

Triveni Engineering And Industries ... vs State Of U.P. Through Its Secretary, ... on 11 May, 2005

Equivalent citations: 2006(1)AWC736

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Bench: Arun Tandon

JUDGMENT

Arun Tandon, J.

1. The leading issue to be decided in the present writ petition is as to whether the Cane Commissioner of Uttar Pradesh in exercise of powers under Section 15 of the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 (hereinafter referred to as the Act) can reserve a sugar cane area within the territorial limits of Uttar Pradesh in favour of a sugar factory situate in the State of Uttaranchal.

2. The facts relevant for the decision of the present writ petition are as follows. Petitioner, M/S Triveni Engineering Industries Limited, Unit Disband, district Saharapur (Uttar Pradesh) is a sugar factory situate within the territorial limits of the State of Uttar Pradesh (hereinafter referred to as the petitioner-factory). The said sugar factory is engaged in manufacturing of sugar through vacuum process. Respondent No. 3, Laxmi Sugar Mills, Iqbalpur, Roorkee, district Haridwar (Uttaranchal State) (hereinafter referred to as the respondent sugar factory) is also a sugar factory situate in the State of Uttaranchal, engaged in manufacturing sugar through vacuum process. The dispute in the present writ petition revolves around 10 sugar cane purchase centers situate in Deoband, district Saharanpur in the State of Uttar Pradesh, namely (i) Majhol -I (ii) Chounda Heri-I (iii) Mayapur Kapoori (iv) Kapoori (v) Bhatol (vi) Jatol (vii) Beerpur (viii) Nanhera and (ix) Faloda (hereinafter referred to as Cane Purchase Centers.).

3. Before creation of the State of Uttaranchal under the U.P. State Reorganization Act, 2000 the aforesaid sugar cane purchase centers were normally reserved areas of respondent-sugar factory situate in the district of Haridwar which was part and parcel of the State of Uttar Pradesh. After the State of Uttaranchal was created as a separate State under the U.P. State Reorganization act, 2000 the said respondent sugar factory situate in Haridwar, now within the territorial limits of State of Uttaranchal.

4. The Cane Commissioner of Uttar Pradesh for the crushing season 2004-05 by means of order dated 08.10.2004 assigned the disputed sugar cane purchase centers in favour of the petitioner sugar factory. The names of the centers in dispute find mention between serial Nos. 44 to 56 of the

reservation order, copy whereof has been enclosed as annexure-2 to the writ petition. The respondent sugar factory feeling aggrieved by the said order of the Cane Commissioner of Uttar Pradesh dated 08.10.2004 preferred an appeal under Section 15 (4) of the Act before the State Government of Uttar Pradesh. The appeal was numbered as Appeal No. 6 (25) -2004. The Special Secretary, Government of Uttar Pradesh by means of the order impugned in the present writ petition dated 05.01.2005 has set aside the reservation/assignment order dated 08.10.2004 in so far as it pertains to the disputed sugar cane purchase centers in favour of the petitioner sugar factory and the matter has been remanded for deciding the assignment/reservation of the sugar cane purchase centers afresh after consultation with the Cane Commissioner of the State of Uttaranchal with a direction to pass orders only with the consent of the Cane Commissioner of the State of Uttaranchal. It is this order of the State Government of Uttar Pradesh dated 05.01.2005 which has been challenged by means of the present writ petition.

5. I have heard Sri Sudhir Chandra, Senior Advocate, assisted by Bharati Sapru Advocate on behalf of the petitioner, Additional Advocate General Sri Sudhir Agarwal on behalf of the State of Uttar Pradesh and Cane Commissioner of Uttar Pradesh, Sri S.P. Gupta, Senior Advocate, assisted by Sri Yashwant Verma, Advocate on behalf of respondent No. 3 and Sri Amit Kumar Mehra Advocate on behalf of the cane cooperative societies.

