no doubt weighty considerations which go to support the argument that the regulatory power can extend to fixation of price of sugarcane supplied to the factories. But, there are equally weighty factors which persuade me to hold, in concurrence with the view expressed by Srikrishna, J, that the regulatory power under Section 16 does not extend to price fixation.

Number of cases were cited at the bar to buttress the argument that the import of the word 'regulatory' is wide and expansive enough to cover price fixation. It was noticed in more than one case (for eg. Jiyajirao Cotton Mills v. M.P. Electricity Board [(1989) Suppl. 2 SCC 52]) that the expression 'regulate' has no precise or fixed connotation and that it has different shades of meaning. There is no doubt that it is a word of broad import. Its width and content may vary according to the contextual setting in which the expression occurs. The scheme and thrust of the provisions of the relevant statute, the objective of legislation, the legislative intent gathered from the legislative history and the run of the provisions contained in the enactment can all be taken into account while appreciating the correct meaning of the expression 'regulate' in a particular statute. I agree with Srikrishna, J. that the decision in Tika Ramji's case is the main hurdle for giving an amplified meaning to the expression 'regulate' so as to cover price fixation. After giving anxious consideration to the issue, I find it difficult to distinguish the judgment in the manner in which it was sought to be done by the learned counsel appearing for the State and the Union of cane growers. Though the Constitution Bench did not directly deal with the question of interpretation of Section 16 vis-`-vis the power of price fixation, going by the observations made therein and the basis of reasoning adopted to arrive at the conclusion that there was no repugnancy, it is fairly clear that the Constitution Bench negatived the existence of any provision empowering the State Government to fix the price. The Court in addition observed that factually, there was no fixation of minimum price by the State Government. On a comparative analysis of the provisions, this Court found no repugnancy between the impugned Act (U.P. Act of 1953) and the Sugarcane Control Order of 1955. The provisions were held to be mutually exclusive and did not impinge upon each other. It is appropriate to refer to the relevant observations made and the reasons given by the Constitution Bench which are crucial. While dealing with the point No.1, i.e., whether the U.P. Act of 1953 had trenched upon the subject of notified industries falling within the exclusive domain of Parliament, this Court noticed that the provisions in the repealed U.P. Act 1 of 1938 dealing with the minimum price of sugarcane were deleted. The following observations may be noticed:

> "Even the power reserved to the State Government to fix the minimum prices of sugarcane under Chapter 5 of U.P. Act 1 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 24 of 1946."

"The prices fixed by the Centre were adopted by the State 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."

Again it was observed in the next para: "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 the 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 mainly confined itself to the regulation of the supply and purchase of sugarcane required for use in sugar factories....."

Turning then to the question of repugnancy (point No.2), the Court after clarifying that both the Parliament and the U.P. State Legislature had the concurrent power of legislation under Entry 33 of the List III in regard to sugarcane, found no repugnancy between the Central and State legislations. Central to the reasoning of the case are the following observations :

"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 R.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. <emphasissupplied) 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. * * * * * * * * * * * ** * * * * * * * ** * * * * * * * ** * * * * * * * * * * * *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."

No doubt, the content of regulatory power under Section 16 was not discussed by the Constitution Bench. But, as viewed by Srikrishna, J., the observations made by the Court necessarily suggest that the State Government was not invested with the power to fix the price of sugarcane. It was argued that the question of repugnancy was considered from the stand point of minimum price but not the price in general. I find it difficult to accept this contention. The tenor of discussion more especially the observations extracted supra would unmistakably indicate that the Constitution Bench did not consider the question of repugnancy only from such narrow angle but it was considered in the broader perspective of the provisions relating to price and the exercise of power of price fixation by the State Govt. No particular significance can be attached to the use of the expression 'minimum price' in the judgment of Constitution Bench because in one sense, the price ordained to be paid by the State government, will become minimum price. In another sense, it may be a more remunerative or higher price than what is fixed by the Central Government.

On a careful reading and analysis of the judgment, I am inclined to think that the Constitution Bench did not discern any power to fix the price under the Act. If under Section 16, the power to fix price was to be inferred, I have no doubt that the Constitution Bench would have paused and considered the effect of it on repugnancy. It is only on the premise that there was no such provision, the Court recorded its conclusion on the issue of repugnancy. In other words, the Court proceeded on the basis that the subject of price fixation minimum or otherwise was not dealt with by U.P. Act of 1953. It is also not possible to distinguish the decision on the ground that what was uppermost in the mind of the Constitution Bench was the factual non fixation of the price by the State Government but not the power to fix the price. It was on both aspects. Even if the Constitution Bench recorded its conclusion on the question of repugnancy without specifically considering Section 16 and the power to regulate the price that could possibly flow therefrom, this coordinate Constitution Bench cannot express a contrary view at this distance of time.

