

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No.204 of 2008 (M/B)

1. M/s Uttam Sugar Mills Ltd.
Registered office at
7-C, Ist Floor, J-Block
Shopping Centre Saket, New Delhi
Unit: Libberheri, District Haridwar
Through Shri H.N. Tyagi
DGM - Commercial
 2. M/s Kashipur Sugar Mills Ltd.
Kashipur, District U.S. Nagar
Through its Occupier
Shri S. K. Bhatnagar
 3. M/s Lakshmi Sugar Mills Co. Ltd.
Registered office at P.O. Iqbalpur
District Haridwar
Through Shri Bhopal Singh
General Manager (F&A)
 4. Ms. R. B. N. S. Sugar Mills Ltd.
Registered office at Lakshar
District Haridwar
Through Shri S. K. Mittal
General Manager
 5. S. K. Jain s/o Shri S. N. Jain
R/o K1/147 Kavinagar, Ghaziabad
Share-holder of petitioner no.1.
- ... Petitioners
- Versus

1. State of Uttarakhand
Through its Secretary
Sugar Industry & Cane Development Dept.
Civil Secretariat, Dehradun
2. Cane & Sugarcane Commissioner
State of Uttarakhand, Dehradun
3. Union of India through its Secretary,
Ministry of Consumer Affairs, Food and Public
Distribution, Krishi Bhawan, New Delhi. ... Respondents

AND

Writ Petition No.205 of 2008 (M/B)

1. M/s Uttam Sugar Mills Ltd.

- Registered office at
7-C, 1st Floor, J-Block
Shopping Centre Saket, New Delhi
Unit: Libberheri, District Haridwar
Through Shri H.N. Tyagi
DGM - Commercial
2. M/s Kashipur Sugar Mills Ltd.
Kashipur, District U.S. Nagar
Through its Occupier
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Ministry of Consumer Affairs, Food and Public
Distribution, Krishi Bhawan, New Delhi.
- ... Respondents

Mr. Pinaki Misra, Advocate with Mr. Akhilesh Kalra, Mr. Arjun Pant, and Mr. Paresh Tripathi, Advocates for the petitioners.

Mr. L. P. Naithani, Advocate General for respondent nos.1 & 2.

Mr. U. K. Uniyal, Senior Advocate for applicants in Impleadment Application.

Mr. Anurag Bisaria, Advocate for the Caveator/Intervenor.

Date of Delivery of Judgment : 31st March, 2008

JUDGMENT

**Coram: Hon. V. K. Gupta, C.J.
Hon. J. C. S. Rawat, J.**

Per:- Hon. J. C. S. Rawat, J.

Since there is a common question of law and fact involved in both petitions, therefore, both petitions have been heard together and are being disposed of by this common judgment.

2. By means of Writ Petition No.204 of 2008 (M/B), the petitioners have sought the following reliefs :-

“(i) issue a writ, order or direction or writ in the nature of certiorari quashing the notification/order dated 23rd January, 2008, fixing the SAP of Rs.132/- per quintal for early maturing cane varieties and Rs.127/- per quintal for general cane varieties, issued by respondent no.1, as contained in Annexure No.1 to the writ petition.

(ii) issue a writ, order or direction or writ in the nature of mandamus declaring section 16 of the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 (adopted by Uttarakhand) as unconstitutional.

(iii) issue an appropriate writ, order or direction or writ in the nature of mandamus declaring that the State Government would have no authority to fix a price for sugarcane till adequate and appropriate guidelines are framed and incorporated in the provisions of the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 (as adopted by Uttarakhand).

(iv) issue a writ, order or direction or writ in the nature of mandamus directing the respondents to appoint a Committee consisting of experts in the field, including industry representative, to fix the price of sugarcane after considering the guidelines, which may be framed by the respondent State.

(v) issue a writ, order or direction or an appropriate writ calling for the records of the State Government and quashing its decision fixing State Advised Price for 2007-08.

(vi) issue a writ, order or direction or writ in the nature of mandamus commanding the respondent State to refix a fair and reasonable price for sugarcane for the crushing season 2007-08 after taking into consideration relevant factors, as enumerated in the writ petition.

(vii) Issue a writ, order or direction permitting the petitioners to pay cane price for the crushing season 2007-08 equal to the Statutory Minimum Price fixed by the Central Government till such time as guidelines are framed under the Act.

(viii) Issue a writ order or direction in the nature of certiorari quashing Form C aforesaid.

(ix) issue an appropriate writ, order or direction declaring the fixation of State Advised Price under the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 as void in view of Article 254 of the Constitution of India.

(x) Issue a writ order or direction in the nature of mandamus directing the respondents not to insist upon the execution of any agreement to be executed in Form-C till appropriate guidelines are framed for fixation of State Advised Price and further not to enforce any agreement executed by the petitioners in Form-C.

(xi) issue a writ, order or direction in the nature of mandamus, including diversion of cane centre be taken against the petitioners on the basis of the arrears arising out of the State Advised Price.

(xii) issue an ad-interim mandamus to the above effect.

(xiii) issue such other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case; and

(xiv) award the cost of the petition to the petitioners."

3. By means of Writ Petition No.205 of 2008 (M/B) moved under Article 226 of the Constitution of India, the petitioners have sought the following reliefs:-

"(i) Issue a writ, order or direction or writ in the nature of mandamus summoning the record from the respondent State determining the State Advised Price (SAP) of sugarcane for the crushing season 2006-07 and declare the same to be arbitrary, illegal and void abinitio and further the consequential right accrued in favour of the petitioners may be declared to flow in their favour.

(ii) Issue a writ, order or direction or writ in the nature of certiorari quashing the order dated 28th December, 2006 issued by the State Government fixing the State Advised Price of sugarcane for the crushing season 2006-07, after the aforesaid declaration, as contained in Annexure No.1 to the writ petition.

(iii) issue a writ, order or direction or writ in the nature of mandamus commanding the respondents not to enforce the State Advised Price, as laid down in the impugned order dated 28th December 2006 issued by the State Government, as contained in Annexure No.1 to the writ petition, against the petitioners.

(iv) issue a writ, order or direction or writ in the nature of mandamus commanding the respondents not to take any coercive steps against the petitioners for recovery and enforcement of the impugned State Advised Price for the cane crushing season 2006-07.

(v) issue an ad-interim mandamus to the above effect.

(vi) issue any other appropriate writ, order or direction in favour of the petitioners as the Hon'ble Court may deem fit in the circumstances of the case.

(vii) award the costs of the petition to the petitioners.”

