BOMBEY HIGH COURT

Rahuri Sahakari Sakhar Karkhana Ltd

Vs.

State (Bombay)

Writ Petn. No. 4897 of 1984

(Dharmadhikari and Sugla, JJ.)

14.08.1986

JUDGEMENT

Dharmadhikari, J.

1. Since all these Writ Petitions involve common questions of law and as facts, they were heard together and are being disposed of by this common judgment.

2. The petitioners in these Writ Petitions, who are either co-operative sugar factories or sugarcane growers, have challenged the order issued by the State Government, on 12th September, 1984, known as the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) Order, 1984 (hereinafter referred to as "the Order"). It is contended by the petitioners that the impugned order is outside the scope of the Essential Commodities Act or the Sugar Control Order, 1966 issued by the Central Government. The said order is also violative of the petitioners' fundamental rights guaranteed under Articles 14 and 19 of the Constitution of India. The petitioners in Writ Petition No. 4897 of 1984, the Rahuri Sahakari Sakhar Karkhana Ltd. have also challenged Schedule 37 of the impugned order, on the ground that it is not only violative of the petitioners' fundamental rights guaranteed under Articles 14 and 19 of the Constitution of India, but is also wholly arbitrary, irrational and unreasonable. The said Schedule is also contrary to Article 300-A of the Constitution of India. It is the case of the Rahuri Sahakari Sakhar Karkhana Ltd. that the said Schedule is also vitiated as it violates the principles of natural justice and also suffers from total non-application of mind since relevant factors were not taken into consideration by the State Government while issuing the said order. The petitioner Karkhana has also challenged Note (b) of the Schedule which prohibits enrolment of the members from the villages, which are known as overlapping villages. According to the petitioners, the cut-out date prescribed in that behalf is also illegal. It has no rational nexus with the object sought to be achieved and is also beyond the scope of the order issued by the Central Government. The said Note is in conflict with and repugnant to the provisions of the Maharashtra Co-operative

Societies Act, which is a State legislation and by issuing an order under the Essential Commodities Act, it was not open to the State Government to override the said provisions. According to the petitioners, the note attached to the Schedule gives retrospective effect to the impugned order, which as also illegal, since an order issued under the Essential Commodities Act cannot have any retrospective effect. The Rahuri Sahakari Sakhar Karkhana has also contended that Schedule 37 has been issued in *mala fide* exercise of the power at the behest of Shri Sakhar Patil, Chairman of the Pravara Sahakari Sakhar Karkhana Ltd., Sri Vikhe Patil was a member of the Committee constituted by the Government and, therefore, Schedules are prepared so as to benefit the respondent No. 2, the Pramara Sahakari Sakhar Karkhana Ltd. It is also contended that while preparing the Schedules, so far as the petitioner Rahuri Sahakari Sakhar Karkhana Ltd. is concerned, the State Government had not taken into consideration its authorized or legal crushing capacity. Instead of it, the whole order is based on the licensed capacity of the sugar factory and thereby it omitted from consideration the factual, authorized and lawful capacity of the Sugar Karkhana while reserving the respective areas. While preparing Schedule 37, the authorities concerned totally omitted from consideration the fact that the petitioner Karkhana is also running a distillery and a paper mill and the needs of the distillery and the paper mill are not taken into consideration while preparing the Schedule or reserving the areas.

2-A. So far as the sugarcane growers are concerned, who are either members of the a co-operative sugar factory or non-members, it is contended that they are entitled to sell their sugarcane at the highest price available. By the process of reservation of areas they are deprived of a reasonable price and thus the order violates Article 19(1)(g) of the constitution and is not saved by sub-Article (6) of Article 19(1) of the Constitution. A contention is also raised on behalf of the non-members as well as various sugar factories that the prohibition enrolment of the membership after the cut-cut date is also violative of Article 19(1)(c) of the Constitution and the provisions of the Maharashtra Co-operative Societies Act.

3. On the other hand, it is contended by the respondent State Government that the sugar industry is an agro-based industry and requires sugarcane for manufacture of sugar. Both sugarcane and sugar are declared as essential commodities under the Essential Commodities Act, 1955. Sugar industry is a licensed industrial undertaking, requiring license under Section 11 of the industries (Development and Regulation) Act.1951. Distribution and movement of sugarcane have been regulated under the Sugarcane (control) Order, 1966 and by notification, dated 16th July, 196b the central Government directed that the powers conferred on it (i.e. the Central Government by Clauses 6, 7, 8 and 9 of the said Order shall be exercisable, among others, also by the State of Maharashtra. Sugarcane crop is dependent on agro-climatic conditions as also on the prices which the sugarcane growers receive for their crop which, in turn, are dependent on the prices which the sugar factories receive for their manufactured product i.e. sugar. Therefore, supply of sugar and sugarcane and its price are intimately connected with each other. Whenever conditions of drought prevail and/or the sugar price a show a declining trend, the production of sugar get reduced and it has an adverse effect on the working of the sugar industry. The sugar industry is

also subject to the cyclic ups and downs. It is the experience that these cyclic ups and downs in sugarcane production in the State had adverse effect on some of the sugar factories, particularly on the sugar factories which are identified as sick and financially week. It has been the experience of the Government that in times of shortage of sugarcane crop, in the absence of statutory provisions earmarking the areas for drawal of cane, it has become difficult for certain factories to get adequate quantity of cane, thereby affecting their obligation towards the cane growers for payment of cane price, towards employees and workers for payment of their salaries and wages, contribution towards provident fund etc. In such situations, the State Government was required to assist the factories with huge amounts for enabling them to discharge their obligations by diverting funds with considerable stress and strain on the State Exchequer. It was also the experience that while some factories starved of sugarcane, the other factories far exceeded their crushing capacity. In order to find out some solution to this problem, the State Government appointed a Committee as an Expert Committee under Government Resolution, dated 28th April, 1980. The said Committee was requested to make its recommendations with regard to the following terms of reference :-

1. To take review of the work done in the past in regard to the formation of zones for Sugar factories;
2. to identify the limitations due to which the object of formation of zones could not be achieved;
3. To suggest remedial measures in respect of
(a) Overlapping areas;
(b) Enrolment of members;
(c) Deterioration of relations between the sugarcane acreage to the investment in the form of shares/contracts;
4. To suggest parameters and authority for the pooling of the sugarcane produced in a given area and its distribution among the factories in the area in relation to their crushing capacities;
5. To suggest parameters for recommending expansion in the crushing capacities of the existing factories;
6. To suggest definite procedures having statutory support for enforcing drawal of sugarcane from the specified areas; and
7. To suggest a co-ordinated programme of sugarcane development in the areas of sugar factories.

