

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 460 OF 1997@@
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U.P. Co-op Cane Unions Fed. ... Appellant (s)

Vs.

West U.P. Sugar Mills Asson & Ors. ... Respondent (s)

(With appln. for intervention)

With

C.A. No. 461/97

(With appln. for exem. from filing c/c of the imp. judgment)

C.A. No. 4685/97

(With appln. for stay)

S.L.P.(C) No. 22251/97

(With appln(s). for c/delay in filing SLP and
exem. from filing c/c of the impugned judgment

and exem. from filing O.T. and permission to place addl.
documents on record)

C.A.No. 1639-1645/99

(With office report)

C.A. No. 1727/99

C.A. No. 4602/99

(With office report)

I.A. Nos. 13-14 in CA 3512-3513/97

(With appln. for directions)

T.P.(C) 648 and 649/2000(with appln. for ad interim orders)

Date: 31-01-2001 This/These matter(s) was/were called
on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For appellant (s)@@

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in CA 460/97

Mr. Vijay Bahuguna, Sr.adv.

Mr. Prashant Kumar, adv.

Mr. Prasenjit Keswani, adv.

Mr. Darpan Wadhwa, adv.

Mr. Joseph Pookkatt, adv.

in CA 461/97 and

res. in CA 3512-13/97

Mr. Pramod Swarup, adv.

Ms. Pareena Swarup, adv.

Mr. Praveen Swarup, adv.

in CA 4685/97

Mr. Rakesh Dwivedi, Sr.adv.

Mr. BB Singh, adv.

Mr. Kumar Rajesh Singh, adv.

in CA 1639-45/99

Mr. Raju Ramachandran, Sr.adv.

Mr. Brijender Chahar, adv.

Ms. Jyoti Chahar, adv.

Mr. Vinay Garg, adv.

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in CA 4602/99 Dr. AM Singhvi, Sr.adv.
Mr. Jatinder K Sethi, adv.
Mr. Punit Dutt Tyagi, adv.
Mr. Manish Mishra, adv.

in CA 3512-13/97 Ms. Meenakshi Arora, adv.

For respondent (s)@@
CCCCCCCCCCCCCCCCCCCC
in CA 460/97, 461/97, Mr. Shanti Bhushan, Sr.adv.
SLP 22251/97 & appl. Mr. Sudhir Chandra, Sr.adv.
in CA 1727/99 Mr. Jayant Bhushan, adv.
Mr. Prashant Bhushan, adv.
Mr. Achintyu Dvivedi, adv.

in CA 460, 461 & SLP
22251 Mr. SK Gupta, adv.

in CA 461/97 Mr. Vijay Bahuguna, Sr.adv
Mr. Sidharth Bhatnagar, adv
Mr. Prashant Kumar, adv.

in CA 4685/97 Mr. KK Venugopal, Sr.adv.
Mr. YV Giri, Sr.adv.
Mr. Praveen Kumar, adv.

in CA 4685/97 Ms. Pinky Anand, adv.
Mr. DN Goburdhan, adv.

in SLP 22251/97 Mr. Darpan Wadhwa, adv.
Mr. Prashant Kumar, adv.

in CA 1639-45/99 Mr. PK Dey, adv.
Ms. Gitanjali Malviya, adv.
Ms. Gouri K. Das, adv. for
Ms. Rani Jethmalani, adv.

in CA 1727/99, CA Mr. KL Janjani, adv.
4602/99 & 3512-13/97

in CA 1727/99 Mr. Prasenjit Keshwani, adv.
Mr. Prashant Kumar, adv.
Mr. Devesh Singh, adv.
Mr. Sidharth Bhatnagar, adv.

in CA 4602/99 and Mr. Pradeep Misra, adv.
CA 3512-13/97 Mr. T Mahipal, adv.

in CA 4602/99 Mr. Mukesh K Giri, adv.

in CA 1727 & 4602/99 Mr. VM Singh, in-person
& petr.in SLP 22251/97

in CA 3512-13/97 Mr. Pravir Choudhary, adv.

in CA 3512-13/97 Mr. SN Bhat, adv.

For intervenor@@
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in CA 460/97 and Mr. KK Venugopal, Sr.adv.
For petitioner Mr. PH Parekh, adv.@@
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in TP 648 & 649/2000 Mr. Sameer Parekh, adv.

Mr. Rohit Alex, adv.

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UPON hearing counsel, the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J.

Mr. V.M. Singh (In-Person) resumed his arguments at 10.40 a.m. and concluded at 11.20 a.m. Thereafter, Mr. Raju Ramachandran, learned senior counsel argued the matter for 15 minutes.