4. In substance, the writ petitioners in W.P. No.204/2008 (M/B) have challenged the Government Notification/Order dated 23.01.2008 fixing the State Advised Price (SAP) of Rs.132/- per quintal for early maturing cane varieties and Rs.127/- per quintal for general cane varieties for the crushing season 2007-2008. In the latter petition, the petitioners have challenged the Government Notification dated 28th December, 2006 fixing the State Advised Price (SAP) of sugarcane for the crushing season 2006-2007. The grounds of challenge in both petitions are common. It has been alleged in the petitions that the sugarcane is an essential commodity under the Essential Commodities Act, 1955 (*hereinafter referred as the E.C. Act*) which 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. In exercise of the said Act, the Central Government has made the Sugarcane (Control) Order 1966 *{hereinafter referred as ‘the 1966 Order (Central)}*. The object of this Order was to promote the sugar industry and to eliminate unnecessary impediments in the production of sugar. The Central Government after a thorough consideration had fixed a Statutory Minimum Price (for short ‘SMP’). It was further alleged in the petitions that while fixing the ‘SMP’, the Central Government has consulted the appropriate bodies and associations and also made necessary enquiries, including the collection of relevant data and its evaluation. The State of U.P. has enacted the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 *(hereinafter referred as ‘U.P. Act, 1953)* and this Act was adopted by the State of Uttarakhand vide Uttarakhand Sugarcane (Regulation of Supply & Purchase) Act 2000. Section 16 of U.P. Act 1953 empowers the State Government to regulate the distribution, sale and purchase of cane in any reserved or assigned areas. The Constitution Bench of Hon’ble Apex Court in the case of **U.P. Cooperative Cane Unions Federations Vs. West U.P. Sugar Mills Association & others reported in 2004 (5) SCC 430** has held in its majority judgment that the power conferred upon the State Government under section 16 of the U.P. Act, 1953 includes the power of State Government to determine State Advisory Price *(hereinafter referred as ‘S.A.P.’)* to be paid by the occupier of the factory for purchasing sugarcane intended to be used by the factory. In exercise of the power conferred under section 16 of the U.P. Act 1953, the State Government fixed the S.A.P. at the rate of Rs.132/- per quintal for early maturing cane varieties and Rs.127 per quintal for general cane varieties. The State has disregarded the various factors which are required to be taken into consideration for fixing of the S.A.P. of sugarcane. It was further alleged that there is a provision under

Sections 3 and 4 of the U.P. Act, 1953 to constitute a Sugarcane (Control) Board. The Uttarakhand State Government has not constituted the Board as provided under section 3 & 4 of the Act. Under the legislative intent, it is obligatory on the part of the State Government to seek the advice of sugarcane board while fixing the S.A.P. The State Government while fixing the S.A.P. for the crushing season 2007-08 has neither considered any guidelines nor relevant factors, nor prevailing sugar prices, nor the cane price prevailing in other sugarcane producing States which are much lower than the cane price of Uttarakhand. The petitioners had executed Form-B & C agreement which is a dotted line agreement. Petitioners' sugar factories had no option, but to purchase sugarcane at the SAP fixed by the State Government and they had to sign in the agreement in Form B & C prescribed in the 1954 Rules. The said Forms leave no choice for sugar factories, thus, the agreement in Form B & C indicated above renders nugatory the ability of the petitioners' company have entered into an independent agreement with the farmers for purchase of sugarcane at a price lower than the S.A.P. A number of representations were made to the authorities concerned. When no heed was paid by the State Government, the petitioners filed the writ petitions before this Court.

5. The State Government has filed the counter affidavit on behalf of respondent no.1 & 2 alleging therein that the sugarcane growers and the petitioners have already acted upon the agreement executed in Form B & C for the year 2006-07 wherein the petitioners have agreed to purchase the sugarcane at the rate fixed by the State Government for the crushing season 2006-2007 as is apparent from perusal of Clause 1 of said agreements. Copies of these agreements have been filed with C.A. – 1 to 3. The

respondent no.2 have also alleged that all the petitioners entered into an agreement to purchase the sugarcane at the rate fixed price by the State Government for the crushing season 2007-08 and the copies of these agreements have been filed as C.A.-4 to 7. It was further alleged that the Government fixed S.A.P. at the rate of Rs.132/- per quintal for early maturing cane varieties and Rs.127/- per quintal for general varieties for the purchase of sugarcane in the year 2006-07 and these rates of SAP were not changed for the crushing season of 2007-08. It was further alleged in the counter affidavit that after executing the agreement the occupier of the factory cannot turn around from the agreement executed in Form 'C' by saying that it is a standard format and doted line contract. The Central Government is empowered to fix the minimum price of sugarcane and it can be higher than the minimum price which may in the nature of agreed purchase price between the occupier of the factories and the sugarcane growers and sugarcane cooperative societies. The Constitution Bench of the Hon'ble Apex Court in **U.P. Cooperative Cane Unions Federations (supra)** has held that the regulatory power is possessed with the State Government under section 16 of U.P. Act, 1953 and the regulatory power also include the power to fix the price of sugarcane. If it is held that the State under the power of regulation cannot fix the price then the statutory provisions contained in the U.P. Act, 1953 and the Order thereunder i.e. 1954 would be completely one sided agreement operating for the benefit of sugarcane factories giving them many advantages and no corresponding obligation would have to be given to the cane growers and leaving the cane growers in the lurch. At last, the respondents prayed for dismissal of the writ petitions.

6. The Sehkari Ganna Vikas Samiti of Iqbalpur Roorkee (District Haridwar), Jwalapur (District Haridwar), Laksar (District Haridwar) and Kashipur have also filed impleadment applications alongwith their affidavits. They have alleged in their applications that the applicants are the registered societies under the Co-operative Societies Act and they supply the cane from the cane growers to the sugar factories. The sugar factories cannot directly purchase cane from the cane growers. The applicants' societies get payment from the sugar factory and disburse it among the cane growers. The petitioners' sugar factories and the societies have executed an agreement for supplying the cane and now they cannot turn around. These interveners were allowed to intervene in the matter.

7. The pleadings have been exchanged in Writ Petition No.204 of 2008 (M/B). The parties have adopted common pleadings in both petitions because the grounds of challenge in both petitions are common.

8. We have heard the learned counsel for the parties on admission and perused the record.

9. Learned counsel for the petitioners contended that neither they have challenged nor they can challenge the existing power of the State about the fixation of SAP in view of the judgment rendered by the Hon'ble Supreme Court in **U.P. Cooperative Cane Unions Fed. (supra)**. It was further contended that the Central Government in its 1966 Order has categorically laid down the norms for fixing the SMP whereas the State legislation did not provide any machinery, norms or guidelines to exercise the power in this regard; in absence of guidelines norms and criteria prescribing the SAP

render the section 16 of U.P. Act, 1953 unconstitutional; the State Government did not consider the relevant factors while fixing the S.A.P.; the State Government considered the irrelevant factors to fix the S.A.P.; and S.A.P. was fixed arbitrarily. It was further contended that section 3 of U.P. Act, 1953 provides to constitute a Sugarcane (Control) Board and the function of the Board is to advise the State Government on the matters pertaining to regulation of supply and purchase of sugarcane. The State Government inspite of the mandate of law has not established any Sugarcane (Control) Board in the State. The Government has fixed the sugarcane price on its whims and fancies. It was further contended that the State Government could not demonstrate before the Court that as to what method was adopted or on whose advice the Government fixed the SAP of sugarcane for the year 2006-07 and 2007-08. It was further contended that it is evident from non-production of such reports or documents that the State Government has not adopted any norms or guidelines while fixing the State Advice Price.