4. The said Committee was headed by the Director of Sugar, Maharashtra State and consisted of other members representing the Sugar Industry, both in the Co-operative Sector and in the Joint Stock Sector. It also consisted of the Members of Technical organizations, such as (1) The Directorate of Agriculture, Maharashtra State, (2) The Agricultural Universities, (3) The Deccan Sugar Institute, Pune, (4) The Irrigation Department, Maharashtra State, (5) The Maharashtra State Electricity Board, (6) The Maharashtra State Co-operative Bank Ltd. and (7) The Reserve

Bank of India. The Committee issued a detailed pro forma to the Sugar factories in the State and had collected data on several relevant aspects. The data received from the sugar factories was made available to the Members of the Committee. The Committee held in all 18 meetings and submitted its unanimous report on 26th October, 1983 to the State Government. This Report was submitted by the Committee after considering the data furnished by the various Sugar factories and after considerable deliberations. The Report made is unanimous. After carefully considering the said report the State Government issued the impugned order in the interest of the Sugar Industry in the State of Maharashtra. The respondents have denied the various allegations made about the *mala fide* exercise of the power. The Pravara Sahakari Sakhar Karkhana Ltd. has denied all adverse allegations made against their Chairman Shri. Vikhe Patil. It is contended by the respondents that the allegations of mala fides as made are not only vague, but the petitioners have failed to establish even prima facie, any of the allegations. In this context, according to the respondents, it cannot be forgotten that after examining the data placed before it, the Committee came to the conclusion that it would not be possible to follow the uniform principles for application to all the factories and, therefore, decided to examine each case with reference to the guidelines enumerated in the Report. Therefore, having regard to the facts and circumstances prevailing, the Committee decided that the licensed capacity of the factory should be adopted as the basis for arriving at the requirement of cane of the factory. The surplus cane remaining after calculating on the oasis of the licensed capacity, as far as possible, to be equitably distributed. The crushing days of 160, fixed as per the norms of Bureau of Industrial Costs and Prices, Government of India, were considered to be acceptable for calculation of requirement of sugarcane of these factories. The recommendations of the Committee, which are in accordance with the guidelines framed in that behalf and the Schedules prepared are, therefore, perfectly equitable and legal being in tune with the recommendations made by the Committee. On the basis of the guidelines framed by the Committee even the requirement of the petitioner Rahuri Sahakari Sakhar Karkhana was considered and then Schedule 37 was prepared.

5. The respondents have denied the fact that the authorized capacity of the Rahuri Sahakari Sakhar Karkhana was increased by 25% which was permissible under the Government of India's liberalized policy. According to the respondents the licensed capacity of the said sugar factory continues to be the same and whatever improvements, if any, made by the said sugar factory are wholly unauthorized and illegal. While framing Schedule 37 the said 25% increase could not have been taken into consideration because the criteria adopted by the Committee was the licensed capacity of the sugar factory and admittedly the licensed capacity as such is not altered.

6. So far as the challenge based on the breach of the principles of natural justice is concerned, it is contended by the respondents that the said principles have no application to the impugned order, which is in the nature of a statute. The principles of natural justice do not apply to the Legislative function. Even otherwise the information supplied by the petitioner to the Committee was duly considered and the Committee had also given a personal hearing to the officer of the petitioner factory on 25-11-1981.

7. So far as the prohibition on the enrolment of the membership is concerned, it is contended by the respondent State that unless such a provision was made, the equitable distribution of sugarcane would have become impossible. The prohibition on further enrolment of members is an integral part of the equitable distribution of the sugarcane and, therefore, such a footnote has been put below Schedule 37 relating to the reserved area for the Rahuri Sahakari Sakhar Karkhana Ltd. Due to inadvertence such a note was not incorporated below Schedule 39 relating to the Pravara Sahakari Sakhar Karkhana Ltd. However, immediately instructions have been issued to the said Karkhana not to enroll members from the overlapping villages and action is being taken to include such a note in respect of the said Karkhana also. The respondents have denied that Sri Vikhe Patil or anybody else had exercised any influence and because of it preferential treatment was given to the Pravara Sahakari Sakhar Karkhana Ltd. Thus, in substance, it is the case of the respondents that after considering the report of the Expert Committee. the impugned order came to be passed by the State Government in the interest of the Sugar Industry in the State of Maharashtra. The said order is covered by Article 39(b) of the Constitution and, therefore, enjoys the protective umbrella of Article 31C of the Constitution. Even otherwise the impugned order is not violative of Article 14 or Article 19 of the Constitution of India on any count whatever. The said order is also within the four corners of the order issued by the Central Government in 1966. Thus, all the averments and contentions raised in the petitioners are denied by the respondents.

8. For properly appreciating the controversy raised before us, it will be worthwhile if a reference is made to the relevant provisions of the Act and the Order issued by the Central Government on 16th July, 1966. Section 3 of the Essential Commodities Act confers powers up on the Central Government to issue an order to control production, supply, distribution etc. of essential commodities. By Section 5 the Central Government is authorized to delegate its powers. Then by Section 6 it is declared that any order made under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act. In substance, an order issued under the Essential Commodities Act is given an overriding effect. In exercise of the powers conferred by the Essential Commodities Act, the Central Government issued an order, known as the Sugarcane ((Control) Order, 1966. By Clause 6 of the said Order it was provided that the Central Government may, by order notified in the Official Gazette, regulate the distribution and movement of the sugarcane. Clause 11 of the said Order provides for the delegation of powers to the other authorities, including the State Government. In pursuance of these powers conferred upon the State Government, the impugned order came to be passed on 12th September, 1984. The preamble to the said order reads as under :-