7. On behalf of the petitioner it is contended that the U.P. State Sugar Cane (Regulations of Supply and Purchase) Act, 1953 has been promulgated by the State of Uttar Pradesh with reference to, its legislative powers as referable to schedule 7, list 3, item 33 of the Constitution of India. The validity of the said Act has already been upheld in the case of Tika Ram C.H. Ramji v. Union of India and Ors., AIR 1956 Supreme Court 676. From Section 1 (2) of the Act it is apparently clear that it extends to the whole of Uttar Pradesh only. Even otherwise any Act passed by the State Legislature operates within the territorial limits of the State only. Prior to the issuance of the U.P. Reorganization Act, 2000 the territories of the State of Uttaranchal were part and parcel of the State of Uttar Pradesh. However, with the enforcement of the Reorganization Act and with the formation of the State of Uttaranchal the territories carved out ceased to be part and parcel of the State of Uttar Pradesh (reference Section 2 (1), 3 and 4 of the U.P. Reorganization Act, 2000. Under Section 86 of the Reorganization Act there was a transitory provision for the extension of the laws of the State of Uttar Pradesh to the territorial limits of the State of Uttaranchal so long as the State of Uttaranchal did not exercise powers under Section 87 of the Reorganization Act. In exercise of powers under Section 87 of the Reorganization Act the State of Uttaranchal adopted vide order dated 08.10.2002 the provisions of the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 substituting the words 'Uttar Pradesh' by the word 'Uttaranchal' in the said Act.

8. In view of the aforesaid it is submitted that the State of Uttaranchal has now its own Uttaranchal Sugar Cane (Regulations of Supply and Purchase) Act and therefore the sugar factories as well as sugar cane areas within the State of Uttaranchal are now governed by the aforesaid Act of the State of Uttaranchal alone. It is submitted that the memorandum of understanding which was entered into between the governments of Uttaranchal and Uttar Pradesh regarding supply of sugar cane etc. dated 19.03.2001 ceases to be applicable for the following reasons (i) the memorandum of understanding was confined to the crushing season 2000-2001 only; (ii) with issuance of the

adoption notification of the State of Uttaranchal there as now a separate Act regulating supply and purchase of sugar cane for the State of Uttaranchal, therefore, the Cane Commissioner in the State of Uttar Pradesh or for that purpose the State Government of Uttar Pradesh cannot reserve/assign any sugar cane area within the territories of the State of Uttar Pradesh for the sugar factory situate in the State of Uttaranchal; (iii) the agreement runs contrary to law inasmuch as the Cane Commissioner of Uttar Pradesh cannot enter into any agreement with the authorities of the State of Uttaranchal for reservation/assignment of sugar cane centers falling within the territories of the State of Uttar Pradesh as the same would be contrary to the provisions of the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953.

9. It is further submitted that it was open to the State of Uttar Pradesh and State of Uttaranchal to approach the Parliament under Article 252 of the Constitution of India for making a law applicable to both the States in respect of regulation of sugar cane supply and purchase. This has not been done, and, therefore, it is contended that the appeal as filed by the respondent sugar factory situate in the State of Uttaranchal seeking reservation/assignment of the sugar cane centers within the territorial areas of the State of Uttar Pradesh was legally not maintainable. The State Government of Uttar Pradesh could not have passed any orders which would create a right of reservation/assignment of sugar cane areas within the State of Uttar Pradesh in favour of a sugar factory situate in the State of Uttaranchal. The order passed by the State Government of Uttar Pradesh dated 05.01.2005 is, therefore, unsustainable. There being no right for the sugar factory situate in Uttaranchal to seek any reservation/assignment of cane purchase centers situate in the State of Uttar Pradesh the appeal as filed by the respondent sugar factory could not have been entertained by the State Government of Uttar Pradesh.

10. Sri Sudhir Agarwal, Additional Advocate General on behalf of the State of Uttar Pradesh, specifically stated that the power of the Cane Commissioner of the State of Uttar Pradesh to reserve/assign any sugar cane area cannot be extended so as to provide reservation in favour of a sugar factory situate outside the State of Uttar Pradesh. However, he submitted that in view of Section 60 of the U.P. Reorganization Act, 2000 it was statutory liability of the State of Uttar Pradesh to make provision for purchase and supply of sugar cane even after creation of the State of Uttaranchal and, therefore, the memorandum of understanding dated 19.03.2001 which has been extended under the Government Order dated 29.10.2004 for the crushing season 2004-05 is for the benefit of the sugar factories and cane growers of the State of Uttar Pradesh. According to the Additional Advocate General every sugar cane area must necessarily be reserved/assigned to one or the other sugar factory in discharge of the aforesaid liability under Section 60 of the U.P. Reorganization Act, 2000. The State of Uttar Pradesh has entered into the said memorandum of understanding with the State of Uttaranchal in the interest of sugar factories and cane growers of Uttar Pradesh inasmuch as under the memorandum of understanding certain sugar cane areas situate in the State of Uttaranchal have been reserved/assigned in favour of the sugar factories situate in the State of Uttar Pradesh and vice versa. In short the categorical stand taken by the Additional Advocate General is that the memorandum of understanding which forms the basis for reserving sugar cane areas situate in the territorial limits of the State of Uttar Pradesh in favour of the sugar factories situate in the State of Uttaranchal is an exercise undertaken by the State Governments with reference to Section 60 of the U.P. Reorganization Act, 2000. It is fairly conceded