10. The Advocate General appearing on behalf of respondent nos.1 & 2 contended that the provisions regarding the constitution of the Board has been deleted by the State of U.P. by the Amendment Act, No.17 of 2006 by which section 3 & 4 of the said Act have been omitted. The State Government of Uttarakhand is proposing not to constitute the sugarcane board and to delete the provisions of section 3 & 4 of U.P. Act, 1953. It was further contended that the reservation or the assignment of area is made for the benefit of a sugar factory under the provisions of the U.P. Act, 1953. The agreements in form B and C executed by the cane growers or cane growers' cooperative society in favour of occupier of a factory are also for

the benefit of sugar factory because these agreements gave an assurance of continuous supply of sugarcane on the days indicated in the requisition slips issued by the sugar factories so that there may be not any problem in getting the raw material throughout the season. If the cane growers and the Co-operative societies does not provide the adequate quantity of sugarcane as required by the sugar factories in the requisition slip, the cane growers or the society, as the case may be, are penalized for the same. It was further contended that in absence of such agreements the sugar factories will also be the loser as they may face great problem in getting the supply of sugarcane according to their requirements. The occupiers of the factories are keen on execution of the agreements. The agreement is not only in favour of the cane growers, but also in favour of the factories. The agreement is one composite transaction and it is not open to them to contend that the terms of relating to price should not be enforced as their consent in that regard was obtained on a doted line form; the owners and occupiers of the factory are fully bound by the agreement and the factory owners cannot assail the only clause relating to price of sugarcane on the ground that their consent was obtained forcibly on a doted line form.

11. Learned Senior Counsel appearing for the interveners adopted the arguments advanced by the learned Advocate General.

12. Before proceeding to discuss on merit and the contentions raised in both petitions, it would be just and appropriate to examine the legal position in this regard. The sugar industry is a controlled industry in the sense that the Government has control on the sugarcane production, distribution and prices. There are Central and State Legislations on the subject.

13. The Sugarcane Act, 1934 was initially enacted by the Central Legislature. It regulated the price of sugarcane intended to be used in the sugar factories. It empowers the State Government to declare the area as assigned or reserved area of sugarcane for the sugar factories and also to fix the minimum price for the purchase of sugarcane in that area. U.P. Legislature by enacting the U.P. Sugar Factories (Control) Act, 1938 repealed the Sugarcane Act, 1934 in its application in the Province of U.P. The Sugarcane Act, 1934 was repealed in its application to the State of U.P. on the promulgation of the United Provinces Sugar Factories (Control) Act, 1938 which again gave the power to the State Government to grant licenses for setting up of factories, reserving area for purchase of sugarcane by factories and the minimum price of sugarcane to be paid by the factories. The U.P. Sugar Factories Control Act, 1938 was repealed by the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953.

14. It is pertinent to mention here that the Parliament enacted the Essential Commodities Act, 1955. Section 2(a) of E.C. Act defines the commodities and section 2(b) defines the 'food crops'. The 'food crops' includes the crops of sugarcane. In exercise of the powers conferred under section 3 of E.C. Act, the Sugarcane (Control) Order, 1955 was issued by which it is provided that the Central Government may after consultation with such authorities, bodies or associations, 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 the occupier of factories for sugarcane purchased by them. The Central Government again issued a Sugarcane (Control) Order, 1966 by which the Sugarcane (Control) Order, 1955 was repealed and the said Order

also empowers the Central Government to fix the minimum price of sugarcane to be paid by the sugar factories. The Sugarcane (Control) Order, 1966 was amended from time to time. This Order also unequivocally provides that the Central Government can only fix the minimum price to be paid by the occupier of sugar factories for the sugarcane purchased by them.

15. In the Constitution Bench of **U.P. Cooperative Cane Unions Fed. (supra)**, the Hon'ble Supreme Court has held that the effect of clause 3(2) is that a producer of sugar 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-growers that they cannot sell or agree to sell sugarcane to a producer of sugar below the said price. It was further held that a whole reading of the 1966 Order (Central) 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' cooperative society. So the field for a price higher than the minimum price is clearly left open in the 1966 Order (Central) made by the Central Government. The Hon'ble Supreme Court further held that the regulatory power possessed by the State Government shall also include the power to fix the price of sugarcane. If it is held that the State under its power of regulation cannot fix the price, then the statutory provision contained in the U.P. Act 1953, U.P. Rules, 1954 and the 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 cane-grower in lurch. 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 cane-growers become wholly illusory.

16. At the outset, it need to be mentioned that according to the provisions of the U.P. Rules, 1954 made under section 16 of U.P. Act 1953, Form B & C in the appendix thereto provides that the occupier of the sugar factory and the sugarcane growers / sugarcane growers co-operative societies would execute an agreement in the said forms. Once the occupier of the sugar factory reaches an agreement with the cane growers, may be at the instance of the State authorities, to pay the price equivalent to the SAP either by executing a formal agreement in this behalf or otherwise the occupier of sugar factory has to pay such price and in case of default it can be recovered by the State authorities by coercive methods. The minimum price fixed by the Central Government under clause 3 of the 1966 Order (Central) issued under Section 3 of the E.C. Act, 1955 is only a minimum price and not a remunerative price and therefore the power to fix the remunerative price vested with the State Government as the field for the same remained open and unoccupied. The State in exercise of its legislative power enacted under section 16 of the U.P. Act, 1953 has issued the impugned order. The Hon'ble Supreme Court has further held that there is no repugnancy between the minimum price fixed by the Central Government and the S.A.P. fixed by the State Government in exercise of its regulatory power conferred under section 16 of the U.P. Act 1953. The Hon'ble Supreme Court has held as follows:-

“26. 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 cane-growers, 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 cane-growers, its weight and price is correctly recorded and the price is paid to them within 14 days, failing which the 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 the 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 cane-grower in a lurch with a 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 cane-growers become wholly illusory.

27. It has been urged by learned counsel for the respondents that the expression "at the minimum price notified by Government" used in the pro forma of the agreement which is to be executed between a cane-grower and the occupier of the factory as given in Form B and that which is to be executed between a cane-growers' cooperative society and the occupier of the factory as given in Form C in the appendix to the 1954 Order indicates that it is only the minimum price fixed by the Central Government which can be the consideration or price for the sale of sugarcane to the sugar factory. Strong reliance in support of this submission has been placed upon certain observations made by this Court in *Tika Ramji v. State of U.P.*¹⁷ The pro forma of the agreement viz. Forms B and C are contained in the appendix to the U.P. Sugarcane Supply and Purchase Order, 1954. This Order has been made by the 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 the U.P. Legislature, the only logical inference which can be drawn is that the word "Government" refers to the State Government. There is no

indication in the pro forma of the agreement or in the 1954 Order that the word “Government” would refer to the Central Government. If the State Government is prescribing a pro forma of an agreement which is to be executed by a cane-grower or a cane-growers’ cooperative society and the occupier of the factory regarding sale and purchase of sugarcane wherein the word “Government” is used, it can only mean the State Government and not the Central Government unless there is clear indication to the contrary.”

Thus, it is clear from perusal of the above that there is no repugnancy between the 1966 Order (Central) and the provisions of U.P. Act 1953.