> "Whereas the Government of Maharashtra had in the year 1980, appointed a Committee of Experts for making recommendations for formation of zones for drawal of sugarcane by the Sugar Factories in the State;

And whereas the State Government has received the recommendations of the said Expert Committee;

And whereas the Government of India has granted Letters of Intent for establishment of new sugar factories and has stipulated therein that the conversion of the Letters of Intent into Industrial Licences shall inter alia, depend on the State Government notifying the zones for drawal of sugarcane by the new factories;

And whereas it is apprehended that in the event of non-availability of sugarcane to meet the requirements of the sugar factories in the State, the economic viability of large number of sugar factories is likely to be adversely affected, resulting in serious financial crisis and socio/economic problems, among others, such as

(i) The factories may incur heavy losses;

(ii) The factories may not pay the minimum statutory prices for the sugarcane;

(iii) The sugarcane grower may suffer serious economic consequences;

(iv) The employees of the factories may not get their salaries and wages;

(v) The factories may not discharge their liabilities towards various financial institutions and other creditors;

(vi) The factories may not discharge their tax liabilities towards Government;

(vii) The seasonal employment of large Section of population in rural areas may be adversely affected;

(viii) A large Section of population and institutions directly or indirectly dependent on the factories will suffer from serious economic consequences;

And whereas the Government of Maharashtra is of the opinion that for avoiding the aforesaid apprehended financial crisis and socio/economic problems and also for fulfilling the condition stipulated by the Government of India for converting Letters of Intent of new sugar factories, it has become expedient, in the public interest to make an order for the purposes mentioned herein below, namely :-

(a) reserving areas for drawal of sugarcane for each factory, in the State having regard to the crushing capacity of each of the factories the availability of sugarcane in the reserved areas and the need for production of sugar enabling each of the factories to purchase the quantity of sugarcane required by it;

(b) manufacturing sugar from sugarcane only in accordance with the conditions specified in the license issued in that behalf;

(c) prohibiting or restricting or otherwise regulating the export of sugarcane from any reserved area except under and in accordance with a permit issued in that behalf, and

(d) empowering the Director of Sugar, Pune, to call for information for securing compliance with the provisions of Order or to satisfy himself that the Order is complied with:

Now, therefore, in exercise of the powers conferred by paras's (a), (c) and (f) of sub-Clause (1) of Clause 6 and sub-Clause (a) of Clause 9 of the Sugarcane (Control) Order, 1966 read with the Notification of the Government of India, Ministry of Food, Agriculture, Community Development and Co-operation (Department of Food) No. GSR-

1127/BSS. Com/Sugarcane dated the 16th July, 1966, and of all other powers enabling it in this behalf, the Government of Maharashtra makes the following Order, namely :-

_____."

The expression "reserved area" is defined to mean the area reserved for a factory as specified in the Schedule pertaining to that factory. The term "Schedule" is defined to mean a schedule appended to the Order and shall include footnotes appearing thereunder, which shall also form part of the Schedule. Clause 4 deals with the grant of license for crushing cane. By this clause it is provided that a separate license shall be necessary for each crushing season and the application for a license for crushing cane shall be made to the licensing authority by 30th September of each year in the prescribed form. The licensing authority is obliged to grant the license applied for in Form B and in the case of refusal, it is further obliged to communicate the reasons. The grant of license cannot be refused unless the applicant has been given an opportunity to show cause against such refusal. As to what will be taken into consideration while granting the license is also provided by Clause 4. Then comes Clause 5 which deals with the regulation of supply of sugarcane. The said clause reads as under :-

"5. Regulation of Supply of Sugarcane :
(1) A permit officer may allow a sugar factory to purchase cane or to accept supplies of cane from cane growers from areas other than the area reserved for it under Clause 3 if he is satisfied that any of the following circumstances exist, namely :
(a) in the event of production of cane in the area reserved for the factory being not adequate for enabling it to reach optimum level of crushing;
(b) in the event of surplus production of cane in the areas reserved for other factories which those factories are not able to crush during the crushing reason.
(c) in the event of stoppage of nearby sugar factory due to mechanical break down, labour unrest, lock out or any other reason.
(d) in the event of cane grower or cane growers from the area reserved for a particular factory declining to supply cane to the said factory on account of any of the following reasons, if found justified by the Permit Officer :-
(i) Non-payment or late payment of cane price by the sugar factory; or
(ii) Non-fulfilment of any of the obligations by the sugar factory arising out of agreement between the cane grower or cane growers and the sugar factory; or the order is covered by the provisions of Article 39(b) of the Constitution of India, and therefore, enjoys the protective umbrella of Articles then obviously the challenge based on these Articles will not be available to the petitioners. However, it is contended by Shri Paranjape, the learned Counsel appearing for the petitioners that Article 31C is not retrospective in nature and, therefore, the provisions of the Essential Commodities Act, 1955, are not covered by Article 31C. The Essential Commodities Act is a controlled legislation and it is used in times of scarcity, obviously to secure maintenance. supply and distribution of the essential

commodities. Article 39(b) will not cover such a legislation or an order issued thereunder. The object of the Essential Commodities Act is not distribution of ownership and the expression (Control) used in Article 39(b) is akin to ownership and cannot take in its import anything less than ownership. The present order is only meant for regulating the distribution of sugarcane and by this order no control is acquired by the State Government even in the matter of distribution or supply. We find it difficult to accept the contention of Shri Paranjape in that behalf.

10. The scope of Article 39(b) is by now well-settled. In this context reference could usefully be made to the decisions of the Supreme Court in *Sanjeev Coke Mfg. Co. v. Bharat Cooking Coal Ltd*[1]*., State of Karnataka v. Ranganatha Reddy. AIR 1978 Supreme Court 215* and the latest decision of the Supreme Court in *State of Maharashtra v. Basantibai Mohanlal Khetan*[2]*,* It was rightly contended by Shri Singhavi that in view of the scarcity or non-availability of sugarcane, for securing the equitable distribution and supply of sugarcane the impugned order came to be issued by the state Government. The ultimate object of the order is to control the essential commodities viz. the sugar and sugarcane. Areas are reserved *qua* each factory for securing this object of supply of the essential commodity and, therefore, the said under is covered by the provisions of Article 39(b), which deals with the ownership and control of the material resources of the community and their distribution as best to(iii) Discrimination by the Sugar factory in harvesting of cane and thereby causing loss to the cane grower or the cane growers;

Provided that before passing any order under this sub-clause, for any of the above reasons, the Permit. Officer shall give the parties concerned a reasonable opportunity of being heard in person or through the authorized representative."