by the Additional Advocate General that except for Section 60 of the Reorganization Act, 2000 the Cane Commissioner, Uttar Pradesh, has no authority to reserve/assign cane areas of Uttar Pradesh in favour of the sugar factories situate outside the territorial limits of the State of Uttar Pradesh including the State of Uttaranchal.

11. Sri S.P. Gupta, Senior Advocate, on behalf of respondent No. 3, sugar factory, submits as follows:--

(a) Under U.P. Act of 1953 no sugar cane grower is bound to offer for sale his sugar cane to any one and if there is no reservation/assignment of sugar cane areas in favour of a sugar factory the sugar cane grower can sell his sugar cane to any sugar factory he so likes. Accordingly the petitioner sugar factory or for that purpose any other sugar factory situate within the State of Uttar Pradesh has no inherent right to purchase sugar cane in the State of Uttar Pradesh. The right to purchase sugar cane from any particular area in favour of a sugar factory arises only under the reservation/assignment order issued by the Cane Commissioner. Therefore, the reservation/assignment by the Cane Commissioner in favour of a sugar factory situate in the State of Uttaranchal does not interfere with any of the rights of the petitioner.

(b) 'Factory' as defined under Section 2 (j) of U.P. Act 1953 as well as under Clause 2 (c) of the Sugar Cane Control Order 1966 is not restricted to a sugar factory situate in the State of Uttar Pradesh only, therefore, the factories situate outside the State of Uttar Pradesh are also covered by the said definition. Accordingly reservation/assignment of sugar areas under Section 15 (1) of the Act can be made in favour of a sugar factory situate outside the State of Uttar Pradesh. If the language of the statute is plain and simple it is not permissible for any Court of law to add words to the language of the statute and, therefore, the words 'situate within the State of Uttar Pradesh' in the definition of the 'factory' under the Act cannot be read as suggested by the petitioner (reference Dental Council of India and Anr. v. Hari Prakash and Ors., 2001 (8) SCC 61, Union of India v. Rajeev Kumar, 2003 (6) SCC 516).

(c) The reservation/assignment of sugar cane areas in favour of a sugar factory situate outside the territorial limits of the State of Uttar Pradesh cannot be said to be beyond the authority of the Cane Commissioner / State Government of Uttar Pradesh inasmuch as the reservation/assignment is done in respect of a sugar cane area situate within the State of Uttar Pradesh. It is immaterial that the reservation/assignment is being made in favour of a sugar factory situate outside the State of Uttar Pradesh.

(d) Under Sub-clause (19) of Clause 5 of the U.P. Sugar Cane (Regulation of Supply and Purchase) Order 1954 a sugar factory situate outside the State of Uttar Pradesh has been permitted to purchase sugar cane from any area within the State of Uttar

Pradesh and a legal fiction has been created whereby such a sugar factory has been deemed to be located within the State of Uttar Pradesh. The legal fiction has to be given its full effect and, therefore, the respondent No. 3 sugar factory while purchasing sugar cane grown within the territorial limits of the State of Uttar Pradesh is deemed in law to be located within the State of Uttar Pradesh and accordingly is entitled to reservation/assignment of sugar cane areas in its favour. In support of the said submission he has placed reliance upon the judgment of the Hon'ble Supreme Court in the case Commissioner Commercial Taxes, Ranchi and Anr. v. Swarn Rekha Cokes & Coals (P) Ltd. reported in (2004) 6 SCC 689.