17. The sugarcane is the only raw material in Uttarakhand for the manufacturer of sugar as it is the sugarcane juice, which is ultimately converted into the crystals which becomes a marketable commodity. It is also pertinent to mention here that besides the crystal sugar, *Molasses, Bagasse and Press-mud* are also by-product in the manufacture of sugar which also become a marketable commodity. The sugarcane factories require the fresh juice of sugarcane in a limited quantity during the entire crushing season. In order to ensure proper and continuous supply of sugarcane to the sugar factories throughout the crushing season, the sugarcane growers have to provide the sugarcane after harvesting it according to the capacity and the requirement of sugar factory everyday. Thus, the sugarcane growers cannot harvest their crops at one time and cannot sell later on at their convenience at the opportune time. If the sugarcane is not harvested according to the requirement of sugar factory, the smooth functioning of sugar factory would become difficult. In order to achieve the proper balance between the cane growers and the sugar factories

and to ensure the continuous supply of sugarcane to the sugar factories, the Central and State Government had enacted the aforementioned enactments. If the balance is not maintained, it will hit the economic condition of the State as well as of the country. To give effect to the aforesaid objects, the State Government had provided a state mechanism for the same.

18. It is also endeavour of the State to fix such a price of sugarcane that the sugarcane growers could get proper remunerative price for the cane supplied by them to the sugar factories and at the same time it would be the endeavour of the State to ensure that the sugar factories may not suffer any loss and the crystal sugar prepared by them should compete in the open market.

19. Learned Advocate General pointed out that the price fixation has been exercised by the State Government in exercise of the power conferred under section 16 of the U.P. Act, 1953 and the impugned orders are concerned with the matters of economic policy. The substance of the contention of the learned Advocate General is that it has a limited power to examine the fixation of price of sugarcane by the State Government. It is well settled position of law that the judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations: one is the ambit of judicial intervention and the other covers the scope of Court's ability to quash the administrative decision on its merit. The judicial review is concerned with the review, not the merits of decision in respect of the application of judicial review is made but the decision making process itself. The Court has neither the means nor the knowledge to re-evaluate the factual basis of the executive orders. The Court in

exercise of judicial review is not concerned with the correctness of findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by the evidence. The Court does not substitute its judgment when the legislature by enactment within the ambit of its authority delegates power to any authority to make findings of fact which are conclusive provided that such findings satisfy the test of reasonableness. The price fixation is not within the ambit of the Courts. In such cases, the judicial inquiry is confined to ascertain the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the enactments. Section 16 of the U.P. Act, 1953 provide the regulatory power to the State Government to fix the price of sugarcane. The judicial function in support of such matters is exhausted when there is found to be a rational basis for conclusion by the concerned authority. Thus, it is the duty of the Court to confine itself to the question as to whether a decision making authority exceeded its power; committed an error of law; committed the breach of rules; reached at a decision which no reasonable person or the authority would have reached; and abused its power. The Court does not sit as a Court of appeal but merely review in which the decision was made. The Hon'ble Apex Court in the case of **Union of India & another Vs. Cynamide India Ltd. & another 1987 (2) SCC p/720** has held as follows:-

“4. We start with the observation, “Price fixation is neither the function nor the forte of the court”. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we

will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not re-evaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The court will, of course, examine if there is any hostile discrimination. That is a different “cup of tea” altogether.

9. In *Shree Meenakshi Mills Ltd. v. Union of India* 1974(1) SCC 468 a notification fixing the ex-factory price of certain counts of cotton yarn was questioned on the ground that the price had been arbitrarily fixed. After referring to *Harishankar Bagla v. State of M.P.* AIR 1954 SC 465, 1954 Cr.L.J. 1322 *Union of India v. Bhana Mal Gulzari Mal* AIR 1960 SC 475 ; *Sri Krishna Rice Mills v. Joint Director (Food)* 1974 (1) SCR 418, *State of Rajasthan v. Nath Mal and Mitha Mal* AIR 1954 SC 307, *Narendra Kumar v. Union of India* AIR 1960 SC 430, *Panipat Cooperative Sugar Mills v. Union of India* 19773 (1) SCC 129. *Anakapalle Cooperative Agricultural & Industrial Society Ltd. v. Union of India* 1973 (3) SCC 435 and *Premier Automobiles Ltd. v. Union of India* AIR 1972 SC 1690, a Constitution Bench of the court observed that the dominant object and the purpose of the legislation was the equitable distribution and availability of commodities at fair price and if profit and the producer's return were to be kept in the forefront, it would result in losing sight of the object and the purpose of the legislation. If the prices of yarn or cloth were fixed in such a way to enable the manufacturer or producer recover his cost of production and secure a reasonable margin of profit, no aspect of infringement of any fundamental right could be said to arise. It was to be remembered that the mere fact that some of those were engaged in the industry, trade or commerce alleged that they were incurring loss would not render the law stipulating the price unreasonable. It was observed: (SCC p. 493, paras 76 and 77)

“The control of prices may have effect either on maintaining or increasing supply of commodity or securing equitable distribution and availability at fair prices. The controlled price has to retain this equilibrium in the supply and demand of the commodity. The cost of production, a reasonable return to the producer of the commodity are to be taken into account. The producer must have an incentive to produce. The fair price must be fair not only from the point of view of the consumer but

also from the point of view of the producer. In fixing the prices, a price line has to be held in order to give preference or predominant consideration to the interest of the consumer or the general public over that of the producers in respect of essential commodities. The aspect of ensuring availability of the essential commodities to the consumer equitably and at fair price is the most important consideration.

The producer should not be driven out of his producing business. He may have to bear loss in the same way as he does when he suffers losses on account of economic forces operating in the business. If an essential commodity is in short supply or there is hoarding, cornering or there is unusual demand, there is abnormal increase in price. If price increases, it becomes injurious to the consumer. There is no justification that the producer should be given the benefit of price increase attributable to hoarding or cornering or artificial short supply. In such a case, if an 'escalation' in price is contemplated at intervals, the object of controlled price may be stultified. The controlled price will enable both the consumer and the producer to tide over difficulties. Therefore, any restriction in excess of what would be necessary in the interest of general public or to remedy the evil has to be very carefully considered so that the producer does not perish and the consumer is not crippled."

The cases of Panipat Sugar Mills (*supra*) and Anakapalle Cooperative Agricultural Society (*supra*) were distinguished on the ground that they were governed by sub-section (3-C) of Section 3 of the Essential Commodities Act and therefore, had no relevance to the case before the Constitution Bench. The case of Premier Automobiles (*supra*) was distinguished on the ground that the decision was rendered by invitation and on the agreement of the parties irrespective of technical and legal questions. The court quoted with approval a passage from *Secretary of Agriculture v. Central Reig Refining Co.* 338 US 604, 94 Law Ed 381 stating: (quoted in SCC p. 492, para 69)

"Suffice it to say that since Congress fixed the quotas on a historical basis it is not for this Court to reweigh the relevant factors and, perchance, substitute its notion of expediency and fairness for that of Congress. This is so even though the quota thus fixed may demonstrably be disadvantageous to certain areas or persons. This Court is not a tribunal for relief from the crudities and inequities of complicated experimental economic legislation."

In Saraswati Industrial Syndicate Ltd. v. Union of India 1974 (2) SCC 630 the court observed: (SCC p. 636, para 13)

“Price fixation is more in the nature of a legislative measure even though it may be based upon objective criteria found in a report or other material. It could not, therefore, give rise to a complaint that a rule of natural justice has not been followed in fixing the price. Nevertheless, the criterion adopted must be reasonable. Reasonableness, for purposes of judging whether there was an ‘excess of power’ or an ‘arbitrary’ exercise of it, is really the demonstration of a reasonable nexus between the matters which are taken into account in exercising a power and the purposes of exercise of that power.