Clause 6 provides for application for Export Permit. fees and security deposit, therefor. Clauses 7 and 8 deal with the issue of Export Permit or its refusal. Clause 10 deals with the revocation of Permit and return of the security deposit or its forfeiture. By Clause 12

[1] AIR 1983 SC 239

[2](1986) 2 SCC 516

an appeal is provided by a person aggrieved by any order of the licensing authority, including any order refusing to issue the license or of revoking the license or refusing to issue or revoking the permit or forfeiting the security deposit etc. Clause 13 deals with the power of the Director of Sugar in respect of entry, search, seizure etc. If the said clauses are read with the relevant clauses of the Sugarcane (Control) Order, 1966 issued by the Central Government, it is quite obvious that they are similar in nature. It is also an admitted position that prior to issuing the Maharashtra Sugar Factories (Reservation of Area and Regulation of Crushing and Sugarcane Supply) Order in 1984, an Expert Committee was constituted by the State of Maharashtra and the order is based on the unanimous recommendations made by the Expert Committee. Therefore, after considering the data collected by the Expert Committee and its recommendations, in exercise of the powers conferred upon it by the Sugarcane (Control) Order, 1966 read with the provisions of the Essential Commodities Act, the impugned order came to be issued by the State Government. The provisions of the Essential Commodities Act or the parent order viz. the Sugarcane (Control)

Order, 1966 are not challenged before us. The challenge in these Writ Petitions is limited to the order issued by the State Government in September, 1984.

9. The main challenge to the order is based on Article 14 and Article 19(1)(c) and (g) of the Constitution of India. If the contention raised by Shri Singhavi is accepted viz. that subserve the common good. In our view, it is not necessary to deal with this aspect of the matter any further and in details in view of the decision of the Supreme Court in *M/s Laxmi Khandsari v. State of U.P*[3]. In that case the Supreme Court was concerned with the Sugarcane (Control) Order, 1966. While negativing the contention of the learned Counsel therein, ultimately this is what the Supreme Court observed in para 34 of its judgment :-

> "In the instant case, however, if the argument of the Attorney General is to be accepted, there is no violation of the Directive Principles because the main object sought to be achieved by a temporary suspension of the business of the petitioners is to ensure large-scale production of white sugar and to make it available to the consumers at reasonable rates which is an implementation rather than a contravention of the Directive Principles particularly cls. (b) and (c) of Article 39....."

Clause (b) of Article 39 is to be widely construed. The expression 'material resources' would include raw materials as well as agricultural resources. So also the words "distribute and control" used in Article 39(b) cannot be construed in the restricted sense. These words are used in the wider sense so as to take in all methods of control and distribution. It will include in its import general control over the distribution of material resources. The distribution could be areawise or factory wise. Sugarcane is an essential commodity and over the years it has become a scarce commodity. Therefore in public interest it became necessary to control and regulate its equitable distribution. To achieve this object the impugned order was issued. In such matters the approach of the Court should not be doctrinaire and ultimately the Government is the best judge of the situation. By the impugned order me Government has assumed control over the distribution of sugarcane. An area is reserved for the factory as specified in the Schedule. A provision for grant of license for crushing sugarcane is made by Clause 4 of the Order. A separate

[3] AIR 1981 SC 873

license is necessary for each crushing season. Clause 5 provides for regulation of supply of sugarcane from the area other than the reserved area. Thus an overall control is taken over in the matter of equitable distribution of sugarcane which is an essential commodity. Therefore, it can safely be held that the impugned order has been issued for securing the control of the material resources, so as to distribute it equitably to subserve the common good. This equitable distribution is also contemplated so as to avoid unhealthy competition and concentration of sugarcane in the hands of few. Therefore, it is quite obvious that the Sugarcane (Control) Order is covered by Article 39(b). If this is so, then Article 31C will squarely apply to such a piece of legislation. Relying upon the provisions of other Articles and particularly the expressions used in Article 31A and 31B of the Constitution, it was contended by Shri Paranjape that Article 31C is

not retrospective and will, therefore, not cover the past enactments. In ourview such a narrow interpretation cannot be put on the said Article. The expression "deemed" as used in Article 31C clearly indicates that it covers both the past and future enactments. In this context, our attention was drawn by Shri Singhavi to the following observations of the Supreme Court in *Waman Rao v. Union of India*[4] and particularly para 44 thereof :-

> "The fourth reason is the one cited by Shri Tarkunde that on principle, rules like stare decisis should not be invoked for upholding constitutional devices like Articles 31A, 31B and 31C which are designed to protect not only past laws but future laws also."

11. Further, it cannot be forgotten that the present order was issued in September 1984 i.e. much after the amendment to the Constitution. Since it is a statutory order, it is a law within the meaning of Article 13 as well as Section 2(29) of the General Clauses Act read with Article 367 of the Constitution of India. Therefore, it is squarely covered by the protective umbrella of Article 31C and hence the challenges based on Articles 14 and 19 of the Constitution are not available to the petitioners.

12. Apart from this, if the preamble of the order is read as a whole together with the substantive clauses, then it is quite clear to us that the said order was issued in the interest of the general public and could, therefore, be described as a reasonable restriction within the contemplation of sub-article (6) of Article 19 of the Constitution of India. In *M/s. Laxmi Khandsari v. State of U.P*[5]. the Supreme Court has made following observations about the reasonable restrictions, which read as under :-

> "It is abundantly clear that fundamental rights enshrined in Part III of the Constitution are neither absolute nor unlimited but are subject to reasonable restrictions which may be imposed by the State in public interest under Clauses 2 to 6 of Article 19. As to what are reasonable restrictions would naturally depend on the nature and circumstances of the case, the character of the statute, the object which it seeks to serve, the existing circumstances, the extent of the evil sought to be remedied as also the nature of restraint or restriction placed on the rights of the citizen. It is difficult to lay down any hard or fast rule of universal application but this Court has consistently held that in imposing such restrictions the State must adopt an objective standard amounting to a social control by restricting the rights

4 AIR 1981 SC 271

5 AIR 1981 SC 873

> of the citizens where the necessities of the situation demand. It is manifest that in adopting the social control one of the primary considerations which should weigh with the Court is that as the directive principles contained in the Constitution aim at the establishment of an egalitarian society so as to bring about a welfare State within the framework of the Constitution, these principles also should be kept in mind in judging the question as to whether or not the restrictions are reasonable. If the restrictions imposed

appear to be consistent with the directive principles of State policy they would have to be upheld as the same would be in public interest and manifestly reasonable."