DECISION-

11. It is needless to highlight that controversy in the present writ petition is not with regard to the rights of sugar cane growers to sell their produce to a factory outside the State of Uttar Pradesh. The dispute is with regard to reservation/assignment of a sugar cane area situate within the territorial limits of the State of Uttar Pradesh in favour of sugar factory situate outside the State of Uttar Pradesh whereby it becomes obligatory for the cane powers of reserved/assigned areas of the State of Uttar Pradesh to sell their produce (sugar cane) to said particular factory only. It may be emphasized that the order of reservation/assignment makes it mandatory for the cane growers to sell their produce (sugar cane) to the reserved/assigned sugar factory only and to no other sugar factory. However, cane grower is free to sell his sugar cane to other persons requiring the same (except the sugar factory). (Reference Tika Ram's Case, (supra)).

12. In view of the rival contentions raised the basic issue is to be adjudicated is as to whether the provisions of the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 apply to the sugar factories situate outside the State of Uttar Pradesh only and as to whether the Cane Commissioner of the State of Uttar Pradesh can exercise any jurisdiction/authority to provide for reservation/assignment of sugar cane areas falling within the territorial limits of the State of Uttar Pradesh in favour of sugar factories situate outside the territorial limits of the State of Uttar Pradesh.

13. The territory of India comprises of States, Union territories and other territories which may be acquired by the Union at any time (Reference Article 1 of the Constitution of India). The crux and pivotal point of the federal constitution is the division of powers and functions between the Centre and the regions. The distribution of legislative powers between the Centre and the regions is structure of the federal system which continues to revolve around the central point. The Indian Constitution contains a very exhaustive scheme of distribution of powers and functions between the Centre and the States. The Indian Constitution seeks to create three functional areas (a) an exclusive area for the Centre, (b) exclusive area for the States, and (c) a common and concurrent area in which both - Centre and the States may operate simultaneously subject, however, to over all supremacy of the Centre. The Parliament as such may make laws for the whole of India or part thereof. Any law made by the Parliament is not invalid merely because it has extra territorial operation. (Reference Article 245).

14. The State Legislature on the other hand may make laws having territorial operation with the State concerned (Reference Article 2435 (1). The State Legislature has no legislative competence to make laws having extra territorial operation. A State can legislate exclusively for its own territory and a State Law can affect persons, property or things within the State and not outside the State. A State Law will not be valid if it purports to affect the persons, properties or things outside the State. The State Law may apply to persons, property moveable and immoveable and things within the State territory subject to doctrine of territorial nexus.

15. It is a settled proposition of law that there is a general presumption that the legislature does not intend to exceed its jurisdiction. It is a sound principle of construction that the Acts of legislature should possibly receive such an interpretation as will make it operative and not inoperative (Reference: State of Bihar v. Charusila Dasi, AIR 1959 SC 1002, para 14).

16. For the purposes of appreciating the territorial extent to which the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 applies it would be necessary to refer to Section 1 (2) of the said Act which reads as follows:--

"1. Short title, extend and commencement.-

(1) This Act may be called the, U.P. Sugarcane (Regulation of Supply land Purchase) Act, 1953.

(2) It extends to the whole of Uttar Pradesh."

17. India is a Union of States. The Parliament is empowered to enact a law to admit into Union or establish new States on such terms and conditions as enshrined in Article 2 of the Constitution of India. The Parliament has been empowered by Article 3 of the Constitution of India to reorganize inter se the territories of the States constituting the Union Territory, It is in exercise of powers under Article 3 of the Constitution of India that the Parliament had promulgated the U.P. Reorganization Act, 2000. By reorganizing the territories of the State of Uttar Pradesh under the said Act the State of Uttaranchal has been created and is now a separate State recognized as such by the Constitution itself (reference schedule 1 item 13 and schedule 1 item 27 of the Constitution of India). Article 245 read with Article 246 of the Constitution of India confers power upon the Parliament to make law for the whole of India or part thereof subject, however, to the other provisions of the Constitution, including the lists appended to Schedule 7 of the Constitution of India. Similarly the State Legislature has been conferred power to make laws to be operative only within the territorial limits of the State concerned in respect of matters enumerated in the lists II and III. The State Legislature has no legislative competence to make law having extra territorial operation. Articles 245 And 246 of the Constitution of India read as follows:--

"245. Extent of laws made by Parliament and by the Legislature of States.-

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make

laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation.