It was also reiterated that the decision in Shree Meenakshi Mills’ case was based on a special agreement between the parties and therefore, had no relevance to the question before them.”

20. In the case of **Pallavi Refractories v. Singareni Collieries Co. Ltd.,(2005) 2 SCC 227**, the Hon’ble Supreme has held as follows:-

“13. This Court in Union of India v. Cynamide India Ltd. AIR 1987 SC 1802 has held that price fixation is generally a legislative activity. It may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of the goods is compelled to sell goods to the Government or its nominee and the price is to be determined according to the statutory guidelines laid down by the legislature. In such situations, the determination of price may acquire a quasi-judicial character but, otherwise, price fixation is generally a legislative activity. After observing thus, the Court held that price fixation is neither the function nor the forte of the court. The court is neither concerned with the policy nor with the rates. But in appropriate proceedings it may enquire into the question, whether relevant considerations have gone in and irrelevant considerations kept out while determining the price. In case the legislature has laid down the pricing policy and prescribed the factors which should guide the determination of the price then the court will, if necessary, enquire into the

question whether policy and factors were present to the mind of the authorities specifying the price. The assembling of raw materials and mechanics of price fixation are the concern of the executive and it should be left to the executive to do so and the courts would not reevaluate the consideration even if the prices are demonstrably injurious to some manufacturers and producers. The court will however examine if there is any hostile discrimination. It was observed as under: (SCC p. 734, para 4)

“4. We start with the observation, ‘price fixation is neither the function nor the forte of the court’. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not re-evaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The court will, of course, examine if there is any hostile discrimination. That is a different ‘cup of tea’ altogether.”(emphasis supplied)”

21. The doctrine of judicial review implies that the repository of power acts within the bounds of the power delegated and he does not abuse his power. When the finding is found to be rational and reasonably based on evidence, in the sense that all relevant materials have been taken into account and no irrelevant material has influenced the decision, and the

decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted.

22. In the backdrop of the above principle of law, we have to see as to whether the impugned order satisfied the Court on the touchstone of reasonableness in fixing the price of sugarcane. Section 3 of the U.P. Act 1953 provides that the State Government shall constitute a Sugarcane Board and section 4 provides the function of the Board which is as under:-

“4. Functions of the Board- The Board shall advise the State Government on the following matter, namely -

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

23. Thus, it is evident from perusal of section 4 of U.P. Act, 1953 that the Board has to advise the State Government pertaining to the matters enumerated in the section. In exercise of the powers under section 28 of U.P. Act 1953, the State Government had framed the Rules known as U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954. Section 4(D) of U.P. Act, 1953 provides that the Board may be assigned any other matters as may be prescribed. The other matters which have been provided within

the province of the Board have been defined in Chapter III of the Sugarcane (Regulation of Supply & Purchase) Rules, 1954. The State Government in its counter affidavit has stated that the U.P. has repealed the provisions of the constitution of Sugar (Control) Board by the Amendment Act No.17 of 2006, by which sections 3 & 4 of the said Act have been omitted. The State of Uttarakhand is also proposing not to constitute a Sugarcane (Control) Board. It is under the consideration of the Government to delete the provisions of section 3 & 4 of the U.P. Act 1953. Section 3 provides the constitution of sugarcane (control) board, which has to advise the State Government in relation to the matter pertaining to regulation of supply and purchase of cane for sugar factories. It was pointed out that the power of regulation of supply and purchase of sugarcane also includes the fixation of price, as such, the board has to advise the State Government for fixation of price of the sugarcane. It is admitted case of the parties that the State of Uttarakhand has not constituted any sugarcane (control) board till today. It was pointed out that the State Government has constituted a cane committee and cane implementation committee who are functioning in the State and these committees are regulating the supply and purchase of the sugarcane. Therefore, there is no necessity to constitute the sugarcane board. It is true that the sugarcane board has to advise the State Government pertaining to the matters of regulation of supply and purchase of sugarcane for the sugar factories. When we go through the entire provisions of U.P. Act 1953, U.P. Rules 1954 and the Orders issued thereunder, we find that there is no methodology provided under these enactments to fix the price (S.A.P.) by the State Government. The Acts did not provide any guidelines that on what basis the so-called remunerative price or the SAP is to be fixed. There is no provision in section 3 & 4 of the said Act as to how the sugarcane board

would calculate the remunerative price to advise the State Government in this regard. The U.P. Act, 1953 does not provide any provision in the Act that the advised given by the board would be binding on the State Government. Assuming that the board has the power to advise the State Government about the remunerative price (SAP) it is not provided under section 16 that the State would fix the price (S.A.P.) on the basis of advice given by the sugarcane (control) board. The State Government has an independent power to fix on the basis of its own appreciation of the facts, but the State Government at the same time would have to assess the remunerative price by some evidence. The State Government should have sufficient data available with it. We have to examine as to whether the State Government has taken sufficient materials into consideration while fixing the price of sugarcane and as to whether they have taken any irrelevant material for fixing the remunerative price i.e. SAP. The State Government had placed on record sugar policy for the year 2007-08 and 2008-09 and the material filed with Supplementary Counter Affidavit (Annexure-II of the supplementary counter affidavit). The Government has gathered the information and mentioned in the aforesaid document that a number of factors have been considered while fixing the price of sugarcane. Thus, it is evident that there was sufficient evidence and material before the State Government at the time of fixation of SAP. On the basis of the aforementioned facts and documents it cannot be held the price (SAP) fixed by the State Government is unreasonable.

24. Learned counsel for the petitioners contended that sections 3 & 4 of the U.P. 1953 Act provide the constitution of the Sugarcane Board. It is obligatory on the part of the State Government to constitute the said Board.

It was also obligatory for the State Government to fix the SAP in consultation with the sugarcane board provided under section 3 & 4 of the U.P. 1953 Act and in the State of Uttarakhand there is no consultation with the Board while fixing the price of sugarcane and as such the price of sugarcane fixed by the State Government is not only illegal but also arbitrary. Learned Advocate General refuted the contention. The price (S.A.P.) of sugarcane had to be fixed by the State Government under section 16 of the U.P. 1953 Act. If no advice has been given by the board on account of non-existence of the said board, it does not necessarily mean that the price (SAP) fixed by the State Government would become void. A similar provision has been made in the State Electricity (Supply) Act, 1948 in which a board has the power to revise the tariffs of electricity. There is a consultative council provided under section 16 of the said Act. The constitution and the function of the said board are similar to the Sugarcane (Control) Board. The tariff fixation of power has been given to the board. A similar controversy arose before the Hon'ble Supreme Court in the case of **Hindustan Zinc Ltd. v. A.P. State Electricity Board, (1991) 3 SCC 299**, in which the Hon'ble Supreme Court has held as follows:-