Hearing concluded.

The Court dictated an order condoning the delay and granting leave in S.L.P.(C)No. 22251/97 and referring the cases to a larger bench of three Judges. Let the papers of these appeals be placed before Hon'ble the Chief Justice of India for appropriate orders.

In T.P.(C)Nos. 648 & 649/2000@@
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Issue notice.

In the meantime, further proceedings in W.P.(C)Nos. 20134/98 & 21/2000 pending before the Madras High Court shall remain stayed.

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(Neelam Kawatra)
Court Master

(S. Krishnan)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 460 OF 1997

U.P. Co-op. Cane Unions Federation .. Appellant(s)

-versus-

West U.P. Sugar Mills Asson. & Ors. .. Respondent(s)

(with C.A. Nos. 461, 4685/1997, C.A No. 932/2001 @ S.L.P.© No. 22251/97, C.A. Nos. 1639-1645/1999, C.A. No. 1727/1999, C.A. No. 4602/1999, I.A. Nos. 13-14 in C.A. Nos. 3512-3513/1997, T.P.© Nos. 648 & 649/2000)

O R D E R

Leave granted in S.L.P.© No. 22251/1997.

In this group of appeals, the questions that arise for decision are these:

(1) Whether the State Government is competent to fix State Advised Price for purchase of sugarcane by an occupier of a factory over and above the minimum price fixed under Clause 3 and additional price under Clause 5A of the Sugarcane (Control) Order, 1966 framed under the Essential Commodities Act, 1955.

(2) Whether the State or statutory authority under its regularity power conferred by U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953, Rules and orders framed thereunder has an obligation to ensure proper price of the sugarcane supplied by the sugarcane grower to an occupier of a factory and thus the authority is required to arrange meeting of sugarcane grower/societies and occupier of the factory for reaching to an agreed price of the sugarcane.

(3) Whether the agreed sugarcane price as contemplated under sub-clause 3-A of Clause 3 of the Sugarcane (Control) Order, 1966 is required to be entered into writing in Form B or Form C or it can be oral also or it can be culled out from the Parchies (receipts) issued under the Rule 96 of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954.

Civil Appeal No. 460/1997, CA No.461/1997 and SLP No.22251/1997 arise out of judgment in Writ Petition No. 36889/1996 filed before the Allahabad High Court by the occupiers of the sugar factories who are respondents in these appeals. The respondents herein challenged the State Advised Price fixed by U.P. State Government for the crushing season 1996-1997. The Division Bench of that High Court quashed the fixation of the State Advised Price on the ground that the State Government does not possess any such power. Consequently, the writ petition was allowed.

Civil Appeal No. 1727/1999 arises out of judgment in Writ Petition No. 2086 (M/B) of 1997 filed by Mr. V.M.Singh. The prayer in the writ petition was for enforcing the State Advised Price fixed by the U.P.

Government. That writ petition was allowed by the Division Bench of the High Court of Allahabad.

Civil Appeal No. 4602/1999 arises out of the judgment in Writ Petition No. 775/1997 filed by the appellant herein before the Allahabad High Court. In the said writ petition, the appellant challenged the recovery of State Advised Price fixed by the U.P. Government. This writ petition was dismissed by the High Court.

Civil Appeal No. 4685/1997 arises out of judgment in C.W.J.C. No. 12717/1996 filed by the respondent- sugar factories against the fixation of price of sugarcane by the Bihar Government. The said writ petition was allowed by the Patna High Court following the judgment of the Allahabad High Court in Writ Petition No. 36889/1996.

Before we take up the aforesaid questions, it is necessary to note few facts:

The Central government, in exercise of power under Section 3 of the Essential Commodities Act, 1955, framed an Order known as the Sugarcane (Control) Order, 1966 (hereinafter referred to as the Central Order of 1966). Clause 3 of the said Order provides that the Central Government, after consultation with the authorities, 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. Sub-clause 3-A of Clause 3 of the Order provides for an agreed price for purchase of sugarcane to be paid to the sugarcane grower. Clause 5-A further provides for additional price to be paid to the sugarcane grower by an occupier of a factory. Prior to the issue of the Central Order 1966, U.P. legislature enacted an Act known as The U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 (hereinafter referred to as the Supply Act 1953) and in exercise of the power under Section 28-A of the said Act, the State Government framed Rules which is known as Sugarcane (Regulation of Supply & Purchase) Rules, 1954 (hereinafter referred to as the Supply Rules, 1954). Further, the State Government in exercise of power conferred by Section 16 of the Supply Act, 1953 has framed the U.P. Sugarcane Supply and Purchase Order 1954. For crushing year 1996-97, U.P. Government fixed the State Advised Price for purchase of sugarcane by the occupiers of the factories. This was challenged by means of two separate writ petitions before the Allahabad High Court. In third writ petition prayer was made to enforce the State Advised Price. In one writ, as stated above, the High Court held that the State Government has no power to fix the State Advised Price and whereas in two other writ petitions it was held that agreed price was the State Advised Price and, therefore, it is payable by the occupiers of the factories. It is in this way these matters are before us.