246. Subject matter of laws made by Parliament and by the Legislatures of States.-(1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List').

(2) Notwithstanding anything in Clause (3), Parliament and subject to Clause (1) the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List').

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

18. Sugar cane being an item of food stuff is covered by schedule 7, list III, item 33 of the Constitution of India under the concurrent list and, therefore, the State Legislature of Uttar Pradesh had the power to frame a law under Article 245 of the Constitution of India for regulating the supply and purchase of sugar cane to be operative within the territorial limits of the State of Uttar Pradesh only. Under Article 252 of the Constitution of India. It was open to the State of Uttar Pradesh as well as the State of Uttaranchal to have requested the Parliament to frame a law which would have been made applicable to the territorial limits of both the States but the same has not been done. In view of the aforesaid there is no legislation made by the Parliament which may operate in the territorial limits of the State of Uttar Pradesh and the State of Uttaranchal so far as the sale and purchase of sugar cane is concerned.

19. In view of the aforesaid constitutional provision there is no room to doubt that the U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953 as promulgated by the State Legislature of Uttar Pradesh while referring to the sugar factories as well as sugarcane areas necessarily refer to the sugar factories and the sugar cane areas within the territorial limits of the State of Uttar Pradesh as no law framed by the State Legislature is expected to extend to any part outside the territorial limits of the State, reference Article 245 of the Constitution of India.

20. At this stage reference may also be made to the adaptation order of the State of Uttaranchal dated 08.10.2002 issued in exercise of power under Section 87 of the Uttar Pradesh Reorganization Act, 2000. For ready reference said Section 87 is quoted below:-

"87. Power to adapt laws.- For the purpose of facilitating the application in relation to the State of Uttar Pradesh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.-In this section, to expression 'appropriate Government' means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government. "

21. It is established beyond doubt that with effect from 08.10.2002 the State of Uttaranchal has its own law known as Uttaranchal Sugar Cane (Regulations of Supply and Purchase) Act, for the purposes of regulating the supply and purchase; of sugar cane within the territorial limits of the State of Uttaranchal. The power of the Cane Commissioners of the respective States for reserving any sugar cane area in favour of a sugar factory is necessarily confined to the territorial limits of the respective States. As already noticed hereinabove the Additional Advocate General has fairly conceded that in view of the constitutional and statutory provisions the Cane Commissioner of the State of Uttar Pradesh cannot reserve any sugar cane area falling within the territorial limits of the State of Uttar Pradesh for a sugar factory situate outside the territorial limits of the State of Uttar Pradesh. However, he defends the memorandum of understanding and the reservation order in favour of sugar factories situate within the territorial limits of the State of Uttaranchal in view of Section 60 of the U.P. Reorganization Act, 2000 (which shall be dealt with later).

22. The contention raised on behalf of respondent No. 3 sugar factory that the words 'sugar factory' as mentioned in Section 2(j) of the Act of Uttar Pradesh do not necessarily mean that the sugar factory must be situate within the territorial limits of the State of Uttar Pradesh, is legally not correct as any provision under the State Act including the definition clause must necessarily be read in the back ground that the State Legislature has the competence to frame a law in respect of the subject, properties and things situate within the territorial limits of the State only. Further the words 'sugar factory' have to be read in conjunction with other provisions of the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 and Rules framed thereunder. Some relevant provisions for the purposes of this case would be Sections 12, 14, 15, 21, and 22-A are quoted below;-

"12. Estimate of requirements.-(1) The Cane Commissioner may for purpose of Section 15, by order, require the occupier of any factory to furnish in the manner and by the date specified in the order to the Cane Commissioner an estimate of the quantity of cane which will be required by the factory during such crushing season or crushing seasons as may be specified in the order.

(2) The Cane Commissioner shall examine every such estimate and shall publish the same with such modifications, if any, as he may make.

(3) An estimate under Sub-section (2) may be revised by an authority to be prescribed.