“16. It is unnecessary in the present case to decide whether the revision of tariffs falls within the ambit of ‘major questions of policy’ occurring in Section 16(5)(i) of the Supply Act since the arguments from both sides proceeded on the basis that revision of tariffs for the purpose of this case may be treated as a ‘question of policy’, which expression finds place also in Section 78-A of the Supply Act. The question, therefore, reduces itself to this : Whether the failure of the Board to place the matter before and seek the advice of the Consultative Council on this question renders the revision of tariffs made by it invalid? The common premise for the purpose of this case that revision of tariffs by the Board is a question of policy may indicate that it would be open to the Consultative Council to

advise the Board also on the question of revision of tariffs, and if such advice is given, then the Board must consider the same before taking the final decision. That, however, does not necessarily mean that where no such advice was taken from the Consultative Council or was rendered on account of the absence of any meeting of the Consultative Council during the relevant period, it would necessarily render invalid the revision of tariffs made by the Board. The consequence of non-compliance of Section 16 is not provided and the nature of function of the Consultative Council and the force of its advice being at the best only persuasive, it cannot be said that revision of tariffs without seeking the advice of the Consultative Council renders the revision of tariffs itself invalid. It is also significant that the annual financial statement containing all particulars relating to revision of tariffs is required to be submitted to the State Government in February each year and the State Government is required after receipt of such statement to cause it to be laid on the table of the House or Houses of the State legislature and the said statement is open to discussion therein. The Board is bound to take into consideration any comments made on the said statement in the State legislature. Thus, there is ample provision for discussion on the revised tariffs in the State legislature with the Board being bound to take into consideration any comments made thereon.”

In view of the above, we do not find any force in the contention raised by the learned counsel for the petitioners.

25. Learned counsel for the petitioners further contended that section 16 of the U.P. 1953 Act did not prescribe any guidelines and it would amount to an unbridled power of the State Government to fix the price of sugarcane. Learned Advocate General refuted the contention. An identical provision in pari-materia existed under section 49 of the Electricity (Supply) Act, 1948 (since repealed). Section 49(1) provided as under:-

“49. Provision for the sale of electricity by the Board to persons other than licenses.-

(1) Subject to the provisions of this Act and of regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.”

26. The said provision was challenged before the Hon’ble Supreme Court on the ground that it did not contain any guidelines with regard to the framing of terms and conditions for the electricity tariff. The Hon’ble Supreme Court has held in the case of **Ferro Alloys Corp. Ltd. v. A.P. State Electricity Board, 1993 Supp (4) SCC 136:-**

“97. The attack against Section 49 is that it does not contain any norm or guideline with regard to framing of terms and conditions for the supply of electricity and in particular, the demand of payment of interest on the amounts due to the Board. Further, the principle of fairness of action has not been explicitly set out so as to make it a visible guide. The words occurring in the section “as the Board thinks fit” must be construed as “reasonably thinks fit”. We are unable to countenance this argument. A careful reading of Section 49 clearly discloses as was noted in Hindustan Zinc Ltd. v. A.P.S.E.B. sub-section (1) of the said section starts with the words “Subject to the provisions of the Act and of regulations, if any, made in this behalf”. Therefore, the Board has to conform to the various provisions of the Act and the regulations. Section 49 contains two powers:

- 1. To prescribe terms and conditions of supply; and*
- 2. fix the tariff.”*

27. In the instant case, a similar provision has been made in section 16 of the U.P. 1953 Act which gives only a power to the State Government to regulate the supply of sugarcane, including the power to fix the price of sugarcane. As such, no specific formula is required to be formulated in the said Act itself. As such, we do not find any force in the contention advanced by the learned counsel for the petitioners.

28. It was pointed out by the learned counsel for the petitioners that the State Government should have considered all factors enumerated in clause 3 of the 1966 Order (Central) made under the E.C. Act, 1955 while fixing the remunerative price. The following guidelines have been provided in the Sugarcane Control Order 1966 issued by the Central Government. Section 3(1) of the Control Order 1966 provides as under :-

“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-growers' cooperative 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' cooperative 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 cooperative society, as the case may be."

29. It was pointed out that the above guidelines provided under section 3 (1) of the 1966 Order (Central) have not been adhered to by the State Government, as such, the impugned orders are liable to be set aside. Learned Advocate General for the respondents refuted the contention. As we have pointed out that the Central Government can, under clause 3(1) of the 1966 Order (Central), 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. But the 1966 Order (Central), in view of the definition of "price" in clause 2(g) and also the language used in clause 3 and 3-A, clearly contemplates that there can be a price other than the 'minimum price' of sugarcane fixed under clause 3(1). A perusal of 1966 Order (Central) reveals 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' cooperative society. Under section 3(3-C) of the E.C. Act and the Order 1966, the Central Government has to fix the minimum price to be sold. The State in exercise of its legislative powers conferred by the Constitution Entry 33 list 3

Schedule 7 had enacted U.P. Act, 1953. The provisions as contained in clause 3(1) of the Order 1966 had not been adopted by the U.P. Act, 1953. Clause 3(1) framed under Order 1966 provides the guidelines for fixation of the minimum sugarcane price and the State Government while fixing its power under the aforesaid Act had not provided any such guidelines in its enactments, as such, the guiding principle laid down in the 1966 Order (Central) cannot be the guidelines for fixing the remunerative price of sugarcane. Thus, the contention of the learned counsel has no force.

30. Learned Advocate General contended that the statutory agreement between the cane growers and the sugar producing factories have already been executed in form C appended with the U.P. Rules 1954. The SAP fixed by the State Government becomes the part and parcel of the agreement and when the respective parties have entered into the agreement they cannot turn around and challenge the fixation of S.A.P. for the crushing season under challenge saying that it is arbitrary and unreasonable. Learned counsel for the petitioners further contended that the price of sugarcane mentioned in the agreement was not fixed with their consent and it was done independently by the State Government. Therefore, the conditions of the said contract is not binding upon them as it being arbitrary and unreasonable. Before we deal with the contention raised by the parties, it would be appropriate if we peruse the relevant statutory provision regarding sugar and sugarcane. The sugarcane is an essential commodity as defined in section 2(b) of the Essential Commodities Act. The sugarcane is also included within the definition of E.C. Act. The Industries (Development and Regulation) Act, 1951 declared certain industries as controlled industries. The sugar industry was also included in 1st schedule of the Act and it was

declared as one of the controlled industries. In exercise of the powers conferred under the E.C. Act, 1955 the Central Government framed the 1966 Order (Central) in which the factory and reserved area have been defined in clause 2 and the power to fix the minimum price of the sugar has been given to the Central Government. The U.P. Act, 1953 provides the mechanism for reasonable, necessary and continuous supply of sugarcane to sugar factories in the crushing season, keeping in view of the interest of the sugarcane growers, cane growers' society and sugar factories. The supply of sugarcane to the sugar factories in the quantity which may be reasonably required by them for production in a particular season or seasons is to be regulated by the provisions of this Act. A duty has been cast upon the Sugarcane Commissioner under section 11, 12 & 15 of the U.P. Act 1953 to require the occupier of each factory to furnish in the manner and by the date specified in an order issued by the Sugarcane Commissioner, an estimate of the quantity of sugarcane which would be required by the factory during such crushing season or seasons as may be specified in the order. The U.P. Rules 1954 has been framed pursuant to the U.P. Act, 1953. Rule 21 lays down that the occupier of a factory shall, by August 31st each year, apply to the cane growers in form 1 appendix III for reservation or for assignment of an area for supply of cane to the factory during the crushing season. There is a specific column No.6 in Form II appendix III in which the occupier of the factory has to furnish the details of purchases, if any, made more than the minimum cane price during the last crushing season. It is evident that the occupier of the factory has to furnish the detail of the quantity of the sugarcane which he purchased at a price more than minimum price and also the amount of such price in the said column. This factor is also taken into consideration while reserving or assigning an area to the factory. The