If the provisions of the impugned order are tested on the touchstone of the well-settled principles, the restrictions put can by no, means be said to be unreasonable. They are regulatory in nature and are meant for achieving the object of equitable distribution of essential commodity to subserve the common good of producer, manufacturer and the consumer.

13. So far as the challenge based on Article 19(1)(c) is concerned, the argument advanced before us is twofold. It is contended by the petitioners that the foot-note attached to Schedule 37 which prohibits membership after the cut-out date is directly in conflict with the provisions of the Maharashtra Co- operative Societies Act. The Maharashtra Co-operative Societies Act has been enacted by the State legislature in view of Entry 32 of List II which is a State list. The Essential Commodities Act is enacted under Entry 33 of the Concurrent List Entry 43 of List I i.e. the Union List in specific terms excludes Co-operative Societies. Thus, the Parliament is not competent to enact a legislation dealing with Co-operative Societies which is wholly a State subject. By the impugned order, what is not permitted directly is being sought to be achieved indirectly by laying down a prohibition on enrolment of members *qua* the Co-operative Societies after the cut-out date. Thus, the said provision being wholly repugnant to the provisions of the Maharashtra Co-operative Societies Act and particularly Sections 22 and 23 thereof, the said provision is *ultra vires* and void. It is also in violation of Article 19(1)(c) of the Constitution of India. We find it difficult to accept this contention. In our view, the note under Schedule 37 cannot be read as a total prohibition for enrolment of new membership after the cut-out date. What the note provides is the protection to the existing members as on 30th June, 1981 in the overlapping villages. From the report of the Expert Committee it is clear that a person could become a member of more than one Co-operative Sugar Factory. After the formation of the Expert Committee and with the sole object that in the meanwhile there should be no complications which would come in the way of implementing the report of the Expert Committee, the Director of Sugar issued a Circular on 16-5-1981 directing all the Co-operative Sugar Factories not to control any new members without his permission and this is the reason why 30th June 1981 was chosen as the cut-out date. This cut-out date is chosen only for the purpose of the impugned order and cannot be considered as total prohibition for enrolment of the members. The members enrolled are entitled to enjoy all other benefits of membership. It only means that in case new members are enrolled after 30-6-1981, the sugarcane grown by them would be allocated and distributed as per the provisions of the impugned order, notwithstanding the agreements or the contracts between the parties or the bye laws. As observed by the Supreme Court in *B.K. Garad v. Nasik Merchants Co-operative Bank Ltd*[5]. the bye-laws

[5] AIR 1984 SC 192

of a Co-operative Society framed in pursuance of the provisions of the relevant Act, cannot be held to be law or have the force of law. They are neither statutory in character, nor they have statutory flavour so as to be raised to the status of law. When a question was put to Shri Singhavi,

the learned Counsel appearing for the respondent State as to how the sugarcane of these members will be dealt with, it is conceded by Shri Singhavi that in some Karkhanas new members have been enrolled after 30-6-1981 without the permission of the Director of Sugar and despite the instructions dated 16-5-1981. However, while allocating sugarcane to the concerned factories, the sugarcane of such new members linked to the share holding will be allotted to that factory, provided that such supply does not exceed the requirement based on the licensed capacity. In our view, this makes the whole position clear. the contention that the directions issued by the Director of Sugar or the note appended to the Schedule also prohibit the transfer of interest on the death of the member as per the provisions of Section 30 of the Maharashtra Co-operative Societies Act is not well founded. The said Section does not deal with new membership as such, but deals with the transfer of interest of the existing member on his death. Therefore, such a transfer of share or interest of the deceased member to a person or persons enumerated and in accordance with the rules is not covered by the said note or restriction. It cannot be overlooked that it is the pith and substance of the legislation which is material for deciding the question of conflict or repugnancy. In this context, Shri Singhavi has placed reliance upon the decision of the Supreme Court in *Kerala State Electricity Board v. Indian Aluminium Co. Ltd*[6]. wherein it is observed by the Supreme Court that for deciding under which entry a particular legislation falls the theory of "pith and substance" has been evolved by the Court. If in pith and substance a legislation falls within one List or the other but some portion of the subject-matter of that legislation accidentally trenches upon and might come to fall under another List, the Act as a whole would be valid notwithstanding such incidental trenching. There is no doubt about the exclusive jurisdiction of the State legislature to legislate on the subject i.e. Co-operative Societies. Similarly there is no doubt about the jurisdiction of the Parliament to legislate in respect of production, supply and distribution of foodstuffs. In our view, in pith and substance, the present order which is issued under the Essential Commodities Act relates to the supply and distribution of sugarcane, which is a foodstuff. The impugned provisions are made for the distribution of the essential commodity. Therefore, the impugned order cannot be held to be unconstitutional merely because there is an incidental encroachment (if any) on the rights of the Co-operative Societies or their members. This position is further clear from the non obstante clause used in Article 246 of the Constitution. This is more so in view of the provisions of Section 6 of the Essential Commodities Act which give an overriding effect to any order made under Section 8 of the Act. Therefore, it is not possible for us to accept this contention of the petitioners. To say the least, after reading the foot-note in its context, it is quite obvious that there is no total prohibition on enrolment of members, as contended by the petitioners, but the foot-note is only meant for regulating distribution of sugarcane *qua* different factories. That was absolutely necessary for giving effect to the distribution order. Otherwise, as rightly contended by the respondents, the very purpose of the provision would have been frustrated. This is part and parcel of the control contemplated by the order for the supply and distribution of the sugarcane which is an essential commodity.