14. Power of Survey etc.- (1) The State Government may, for purposes of Section 15, by order provide for-

(a) a survey to be made of the area proposed to be served or assigned for the supply of cane to a factory and the recovery of the cost of_ such survey from the occupier of the factory;

(b) the appointment of an officer for purposes of such survey, his duties and powers;

(c) the procedure in accordance with which the survey shall be made;

(d) the assistance and facilities to be provided to the officer appointed in pursuance of Clause (b) by the persons owning or occupying land in the area; and

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

(2) Any amount due from the occupier of a factory in pursuance of Clause (a) of Sub-section (1) shall be recoverable from such occupier as an arrear of land revenue.

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' Cooperative 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 subsection (1)."

Determination of occupier for the purposes of Section 22.-

(1) Where the occupier of a factory or gur, rab or khandsari Sugar Manufacturing Unit is a firm or other association of individuals, not being a company, any one or more of the partner or member thereof may be prosecuted and punished under this, Act for any offence for which the occupier of the factory of the Gur, Rab or Khandsari Sugar Manufacturing Unit is punishable.

Provided that the firm or association may give notice to the Collector that it has nominated one of its members to be occupier of the factory for the purpose of this sub-section and such individual shall be deemed to be the occupier for the purpose of this sub-section until further notice canceling his nomination is received by the Collector or until he ceases to be a partner or member of the firm or association.

(2) Where the occupier of a factory is a company any one or more of the directors thereof, or, in the case of a private company any one or more of the share holders thereof may be prosecuted and punished under this Act for any offence for which the occupier of the factory is punishable.

Provided that the company may give notice to the Collector that it has nominated a director, or in the case of a private company a share holder to be the occupier of the factory for the purpose of this sub-section and such director or share holder shall be deemed to be the occupier of the factory for the purpose of this sub-section until further notice canceling his nomination is received by the Collector or until he ceases to be a director or share holder.

22-A Powers of certain officers to investigate into offences punishable under this Act-(I) An inspector specially empowered in relation to cases generally or to any class of cases by the State Government, by notification, in that behalf may investigate into any offence punishable under this Act committed within the limits of the area in which such officer exercise jurisdiction.

(2) Any such officer may exercise the same powers in respect of such investigation as an officer-in-charge of a police station may exercise in a cognizable case under the provisions of Chapter XII of the Code of Criminal Procedure, 1973."

23. From the aforesaid statutory provisions it will be seen that the Cane Commissioner is required to obtain an estimate of the sugar cane required by the sugar factory for the purposes of providing reservation/assignment of cane areas under Section 15. The Cane Commissioner of the State of Uttar Pradesh cannot ask a sugar factory situate outside the State of Uttar Pradesh to submit an estimate in respect of the requirement of sugar cane for a particular crushing season nor he can verify or issue orders for determining the requirement of sugar cane by a sugar factory situate outside the State of Uttar Pradesh in a particular year inasmuch as he has no territorial jurisdiction to call for statement or direct inspection etc of the sugar factory situate outside the territorial limits of the State of Uttar Pradesh. The provisions of Section 12 of the Act read with Rules 19, 20 and 21 of the of the Sugarcane (Regulation of Supply Land Purchase) Rules, 1954 also establish that the authorities constituted under the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 do not exercise any jurisdiction over the sugar factories situate outside the territorial limits of the

State of Uttar Pradesh.

24. For the applicability of the provisions of the U.P. Sugar Cane (Regulations of Supply and Purchase) Act 1953 it is necessarily to be inferred that the 'sugar factories' referred to under the Act necessarily refer to the sugar factories situate within the territorial limit of the State of Uttar Pradesh only.

25. In view of the aforesaid this Court has no hesitation to hold that the provisions of the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 apply to the sugar factory and the cane areas situate within the territorial limits of the State of Uttar Pradesh only and, therefore, no reservation/assignment order can be issued under the said Act in favour of sugar factories situate outside the territorial limits of the State of Uttar Pradesh. Since respondent No. 3 sugar factory is situate outside the territorial limits of the State of Uttar Pradesh it was not entitled for any sugarcane area being reserved or assigned in its favour under Section 15 of the Act. Therefore respondent No. 3 could not have preferred any appeal before the State Government under Section 15 (3) of the Act claiming such a right and the State Government in turn could not have allowed the appeal so filed by the respondent No. 3 sugar factory as there exists no legal right in the said respondent sugar factory to claim any reservation/assignment of the sugarcane areas situate within the territorial limits of the State of Uttar Pradesh. The entire proceedings initiated by the respondent No. 3 by way of appeal before the State Government were, as such, totally misconceived and were liable to be rejected as such.