Sugarcane Commissioner, therefore, has to issue an order by which he would make the occupier of every factory to furnish the estimated quantity of sugarcane as per requirement of the sugar factory for a particular crushing season or seasons, which should be done in the manner and by the date specified by the Sugarcane Commissioner. The Sugarcane Commissioner examines such estimate and has the liberty to modify the same and with such modifications, if any, the publication of the estimate is done for the purpose of making it known to all sugar factories that the estimate prepared by them for the requisite quantity of sugarcane for a particular crushing season or season has been accepted by the Sugarcane Commissioner with or without modification. In case, any sugar factory is not satisfied with the estimate so modified or otherwise, it may file a revision before the prescribed authority. After publication of the estimates the Cane Commissioner starts to make the survey of the sugarcane as provided under section 18 of the U.P. Act. 1953. In view of section 12 of the said Act, the declaration of the reserved area or the assigned area is made after the publication of the estimates under section 12 of the U.P. Act, 1953. In exercise of powers conferred under section 16 of the Act, the State Government has issued the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954. Clause 3(2) lays down that a cane-grower or a cane-growers' cooperative 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' cooperative 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' cooperative 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' cooperative society. In the said order it is further provided that the occupier of the factory for which an area has been reserved or assigned would execute an agreement in form B or C, as the case may be. This order prohibits the cane growers or the growers' society who had entered into an agreement in form B or C to a factory not to sell the sugarcane to any other person without prior permission of the Cane Commissioner. The Sugarcane Commissioner can very well assign any specified area, out of the reserved areas of the latter factory to the former factory. It is pertinent to mention here that the reserved and the assigned areas of a sugar factory is not of a permanent nature and no sugar factory or the sugarcane growers can claim that the area reserved or assigned for a particular year would remain with it for long time. The reserved area and the assigned areas are allocated to a particular sugar factory for a crushing season. In the case in hand, the petitioners have executed an agreement in Form B & C with the cane growers/cane growers co-operative societies and they have agreed upon all the terms and conditions which were in favour of the factory owners. The factory owners have further accepted their obligation in the said agreement to pay sugarcane price at the rate fixed by the Government. All the agreements contain the similar terms and

conditions. The copy of one of the agreement filed by the parties is reproduced below:-

“FORM C
Agreement between a Cane-growers’ Co-operative Society and
the occupier of a factory
{Clauses 3(3) and 4(1)}

We सहकारी गन्ना विकास समिति लि० इकबालपुर रुडकी the Cane growers’ Co-operative Society acting through their authorized representatives, hereinafter to be referred to as the first party and the occupier of लक्ष्मी शुगर मिल का० लि० इकबालपुर जनपद हरिद्वार factory, hereinafter referred to as the second party, hereby enter into an agreement for the sale and purchase of cane on the following terms;

(1) The first party agrees to sell during the season 2007-08 for 50-93 lakh maunds of sugarcane of the members of the society standing on 16993 hectares as detailed below with an approximately yield of 105-19 lakh maunds to the second party, at the minimum price notified by Government subject to such deductions, if any as may be notified by the Government from time to time, provided that the price payable by the second party to the first party shall not in any case be lower than that paid generally by the second party to other growers of the villages in which Co-operative Societies operate. The first party further undertakes to supply good cane free from leaves, tops and roots at the factory gate or at 48 purchasing centre in such quantities and on such dates as may be specified in the requisition slip issued by the occupier or manager of the factory in conformity with this agreement and the instructions issued by the Cane Commissioner.

(2) The cane shall be taken by the second party in instalments equitably spread over the whole working period of the factory.

(3) In the event of willful failure to supply at least eighty-five per cent of the agreed quantities of sugarcane, the first party shall be liable to pay the second party compensation at a rate not exceeding two annas per maund on such deficit.

(4) In case the first party willfully fails for a fortnight to supply cane to the second party in accordance with the requisition made by the second party, the first party shall cease to have a claim to sell cane to the second party.

(5) The second party shall ordinarily send his requisition for cane to the first party at least four days before the cane is required and will not make changes within this period without sufficient reasons.

(6) In the event of the second party willfully failing to take delivery of the cane, which the first party is ready to deliver in accordance with this agreement, the second party shall be liable to pay to the first party the actual price of the quantity of such cane which he fails to purchase. In the event of the second party otherwise than willfully failing to purchase cane in accordance with this agreement he shall be liable to pay the first party compensation at a rate not exceeding two annas per maund for such quantity of cane as the second party fails to buy : provided that for any deficiency in the purchase in the instalment fixed for the period after 1st day of April, the second party shall be liable to pay compensation to the first party at a rate not exceeding four annas per maund.

(7) In the event of a breakdown at the factory or of other circumstances due to natural causes, calamities or accidents beyond human control arising to show that the second party will not be able to purchase the cane he has agreed to purchase, the first party, after giving a week's notice to the second party 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.

(8) No compensation for breach of this agreement shall be payable by either party when such breach is due to natural causes, calamities or accidents beyond human control.

(9) Any dispute between the parties regarding the quantity and condition of the cane, the place of delivery, the instalments and other matter pertaining this agreement, shall be referred to arbitration in the manner provided for in the rules. No suit shall lie in a Civil or Revenue Court in respect of any such dispute.

10. पैराई सत्र 2007-08 के लिये माननीय न्यायालय के निर्णय के अधीन एवं उत्तराखण्ड शासन द्वारा समय-2 पर जो भी गन्ना मूल्य निर्धारित किया जायेगा। वह भी मान्य होगा।

विशेष सचिव
सहकारी गन्ना विकास समिति लि० इकबालपुर (रूडकी)
Signature of the authorized
representative of Cane Growers'
Co-operative Society Ltd.

लक्ष्मी शुगर मिल प्रा० लि० इकबालपुर (हरिद्वार)
Signature of the occupier or his
authorized representative in token
of his accepting the above contract

Dated 27-12-2007”

Village	Area under sugarcane			Approximate yield in maunds	Quantity agreed for sale	
	Desi	Improved				Remarks
		Ratoon	Plant			
1	2	3	4	5	6	7
कय केन्द्र 48			कुल योग हेक्टेयर में 16993	लाख कु0 में 05-19	लाख कु0 में 50-93	

Signature
विशेष सचिव
सहकारी गन्ना विकास समिति लि० इकबालपुर (रूडकी) ”

31. The U.P. Rules 1954 provide that the centers are provided at different places for collecting the sugarcane where the representative employees of sugarcane growers and the factory are appointed. The said Rule further provides that the occupier of the factory has to display a notice in Hindi showing the purchase price fixed by the State Government in each purchasing center. Rules 96(1)(i) and (j) of the U.P. Rules 1954 lay 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.