In any case, apart from what was held in Tika Ramji's case, there are certain features and indicators discernible from the scheme of the U.P. Act and the legislative history which lead to the irresistible conclusion that price regulation was not within the contemplation of the Act. In contrast to the preamble of the predecessor Act, namely, the U.P. Sugar Factories Control Act, 1938 (as amended by Act 16 of 1952) the expression 'to regulate the price of the sugarcane' has been omitted. Then, the specific provision contained in the earlier Act (Section 21 of U.P. Act 1 of 1938) conferring power on the State Government to fix minimum price and Section 22A empowering the State Government to direct payment of additional price was omitted, the reason for such omission being the promulgation of the Sugar and Gur control Order, 1950 by the Central Government, as noticed by this Court in Tika Ram ji's case. Having omitted to reenact those provisions, if the U.P. legislature wanted to retain the power to fix higher price over and above the minimum fixed by the Central Government, it is reasonable to expect the legislature to make a specific provision to that effect rather than leaving it to the general regulatory power under Section 16 to take care of it. It cannot be gainsaid that the power to fix the price and to regulate dealings between the parties accordingly is a matter of great importance. When a parallel legislation in the Central field was in operation in regard to price fixation, the State legislature would not have omitted to enact the specific provision empowering the Government to fix the price higher than the minimum level prescribed by that legislation if that was the intention of the legislature. Such provision would have contained norms,

criteria or guidelines governing the higher price fixation or at least left them to be prescribed by Rules. This is also one of the factors which persuades me to think that the price fixation in the guise of regulatory power under Section 16 was not within the contemplation of the U.P. State Legislature. Srikrishna, J. has also referred to this aspect in his judgment. The learned Judge's observations in this behalf are quite pertinent. The conspicuous absence of a specific provision relating to price fixation must be viewed in the back drop of legislative history and the parallel central legislation operating in the field. Both the external and internal aids to construction reasonably point to the conclusion that price regulation was not within the contemplation of State legislature. In fact, that aspect was consciously left out. Above all, the observations in Tika Ramji's case cannot be explained away by clear cut distinguishing features as discussed earlier. I am, therefore, of the view that Section 16 of the U.P. Act 1953 cannot be so construed as to confer the power on the State Government to fix the price. Section 17 of the Act and the Rules are only provisions to ensure prompt payment of price and to provide for recovery in case of default. It is only to this extent a provision exists in regard to price.

I agree with Srikrishna, J, that there is no need to decide the constitutional question whether the fixation of price by the State Government clashes with the provisions of Sugar Control Order 1966 promulgated under the Essential Commodities Act. As and when the legislation is enacted by the State and the price is fixed by the State Government or other designated authority in terms of such statutory provision, the need may arise to test the validity of such provisions in the light of Article 254 of the Constitution. It is a well settled practice of this Court not to render a decision on a constitutional issue on hypothetical basis or in anticipation of future law, especially when the Union of India is not a party to these proceedings. I, therefore, express no view on the Constitutional issue relatable to Article 254.

Having considered the main points at issue, certain aspects concerning the inter-relation between Agreements and State advised price and the role of State machinery in this regard need to be dealt with. The ratio of certain decisions of this Court cited at Bar in a bid to impart binding force to the State advised price should also be considered.

First, I would like to clarify that the signing of an agreement incorporating the State recommended Price should not cloud the issue whether the State Government has statutory authority to fix such price. I agree with Srikrishna, J. that the existence or otherwise of an agreement is not determinative of the crucial controversy relating to the power of the State Legislature or its delegate. If there is no authority to fix the price, the fact that the Agreement is entered into adopting the 'State advised price' does not impart statutory basis to such price. On the other hand, if there is power under the Statute and such power has been demonstrably exercised by the State, there is no need to have recourse to the agreement to sustain the power. It needs to be clarified here that once the agreement is arrived at or executed, the price specified therein, even if it be 'State advised price', has to be paid irrespective of the question whether such price has statutory flavour. At the same time, it must be made clear, as pointed out by Mathur, J., that the agreement cannot be said to have been vitiated on the ground of statutory compulsion for the reason that the statutorily fixed price is incorporated into the agreement. A fortiori, the agreement giving effect to the State advised price is perfectly valid and enforceable unless any vitiating factors under the law of contract are established.

I would however like to make it clear that the State Government or its agents cannot compel or coerce the sugar factories to enter into agreements to pay to the growers the 'State Advised Price', even though it has no statutory power to fix the price. In the absence of such statutory authority, the only course left open to it to ensure higher price to the farmers is to strive to evolve an agreement on price by way of consensus. In such a case, the State advised price can enter into the terms of agreement. Such mutual agreement should be the result of negotiations and voluntary acceptance. In some of the decisions, it has been said that agreed price is the 'State Advised Price'. It may or may not be always so. It depends on the fact whether voluntary agreement as regards the price has been arrived at or not. The super-imposition of State Specified Price into the terms of the agreement by means of an unilateral action on the part of the Government does not obviously pass the muster of agreed price. In short, an agreement cannot be forced on the parties in the absence of statutory backing, though the State machinery can play a role to evolve an agreement through a voluntary process.