26. The courts of law in order to decide whether or not a State law has extra territorial operation at times have invoked the doctrine of territorial nexus. It signifies that the object to which the law applies need not be located within the territorial boundaries of the State but what is necessary is that it should have sufficient territorial connection with the State. If there is territorial nexus between the subject matter of any of the State making the law then the statute in question is not regarded as having extra territorial operation. The Hon'ble Supreme Court has stated the principle of territorial nexus in the case of State of Andhra Pradesh v. National Thermal Power Corporation Ltd, 2002 (5) SCC 203 which reads as follows:-

"It is by reference to the ambit or limits of territory by which the legislative powers vested in Parliament and the State Legislatures are divided in Article 245. Generally speaking, a legislation having extraterritorial operation can be enacted only by Parliament and not by any State Legislature; possibly the only exception being one where extra-territorial operation of a State legislation is sustainable on the ground of territorial nexus. Such territorial nexus, when pleaded must be sufficient and real and not illusory. "

27. In the facts of the present case neither territorial nexus has been pleaded on behalf of respondents nor argued.

28. For appreciating the contention raised on behalf of respondent No. 3 based on the strength of Clause 5 (19) of the U.P. Sugarcane (Regulation of Supply and Purchase) Order, 1954 it would be

worthwhile to reproduce Clause 5(19) of the said order which reads as follows:-

"5. General provisions regarding purchase of cane.-

(19) The occupier of a factory situate outside Uttar Pradesh may make purchases of cane in Uttar Pradesh either himself or through any person employed or appointed by him in this behalf, and in all such cases he or his employees' or other persons acting on his behalf shall be bound by the rules and this order as if the factory were situate in Uttar Pradesh. "

29. The deeming fiction created under the said clause cannot be extended so as to enlarge the definition of 'sugar factory' as contained under the Act itself. The deeming fiction is to be restricted for the purpose it has been so provided.

30. Even otherwise a bare reading of the said clause would establish that it permits the occupier of a sugar factory situate outside the State of Uttar Pradesh to purchase sugar cane in the State of Uttar Pradesh. The aforesaid clause does not provide for any reservation/assignment of sugar cane area being made in favour of occupier of a sugar factory situate outside the territorial limit of the State of Uttar Pradesh. The said clause does not support the case of respondent No. 3. In fact it runs contrary to the submissions made on behalf of respondent No. 3 inasmuch as if according to basic contention of respondent No. 3 i.e. sugar factory situate outside the territorial limits of the State of Uttar Pradesh are also covered by the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, there was no need for any other specific permission being granted for purchase of sugarcane by the sugar factories situate outside the State of Uttar Pradesh under Clause 5 (19) of the U.P. Sugarcane (Regulation of Supply and Purchase) Order, 1954, referred to above. Clause 5 (19) leads to only one conclusion that for permitting the sugar factories situate outside the State of Uttar Pradesh to purchase sugar cane from the areas falling within the territorial limits of the State of Uttar Pradesh a provision has been made for enabling the said purchase only. The deeming provision under the clause cannot be read so as to enlarge the applicability of the provisions of the U.P. Act of 1953 to sugar factories situate outside the territorial limits of the State of Uttar Pradesh.

31. The legal proposition laid down by the Hon'ble Supreme Court in the case of Dental Council of India (supra) is not in doubt. However, the said judgment is not applicable in the facts of the present case for the reasons already detailed hereinabove. Similarly the law as laid down by the Hon'ble Supreme Court in the case of Commissioner Commercial Taxes (Supra) is also well established. However, the said legal proposition does not help respondent No. 3 in any manner in the facts of the case.

32. Lastly the contention raised by the Additional Advocate General on behalf of the State with reference to memorandum of understanding dated 06.03.2001 may now be dealt with.