32. To achieve the first and foremost requirement of the sugarcane factory for its profitable running, it should receive adequate supply of sugarcane everyday according to its requirement throughout the crushing season. The Government with the assistance of the cane growers assign or reserve the areas to achieve such object of the factory. Thus, these areas are assigned by the Cane Commissioner in order to ensure the adequate and continuous supply of sugarcane to the factory. The sugarcane in the reserved or assigned area cannot be purchased by anyone without previous issue of requisition slip and identification card to the growers by occupier of the factory with the prior permission of Sugarcane Commissioner. Learned counsel for the petitioners contended that the Form B/C is a dotted line contract and they were compelled either to purchase sugarcane at a price fixed by the State Government or not to purchase at all. It does not constitute a valid agreement as the same has been obtained without the

consent of the parties. Learned Advocate General refuted the contention. The Hon'ble Supreme Court in the case of **U.P. Cooperative Cane Unions Federations (supra)** has held as follows:-

“29. 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 cane-growers and cane-growers' 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 cane-growers. 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 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 cane-growers or cane-growers' 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 and 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 the 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, it 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 a number of authorities, the Court held as under: (AIR p. 487, para 17)

“17. 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.”

33. As discussed earlier, the reservation or assignment of area is made for the benefit of a sugar factory. The agreements executed by the cane-growers or cane-growers' cooperative society in favour of occupier of a factory are also for the benefit of the sugar factory as by such agreements it gets an assurance of a continuous supply of freshly harvested sugarcane on the days indicated in the requisition slips issued by it so that there may not be any problem in getting optimum quantity of raw material throughout the crushing season. In absence of the agreements the sugar factory will also be a loser as it may face great problem in getting the supply of sugarcane according to its requirement. The occupiers of the factory are themselves keen on 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.”

33. Thus, the Hon'ble Supreme Court has concluded by the aforesaid judgment that the sugar factories are bound to pay the price which was agreed by way of an agreement, wherein the SAP have been agreed by them and it is not open to them to challenge the clause relating to the price of sugarcane on the ground that their consent was not voluntary. Learned Advocate General further contended that the sugarcane is the goods which comes within the meaning of the Sale of Goods Act. The Hon'ble Supreme Court in the case of **U.P. Cooperative Cane Unions Federations (supra)** has held as follows:-

“24. Sugarcane supplied to sugar factory are “goods” within the meaning of Section 2(7) of the Sale of Goods Act. Sub-section (1) of Section 4 of the 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.

25. In Poppatlal Shah v. State of Madras AIR 1953 SC 274, 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 & Co. (Madras) Ltd. AIR 1958 SC 560 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.”

34. Thus, we are of the view that the agreement was executed in between the sugarcane growers and the sugar factories that the cane growers would provide the sugarcane to the sugar factory for the preparation of sugar and in lieu thereof they would give the price agreed and fixed by the State Government. Thus, it is a complete transaction and as such, the factory has no right to assail the said agreement.

35. In view of the foregoing discussion, we do not find any infirmity in the impugned notifications issued by the State Government fixing the S.A.P. of sugarcane for the crushing seasons 2006-07 and 2007-08 on 28.12.2006 and 23.01.2008 respectively. We also uphold the validity of section 16 of the U.P. Act, 1953.

36. While upholding the impugned notifications and the validity of section 16 of the U.P. Act, 1953, we think it just and proper to mention here that the U.P. Act, 1953 has been adopted by the State of Uttarakhand. Section 3 of the Act provide for the establishment of Sugarcane (control) Board and the functions of said board have been defined under section 4 of the U.P. Act, 1953. Section 4 of the said Act specifically provides that the board shall advise the State Government in the matters pertaining to the regulation of supply and purchase of cane. The Hon'ble Apex Court in the case of **U.P. Cooperative Cane Unions Fed. (supra)** has held that the regulatory power under section 16 of the U.P. Act, 1953 possessed by the State Government shall also include the power to fix the price of sugarcane. Otherwise, the statutory provision contained in the U.P. Act, 1953 the Rules, and the 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 cane growers in a lurch. The State has taken a stand that the State of Uttarakhand is a successor State of the State of U.P. and the Sugar Board in the State of U.P. was in dormant state. Consequently, the provision for constitution of such board has been deleted by the State of U.P. in 2006 by U.P. Amendment Act No.17 of 2006. It was alleged in the counter affidavit that the State of Uttarakhand is also proposing to delete the said section from the statute so far. The State of Uttarakhand has not so far deleted sections 3 & 4 of the U.P. Act, 1953 and these provisions continue to remain in the statute book. It is the legislative mandate to the State Government and it is also obligatory on the part of the State Government to constitute a Sugarcane Control Board. Since the State Government is lacking to fulfill the mandate of the legislature, hence the direction to that effect is required in this matter. It is also pertinent to mention here that the State Government has been conferred the power to fix the remunerative price (SAP). If a Government has the power to fix the price under the provisions of law, the State Government should exercise the power in a reasonable manner after considering all the relevant factors concerning the matter. The State Government has not evolved any mechanism for calculation of SAP. While fixing the SAP the State Government considers the entire data available with it. India is a welfare state and the public should know what mechanism they would be adopting while fixing the price well in advance. It is, therefore, necessary to direct the State Government to follow the following guidelines for the sake of fairness, objectivity and transparency to fix the State Advisory Price (S.A.P.). In the facts and circumstances of the case, we think it just and proper that certain directions be issued to the State Government for fixation of the S.A.P.

While upholding the impugned notifications dated 23.01.2008 & 28.12.2006 issued by the State Government fixing the S.A.P. of sugarcane and the validity of section 16 of the U.P. Act, 1953, both petitions are disposed of with the following directions:-

- (i) The State of Uttarakhand is directed to constitute the Sugarcane (Control) Board as provided under section 3 & 4 of the U.P. Act, 1953 within a period of two months from today.
- (ii) The Sugarcane (Control) Board would submit its advice about the fixation of the price (S.A.P.) to the State Government in future and the advice rendered by the Sugarcane (Control) Board would be effectively considered by the State Government while fixing the S.A.P.

Alternatively

- (i) If the Government of Uttarakhand deletes the provisions of sections 3 & 4 of the U.P. Act, 1953 as alleged in the counter affidavit, the Government of Uttarakhand shall constitute a committee consisting of at least three experts pertaining to the field of sugarcane and agriculture. The experts of the Committee should have sufficient experience in the field.
- (ii) This committee would have the power to seek necessary information, documents and files from the Government pertaining to sugarcane for the purpose of its recommendations of the price (S.A.P.) of sugarcane. The

expert committee would advise the State Government with regard to the fixation of S.A.P. well in advance so that the occupier of the factories and the cane growers would not suffer due to the non-declaration of S.A.P.

- (iii) The committee as indicated above would also consider the cost of production of the sugarcane; the recovery of sugar from the sugarcane; the prices at which the sugarcane is sold from the producers of the sugarcane; the return to the growers from alternative crops and general trend of price of agricultural commodities.
- (iv) If the factories are suffering losses it would be found as to whether the occupier of the factories are employing the new techniques. The occupier of the sugar factories will produce the returns of production of *sugar, Molasses, Bagasse and Press-mud* and they will also provide the balance sheets to the expert committee. The Committee would also consider all the relevant factors which it may deem fit and proper while advising the State Government about the fixation of the price (S.A.P.) of sugarcane.

37. However, it is made clear that the aforesaid directions shall be prospective and not retrospective.

38. Both petitions are disposed of accordingly. No order as to costs.

(J. C. S. Rawat, J.) (V. K. Gupta, C.J.)

Dated 31st March, 2008
LSR