Learned counsel appearing for the appellants in CA Nos.460-461/97 and SLP No.22251/97 argued that under the regulatory power conferred by provisions of the Supply Act 1953, Rules and orders framed thereunder the State Government is legally competent to fix the State Advised Price and in any event of the matter state or the statutory authority has an obligation to see that sugarcane growers get proper and remunerative price of sugarcane and thus required to arrange meeting of cane societies and occupiers of the sugar factories for arriving at an agreed price of sugarcane. In that event, the agreed price is the State Advised Price for the sugarcane purchased by the respondents. Learned counsel referred to two decisions of this Court. One, in the case of Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. & Ors. vs. State of Maharashtra & Ors. reported in 1995 Supp (3) SCC 475 and other in the case of State of M.P. vs. Jaora Sugar Mills Ltd. & Ors. 1997 (9) SCC p.207. In Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Ltd. (supra) it was held that the State Government under the relevant bye-laws has power to fix the price of the sugarcane. In paragraph 12 of the said decision, U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 was also referred but the said Act was not examined as to whether it empowers the State Government to fix the State Advised Price over and above the price fixed by the Central Government under Clause 3 and additional price under Clause 5-A of the Central Order, 1966. However, in paragraph 21 at page 499, the Bench made observations to the following

effect:

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

No doubt, this observation indicates that the State Governments are required to offer remunerative price to the sugarcane growers but such power was not traced to any provisions of the Act.

In the case of State of M.P. vs. Jaora Sugar Mills Ltd & Ors. (supra), it was held that under the regulatory power, the State Government or the statutory authority has an obligation to ensure proper price of sugarcane supplied by the sugarcane growers to an occupier of a factory and, thus, the State Government has to ensure the meeting of the sugarcane growers and occupiers of the factories and their association wherein proper price of sugarcane is agreed upon. This decision supports the contention of learned counsel for the appellants.

In Civil Appeal No. 1727/1999 which arises out of the judgment in Writ Petition No. 2086/1997, the High Court has held that the agreed price for purchase of sugarcane between the occupiers of the factories and cane growers society is the State Advised price and, therefore, the occupiers of the sugar factories are under an obligation to pay such price to the sugarcane growers. In view of the decision in the case of State of M.P. vs. Jaora Sugar Mills Ltd (supra), prima facie we do not find any infirmity in the decision of the High Court in Writ Petition Nos. 2086/1997 and 775/1997. However, Mr. Shanti Bhushan, learned senior counsel and Mr. K.K.Venugopal, learned senior counsel appearing for the respondents inter alia argued, that, there is no provision in the Act which empowered the State Government to fix the State Advised price for the sugarcane, that in case it is held that the State possessed the power to fix the State Advised price, the same is ultra vires the Central Act, that the State or statutory authority under its regulatory power cannot coerce or force the occupiers of the sugar factories to agree on dictated price of sugarcane supplied by sugarcane growers to the occupiers of the sugar factories and that, the agreed price of sugarcane under sub-clause 3A of Clause 3 of Central Order 1966 contemplates a voluntarily agreed price and not a price which is dictated by the State Government. Learned counsel strongly relied upon the decision of this Court in the case of State of Tamil Nadu & Ors. vs. Kothari Sugars & Chemicals Ltd. & Ors. reported in (1996) 7 SCC 751. Paragraph 6 of the said judgment runs as follows:

On a perusal of the relevant provisions of the Sugarcane (Control) Order, 1966, particularly clauses 3 and 5-A therein, it is clear that the total price of sugarcane fixed thereunder is the aggregate of the minimum cane price fixed under clause 3 and the additional cane price fixed under clause 5-A. Thus, unless there be an agreement between the grower and the purchaser for purchase of the sugarcane at a higher price, the obligation of the purchaser is to pay to the grower only the aggregate of the amounts fixed under clauses 3 and 5-A. In other words, under the statute there is no liability of the purchaser to pay to the grower any amount in excess of this aggregate amount. Thus, without any contractual or statutory basis fixing the sale price of sugarcane at an amount higher than the minimum cane price fixed under clause 3 and the additional cane price fixed under clause 5-A, any sum paid by the purchaser to the grower as advance prior to fixation of the

additional cane price under clause 5-A cannot form part of the price of cane sugar.