14. We also do not find any substance in the contention raised by the petitioner the Rahuri

[6] AIR 1976 SC 1031

Sahakari Sakhar Karkhana Ltd. that while preparing the schedule its increased capacity ought to have been taken into consideration, instead of its licensed capacity. It is the contention of the petitioners that their application for an increase in the licensed capacity is still pending consideration before the Central Government. In the meantime, relying upon the policy of liberalization, they have increased their capacity by 25% which was wholly permissible under the said Circular. The Circular provided for installation of machinery for balancing purposes. The petitioners have installed the machinery for balancing purposes with the help of the Deccan Sugar Institute. Thereafter they submitted the necessary data to the concerned authorities. This clearly shows that an increase in the licensed capacity by 25% was legally permissible and hence authorized. It is this capacity which ought to have been taken into consideration by the Expert Committee as well as Government while preparing the schedule. The averments and allegations made by the Rahuri Sahakari Sakhar Karkhana Ltd. in this behalf are denied by the respondents. It is the case of the respondents that this increased capacity was wholly unauthorized and illegal. It is the case of the respondents that all through, even in the application for securing license under the impugned order or in the Annual Reports, the licensed capacity of the factory is shown as 3250 MTPD. in support of this, the respondents have also relied upon the admissions of the Sugar Factory as made in the applications as well as in the rejoinder. The petitioner, the Rahuri Sahakari Sakhar Karkhana Ltd. has admitted that they have applied for increased licensed capacity and the said applications are pending. On the basis of the material placed before us, it is not possible for us to come to a definite conclusion that there is an increase in the licensed capacity or the 25% increase is either authorized or legal. To say the least, this is seriously disputed before us by the respondents and the respondents are wholly justified in relying upon the admissions of the Karkhana as made in its Annual Reports or applications made to the concerned authorities. It is not disputed before us by Shri Paranjape that the said increase of 25% (if any) cannot be equated with the sanctioned licensed capacity. The Expert Committee as well as the Government have taken as criteria or guideline only the licensed capacity of the factories and in our view, the said guideline can safely be termed as reasonable. The licensed capacity is determined by the license granted by the Central Government under the provisions of the Industries (Development and Regulation) Act. Nobody is authorized to unilaterally increase the said capacity without the permission of the licensing authority. The licensing capacity is determined by the competent authority and that can be treated as safe criteria for the distribution of the sugarcane which is an essential commodity. For calculating the requirement of sugarcane, a criteria of 160 days is fixed in view of the norms fixed by the Bureau of Industrial Costs and Prices, Government of India. Therefore, if the State Government has chosen the said criteria for deciding the question of equitable distribution of sugarcane, it cannot be said that the criteria chosen is either unreasonable or arbitrary or is not based on the relevant considerations. Therefore, we do not find any substance in this contention also.

15. The question of the by-products or other factories viz. distillery and paper mill is also intrinsically connected with the licensed capacity of the sugar factory. Therefore, if the distribution of the sugarcane is based on the licensed capacity, it cannot be said that while

preparing the schedule, the relevant criteria was not taken into consideration either by the Expert Committee or by the Government.

16. So far as the averments of mala fides are concerned, apart from the fact that the burden heavily lies upon the person who makes such an allegation, we find that the allegations made are not only vague, but they are also without any substance. It is well established that it is very easy to make allegations of mala fides, but it is very difficult to prove them. In the instant case, it is the case of the petitioners - the Rahuri Sahakari Sakhar Karkhana - that because the Chairman of the Pravara Shakari Sakhar Karkhana Shri Vikhe Patil was on the Expert Committee, preferential treatment has been given to the said factory. We do not find any substance in this allegation. The allegations of *mala fide* are denied by the respondents. It is the case of the respondents that after taking into consideration the various representations received and the data collected, the Committee laid down the general guidelines and the Schedules were prepared in furtherance of the said guidelines. Shri Vikhe Patil was not the only member of the Committee. The Expert Committee consisted of other independent members. The recommendations made by the Committee were unanimous. The petitioners who seek to invalidate the Schedule must establish the charge of bad faith or bias against the Expert Committee as such. We are unable to hold from the material on record that the Committee or the Director of Sugar acted with improper motive or were actuated with bias or prepared the Schedule at the behest of Shri Vikhe Patil. To say the least, there is *prima facie* material on record to show that the Rahuri Sahakari Sakhar Karkhana has surplus sugarcane which it supplied to Pravara Sahakari Sakhar Karkhana itself. Therefore, it is not possible for us to accept the contention that Schedule 37 is vitiated either by mala fides or bias, or was prepared in colourable exercise of the power.

17. The contention that Schedule 37 is also vitiated since the principles of natural justice were not followed, is also without any substance. It is not disputed by Shri Paranjape, nor it could be disputed, that the order was issued in exercise of the legislative function and in terms the principles of natural justice will not apply to it see *Rameshchandra Kachardas Porwal v. State of Maharashtra*[7] *Venkata Reddy v. State of Andhra Pradesh*[8]*,* and *K. Nagaraj v. State of Andhra Pradesh*[9]*,* However, it was contended by Shri Paranjape that if an opportunity of being heard is given to one party, then it ought to have been given to the petitioner Rahuri Sahakari Sakhar Karkhana Ltd. also. As already observed, the representative of the Rahuri Karkhana was heard by the Expert Committee. The relevant data was also considered before preparing the relevant Schedules and, therefore, it cannot be said that the said Schedule is any way void as the principles of natural justice were not followed.

18. It is also not possible for us to accept the contention that the impugned order travels beyond the scope of the Sugarcane (Control) Order, 1966 issued by the Central Government. In our view, the impugned order is practically in tune with the order issued by the Central Government. The object of the order is made clear by the Pramble as well as the substantive clauses. The object of the present order is the distribution of the sugarcane which is an essential commodity and that is

wholly covered by the parent Order of 1966 as well as the substantive provisions of the Essential Commodities Act.