The next point which needs to be clarified is that the judgments in Jaora Sugar Mills, (1997) 9 SCC 201 case and S.K.G. Sugars, case relied on by Mathur, J. are of little assistance in answering the crucial issues arising in the present case. As rightly pointed out by Srikrishna, J., in those cases it was found as a matter of fact that there existed valid consensual agreements between the factories and the sugarcane growers. It may be that the official machinery was instrumental in bringing about such agreements, but that is an immaterial factor. Once the agreement is entered into the price specified therein (whether equivalent to State advised price or otherwise), is liable to be paid without raising further questions.

No support can be drawn even from the decision in Maharashtra Rajya Sahakari Shakkar Kharkhana Sangh, (1995) Suppl. SCC 475 case. The following are the observations of R.M. Sahai, J. at para 21 :-

> "..the Central Government did not fix any maximum price obviously because the conditions in the agricultural sector differed from State to State. Therefore, it having fixed a minimum price expects the State to offer remunerative price to its cultivators. In a controlled economy, the price fixation machinery is to be determined by the Government or under the 1966 Order in the manner provided therein....."

The observations must be confined to the facts and the issue arising therein. The distinguishing feature in that case, as pointed out by Srikrishna, J., is that the bye-laws of the co-operative society empowered the State Government to determine the price of the sugarcane to be paid to the members so long as the loans advanced to the co-operative society were not fully paid. It is this bye-law that empowered the State Government to fix the price. No question arose in that case regarding interpretation of Section 16 of U.P. Sugarcane Act or the conflict between the State and Central law.

7. Now, a Summary of conclusions :

1) The State Advised Price has no statutory flavour. It is not fixed or purportedly fixed in exercise of any statutory power. It is only persuasive or recommendatory in nature. The sugar factories cannot be compelled or coerced to pay that price by taking any steps not sanctioned by law.

2) The U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 does not confer the power on the state government to fix the price of sugarcane. Such power cannot be spelt out from section 16.

3) In view of conclusions (1) and (2) it is not necessary to express any opinion on the constitutional issue of repugnancy between the central and the state law. The finding recorded on this aspect by the Allahabad High Court in writ petition No. 36889 of 1996 is set aside. That question of law is left open.

4) The writ or direction issued in some of the writ petitions to 'enforce' the State Advised Price irrespective of the consent of the occupier of sugar factory is declared illegal and hereby set aside.

5) Although the State Advised Price has no sanction of law, the action of the State government in notifying the State Advised Price and advising the sugar factories to comply with the same is not per se illegal. The State Advised Price can serve as the framework within which the agreement as to price can be reached between the cane growers and the sugar producers.

Therefore, the orders issued by the state government / Cane Commissioner communicating the fixation of State Advised Price need not be set aside.

6) There is no legal taboo against the State government machinery playing a role in evolving an agreement between the cane growers and the sugar producers as to the price, without adopting any coercive methods.

7) Once the occupier of sugar factory reaches an agreement with the cane grower may be on the persuasion of the state authorities, to pay the price equivalent to State Advised Price either by executing a formal agreement in this behalf or otherwise, the occupier of the factory is bound to pay such price and in case of default it can be recovered by the State authorities by coercive process laid down in the statute.

8) Whether or not there is an agreement to pay particular price is a question of fact. In the absence of express agreement, it is not impermissible to look into other evidence, if there is a dispute on the question of the price agreed to be paid.

The writ petitions and transferred cases shall be disposed of by the respective High Courts de novo in the light of the declaration of law and the observations made above. Accordingly Civil Appeals/S.L.Ps. other than those mentioned in the last paragraph stand disposed of.

However, I.A.Nos. 13-14 in C.A. Nos.3512-3513 of 1997, S.L.P.(C) Nos. 948 of 2003 and 1363 of 2002 arising out of interim orders and C.A. Nos.1639-1645 of 1999 relating to recovery of agreed price are dismissed. Contempt case to be posted before the appropriate Bench. G.P. Mathur, J.

V.M. Singh has preferred this appeal against the judgment and order dated 11.12.1996 of Allahabad High Court in Civil Misc. Writ Petition No. 36889 of 1986. The appellant V.M. Singh was not a party to the writ petition. We have set aside the impugned judgment and order dated 11.12.1996 of the High Court in Civil Appeals No. 460 and 461 of 1997. Therefore, no separate order is required to be passed in the present appeal.The appeal is accordingly disposed of.