This decision shows that apart from minimum cane price fixed under clause 3 and additional cane price fixed under clause 5-A, unless there is an agreement between the grower and the purchaser for purchase of sugarcane at higher price, there is no obligation on the part of an occupier of a factory to pay any other price fixed by the State Government. This case helps the case of the respondents.

Mr. Shanti Bhushan also referred to a decision of the Constitution Bench in Ch. Tika Ramji & Ors. etc. vs. The State of Uttar Pradesh & Ors. reported in 1956 SCR 393. In this case, certain notifications issued under the provisions of U.P. Supply Act, 1953 were challenged as being repugnant to the Central Act. The contention was that since the field relating to sugarcane has already occupied under Central legislation, the notifications issued under the U.P. Supply Act, 1953 are ultra vires. Dealing with that contention, this Court held that no question of repugnancy under Article 254 of the Constitution could arise as the Central and State legislatures operate in different fields and, therefore, the impugned notifications are valid. On the strength of this decision, it was argued that since the power of fixation of minimum price of sugarcane is within the domain of the Central Government, the State Government under its regulatory power cannot fix the State Advised Price for sugarcane.

Civil Appeal No. 4685/1997 arises out of judgment in Writ Petition No. 12717/1996 filed by the respondents herein before the Patna High Court. Shri Rakesh Dwivedi, learned senior counsel referred to the provisions of Bihar Sugar Purchase Act, 1981 (hereinafter referred to as Bihar Act) and the rules framed thereunder and argued that the Act and Rules empowered the State Government to fix the State Advised Price over and above the minimum and additional price fixed by the Central Government under Clauses 3 and 5-A of the Sugarcane Control Order, 1966. He further argued that the Bihar Act having received the assent of the President of India would prevail over the Central Order of 1966. Mr. K.K.Venugopal, learned senior counsel, appearing for the respondents-sugarcane factories argued that there is no provision in Bihar Act which empowers the State Government to fix the State Advised Price over and above minimum and additional price or agreed price and, therefore, the State Advised Price of sugarcane fixed by the State Government is ultra vires. He further argued that in a legislation under concurrent field unless the power to fix the price of sugarcane is expressly conferred on the State Government, the said power cannot be inferred or implied in the provisions of the Act.

On thoughtful consideration of the arguments of learned counsel for the parties, we find that there is a conflict between the decisions in State of M.P. vs. Jaora Sugar Mills Ltd. & Ors (supra) and in State of T.N. & Ors. vs. Kothari Sugars and Chemicals Ltd. & Ors. (supra) which requires to be resolved. Both the decisions are by two Judges Bench. This Bench, being of an equal number of Judges, cannot overrule one or the other decision. We have also looked into the decisions of the High Courts taking contrary view of the matter. Such dispute arises in each crushing season and it is in the interest of Indian economy that such a perpetual dispute be resolved finally by a larger Bench. We, therefore, refer this group of cases to a larger Bench of three Judges. Let the papers of these appeals be placed before Hon ble the Chief Justice of India for appropriate orders.

Mr. V.M.Singh, referred to the agreement in Form C at page 205 of the paper-book of Civil Appeal No. 932/2001 @ S.L.P.© No. 22251/1997 and argued that the interim order passed earlier be modified. The relevant portion runs as follows:

The first party agrees to sell during the season 1996-97 for 14 lac qtls. Of sugarcane of the members of the society standing on 4888 hectare as detailed below with an approximate yield of 40 lac qtls. To the second party at the minimum price notified by the Government from time to

time, provided that the price payable by the second party to the first party shall not be any case be lower than that paid generally by the second party to other growers of the villages in which co-operative societies operate.

In view of aforesaid recital in the agreement, we, in modification of interim order, direct that sugarcane growers/societies shall not be paid price of sugarcane lower than that paid generally by the occupier of the factories to other growers of the village in which co-operative society operate during pendency of the appeals.

In T.P.© Nos. 648 & 649/2000

Issue notice.

In the meantime, further proceedings in W.P.© Nos. 20134/98 & 21/2000 pending before the Madras High Court shall remain stayed.

& & & & & & & & & ..J.
(V.N.Khare)

& & & & & & & & & .J.
(K.G.Balakrishnan)

New Delhi;
31 January, 2001
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