19. The complaint made that the impugned order is violative of Article 14 of the Constitution, being arbitrary, unreasonable or discriminatory, is also without any

[7] AIR 1981 SC 1127 [9] AIR 1985 SC 551

[8] AIR 1985 SC 724

substance. After laying down the criteria or the guidelines, the Expert Committee considered the case of each and every sugar factory. The complaint of the non-members of the Co-operative Societies that by this order they are obliged to supply sugarcane to a factory or are prohibited from becoming members of the Co-operative Sugar Factory in the overlapping area and, therefore, the order is unreasonable or arbitrary, cannot also be accepted. Ultimately for the equitable distribution of the sugarcane, reservation of area *qua* each factory was contemplated. After preparing the Schedules in that behalf, a provision is made in the order for the Export Permits. This Export Permit takes care of the demands of the respective factories linked with their licensed capacity. The surplus sugarcane is distributed under these Export Permits. Normally the price paid to the member of a Co-operative Sugar Factory is also paid to a non-member. While regulating the essential commodity, some restrictions are inherent in the very process of regulation. The price paid to a producer is not below the minimum fixed by the competent authority appointed by the Central Government. Ultimately the price of the sugarcane is determined by a Committee appointed by the State Government. With the sole intention of avoiding cut-throat competition between the different sugar factories as well as the sugarcane growers, the impugned order has been issued. In this context, it cannot be forgotten that the Co-operative Societies Act has been enacted keeping in view the Directive Principles and the State Policy as enshrined in the Constitution. The co-operative movement in the ultimate analysis is socio-economic and moral movement. It is a part of the scheme of decentralization of wealth and power. Co-operative capitalism is neither co-operation nor socialism. On the other hand, co-operation is a substitute for self-interest of an individual or groups of individuals for the benefit of the whole society. Wealth has no meaning if it is concentrated in few hands. In the absence of decentralization or equitable distribution of wealth or property, it becomes improperty. Therefore equitable distribution is the essence of equality. If for achieving this object the impugned order has been issued under the powers conferred by the Essential Commodities Act and the Sugarcane (Control) Order, 1966, then it cannot be said that this equitable distribution results in inequity or arbitrariness. In our view, the criteria adopted and the guidelines laid down are reasonable. They have a nexus with the object sought to be achieved. Without reserving areas *qua* each factory and regulating the supply of sugarcane to the members or non-members, the object of distribution of the essential commodity viz. the sugarcane, would not have been achieved. Therefore, we find it difficult to accept the challenge raised by the petitioners which is based on Article 14 of the Constitution of India.

20. Apart from the general challenge, certain challenges *qua* a particular Schedule or factory were also raised before us. One of the challenges raised was that though a footnote relating to the

prohibition of new membership is incorporated in Schedule 37, such a foot-note is not there in Schedule 39 which deals with Pravara Sahakari Sakhar Karkhana Ltd. On behalf of the respondents it is candidly admitted that this omission is accidental and as soon as it came to the notice of the authorities, directions have been issued to the Pravara Sahakari Sakhar Karkhana Ltd. that it should not enroll members in the areas of the three overlapping villages of Rahuri Taluka. It is clear that this direction cannot be equated with the footnote incorporated in the Schedule and hence it will be necessary to correct this inadvertent error by amending the Schedule. We do not propose to deal with these individual grievances in detail because in any legislation it is impossible to satisfy everybody. Once care is taken in the matter of equitable distribution of the essential commodity and it is held that the order is reasonable, then individual grievances could be settled and carved out under the relevant provisions of the order. Even otherwise only because in a given case there may be some hardship on that count, the whole order cannot be held as invalid or violative of Article 14.

21. A grievance was made that a grower has no forum for putting forward his grievance. Under proviso to Clause 5, it is specifically laid down that while deciding the question covered by this sub-clause, the Permit Officer shall give to the parties concerned a reasonable opportunity of being heard in person or through an authorised representative. The expression "parile granting the Export Permit, it is only the concerned sugar factories that are heard and the sugarcane grower had no say in the matter. If cls. (6) and (7) are read together, it is quite clear that in the process of issuance of Export Permit the sugarcane grower is also vitally concerned. We are informed that when a factory applies for Export Permit, a copy of the contract entered into with the concerned sugarcane grower is attached to such an application. If such a permit is granted or refused and a sugarcane grower is aggrieved by it, then under Clause 12 he has a right to file an appeal. In Clause 12 the expression used is "any person aggrieved by any order of the Permit Officer." This must take in its sweep the sugarcane grower, if he is aggrieved by the order of the Permit Officer. If the application filed for Export Permit is not accompanied by the relevant contract with the sugarcane grower, then obviously before issuing such a permit the grower will have to be heard. No order could be passed *qua* the sugarcane owned and grown by him behind his back, if he has not consented for it, unless he is heard. Therefore, by necessary implication in the very process of issuance of the Export Permit, in some form or other the sugarcane grower will have to be heard. To say the least, this is implicit. If he is aggrieved by the order passed by the Permit Officer, he has a right to file an appeal under clause 12 of the order. It is true that no time limit has been prescribed for deciding applications for Export Permits or appeals under clause 12. It was rightly pointed out by the Counsel for the petitioners that time is the essence of the whole scheme. The working of factories is seasonal one. Therefore, if the applications for Export Permits or the appeals are not decided expeditiously, then the provision will lose its efficacy and will become illusory. However, we are informed by Sri Singhavi that the, State Government will immediately issue directions to the officers concerned to decide the applications for Export Permits or appeals under Clause 12 within a period of 15 days from the date of the presentation of the application or appeal, as the case may be. Shri Singhavi has also filed before

us a Note stating as to what procedure the respondents propose to follow to remove the individual grievances. The said Note reads as under :-

"1. Supply of sugarcane by non-members in overlapping areas :The non-members in the overlapping areas are entitled to enter into contracts for supply of sugarcane with any factory in their area. The factory does not have to obtain an export permit for obtaining sugarcane from nonmembers. However, when an application is made by a particular factory for grant of crushing licence, it has to give the details of the contracts entered into by it with the nonmembers. While allotting the sugarcane, the licensing authorities will normally allow such contracted sugarcane to be taken by that factory unless it exceeds the requirement based on the licensed capacity and the working days. For instance, if a grower of sugarcane, say 'X' falls in the overlapping area of factory 'Y' and he is not a member of any of the factories plies from the nonmembers like 'X' in accordance with the contracts. While considering the supply of sugarcane by the non-members his area, he enters into contract with factory 'Y'. While allotting sugarcane to the factory 'Y', the Director of Sugar will first take into consideration the sugarcane supplied to the factory 'Y' by its members, and thereafter, he will consider the suprs, the Director of Sugar will normally allow the supplies according to the contracts unless these supplies exceed the requirement of the said factory based on its licensed capacity, multiplied by working days.