33. The memorandum of understanding entered into between the Cane Commissioners of the State of Uttar Pradesh and the State of Uttaranchal on 06.03.2001 ceases to have any application for the following reasons:-

(a) The said agreement was. for the crushing season 2000-2001 only, relevant clause whereof reads as follows:--

^^isjkbZ l= 2000&2001 ds fu, xUuk vk;qDÜk mÜkj izns'k }kjk tkjh lqj{k.k vkns'k la;k 1171@ lh @Ø;&lqj{k.k fnukad 25&10&2000] 28&10&2000 ,oa 9&11&2000 }kjk puhfeyksa ds fy, lqjf{kr fd;k x;k {ks=@Ø; dsUnz nksuksa jkT;ksa esaa vofLFkfr uhph feykksa ds y, ;Fkkor j[kk tk,xkA**

(b) Such an arrangement could have been made with reference to Section 86 of the U.P. Reorganization Act, 2000. However, it is not necessary to deliberate on the said issue as with the enforcement of the Adoption Order dated 08.10.2002 referable to Section 87 of the U.P. Reorganization Act, 2000 the State of Uttaranchal has now its own Regulations and Purchase Act and there being no provision under the Act of Uttar Pradesh or under the Act of Uttaranchal to enter into a memorandum of understanding between the Cane Commissioners of the State of Uttar Pradesh and the State of Uttaranchal for the purposes of reservation/assignment of sugar cane areas in respect of the sugar factories situate outside the territorial limits of the State of Uttar Pradesh, the memorandum of understanding cannot be the basis for providing reservation/assignment of sugarcane centres in favour of respondent No. 3.

(c) The Government Order dated 29.10.2004 extending the applicability of the memorandum of understanding for the year 2003-04 is merely a letter written by the Secretary of Sugar Cane Department. It is not referable to Article 162 of the Constitution of India the said letter cannot be said to have been issued in exercise of executive powers by the State of Uttar Pradesh nor any such contention has been raised.

34. Thus the memorandum of understanding which has lost its force and even otherwise being not legally sustainable cannot be the basis for reservation of sugar cane areas for the factory situate outside the territorial limit of the State of Uttar Pradesh.

35. Learned Additional Advocate General is not correct in justifying the memorandum of understanding with reference to Section 60 of the U.P. Reorganization Act, 2000 inasmuch as discharge of statutory functions by the authorities of the State of Uttar Pradesh, in the present case Cane Commissioner, under an enactment while providing reservation/assignment to the sugar factories cannot be termed as a liability of the State of Uttar Pradesh with reference to Section 60 of the U.P. Reorganization Act, 2000.

36. For ready reference Section 60 of the U.P. Reorganization Act, 2000 is quoted below:-

"Apportionment of assets or liabilities by agreement. Where the successor States of Uttar Pradesh and Uttaranchal agree that the benefit or burden of any particular asset or liability should be apportioned between them in a manner other than that

provided for in the foregoing provisions of this Part, notwithstanding anything contained therein, the benefit or burden of that asset, or liability shall be apportioned in the manner agreed upon."

37. The word 'liability' as used in Section 60 has necessarily to be read along with the word 'assets' as used in the said Section. Extension of the meaning of the word 'liability' so as to require the State authorities to provide for reservation of sugar cane areas in favour of sugar factories situate outside the State of Uttar Pradesh would be stretching too far the meaning of the word 'liability'.

38. Since respondent No. 3 sugar factory is situate outside the territorial limits of the State of Uttar Pradesh it has no legal claim to seek reservation/assignment of sugar cane areas situate within the State of Uttar Pradesh, therefore, the respondent No. 3 had no statutory right to file an appeal before the State Government of Uttar Pradesh against the order of reservation/assignment passed by the Cane Commissioner of Uttar Pradesh in exercise of powers under Section 15 (2) of the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 nor the State Government could have entertained the appeal nor it could have passed an order creating a right in the respondent No. 3 to seek reservation/assignment of sugar cane areas within the State of Uttar Pradesh. No consultation is necessary under the statutory provisions of the U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 with the Cane Commissioner of Uttaranchal before providing reservation/assignment. The State Government of Uttar Pradesh while passing the impugned order has failed to appreciate the aforesaid legal aspect of the matter and has illegally issued directions on an appeal filed by respondent No. 3 sugar factor/ situate outside the territorial limits of the State of Uttar Pradesh.

39. In view of the aforesaid the writ petition is allowed. The order dated 05.01.2005 passed by the State Government of Uttar Pradesh is hereby quashed.