2. Price to be paid to the non-members in overlapping areas :

Since non-members are entitled to enter into contracts with any of the factories in their areas, they will naturally enter into the most profitable contracts. Since there is inadequate supply of sugarcane, the factories, would naturally try to attract the sugarcane growers to supply cane to them at least at the price on which they obtain sugarcane from their members. In any case, the non-members, while entering into the contract, can expressly lay down a condition in the contract that he will be paid the same price as paid to the members finally, on profit sharing basis. In the case of the joint stock companies, the general practice is that in order to attract sugarcane growers to supply sugarcane to them, they pay an average price of the nearby two-three co-operative sugar factories and such a clause invariably finds a place in their contracts. It is, therefore, in the interest of non-members in the overlapping areas, to allow them to enter into contracts with factories of their own choice.

3. Membership after 30th June, 1981 :

In some of the Karkhanas, new members have been enrolled after 30-6-1981 without the permission of the Director of Sugar, despite the instructions dated 16-5-1981. Even in such cases, while allocating sugarcane to the concerned factory, the sugarcane of such new members linked to the share holdings, may be allowed to that factory provided such supply does not exceed the requirement based on its licensed capacity.

4. Reading down the note below the Schedule regarding prohibition of enrolling members in overlapping areas after 30-6-1981 :

The prohibition regarding membership after 30-6-1981 has been imposed mainly with a

view to prevent factories from drawing excess sugarcane on the plea that they are obliged to take the sugarcane of their members. In case the note below the Schedule is read down to mean that the concerned co-operative sugar factory is allowed to enroll members and confer on them all the rights of member except the right to supply the sugarcane to that factory and that the sugarcane grown by them could be allocated under the control and direction of the licensing authority, State should have no objection.

5. Correction of Errors in various Schedules :

(a) The intention of the impugned order is to prohibit the membership in the overlapping villages but due to inadvertence, in some cases, membership has been prohibited even in exclusive areas. This will be corrected by an appropriate amendment to the Schedule.

(b) In some cases, some villages have been given exclusively to two or more factories when they should have been overlapping. According to the State, on a true construction of schedules this could mean overlapping villages. But to make things amply clear, the concerned schedules will be amended to make such villages overlapping.

(c) In the Schedule 39, related to Pravara Sahakari Sakhar Karkhana Ltd. a foot-note prohibiting the said Karkhana, from enrolling members in the areas of three overlapping villages of Rahuri Taluka, had remained to be included inadvertently. In order to correct this mistake, a direction was issued to Pravara Sahakari Sakhar Karkhana Ltd. on 10-11-1984 prohibiting it from enrolling members from these overlapping villages and Pravara Sahakari Sakhar Karkhana Ltd. has decided by the said direction. A suitable foot-note would be added below this Schedule No. 39 of Pravara Sahakari Sakhar Karkhana Ltd.

6. Review of Reservations of Areas mentioned in clause :

The review of reservations of areas mentioned in Clause 3 of the impugned order will be taken after every three years. That means the next review will be after September 1987.

7. Grievances of the growers

While exercising the powers under Clause 5(1)(d) of the impugned order, the Permit Officer has to hear cane-grower or growers with regard to non-payment or late payment of the sugarcane by the factory or non-fulfilment of any of the obligations by the sugar factory arising out of the agreement between the cane-grower or cane-growers and the sugar factory, or any discrimination by the sugar factory in harvesting of the sugarcane thereby causing loss to the sugarcane growers. In case of any adverse order being passed by the Permit Officer, the concerned cane-grower can appeal to the Director of Sugar under Clause 12(2). Thus the sugarcane grower will have full opportunity to get his grievances redressed."

This Note will have to be read in addition to the observations or the findings recorded hereinbefore. In our view, in all fairness, if the State Government intends to follow this procedure to remove the grievances of the individual sugar factories or cane-growers, it will be in the fitness of things to incorporate them in the order amending the order so as to give it statutory sanction.

22. Many of the grievances made before us could surely be taken care of in a review of the

reservation of areas mentioned in Clause 8 of the Order is taken after every three years. The period of three years is reasonable in view of the cyclic ups and downs in sugarcane production in the State. The main grievance of the petitioners in all these petitions is *qua* the reservation of areas. As per the note submitted by Sri Singhavi, the next review will be after September 1987 i.e. after the period of three years from the issuance of the impugned order. The grievance made about the distribution of the sugarcane to the various factories is taken care of by Clause 4, which deals with the grant of license for crushing cane. The factory is obliged to file an application to the licensing authority every year by 30th September in Form 'A'. The form of the application is a detailed one and before granting a crushing license, the data supplied by the individual sugar factory is to be considered by the licensing authority. The details prescribed in the form of application, such as the name of the agriculturist, members' cane as on 30-6-1981, contracted cane etc. clearly mean that while furnishing such information the applicant factory must supply the name of each agriculturist, the details as to whether he is a member or a non-member and the contract entered into with him etc. On the basis of this information, ultimately a decision is to be taken by the licensing authority. Form A-1 under Clause 6(a)(i) of the order, which is the form of the application by a sugar factory for grant of an Export Permit for export of sugarcane from scheduled areas, requires each factory to give various particulars. While giving particulars about the quantity of cane to be exported from each village, the applicant for Export Permit will have to disclose the name of the grower or growers and details about the contract entered into etc. We are informed that such a procedure is being followed by the authorities concerned. If this is the requirement for making an application for granting of license every year or for grant of an Export Permit under clause 6, then in our view, the procedure prescribed is wholly reasonable and cannot be termed as arbitrary.

23. Sri Pradhan, the learned Counsel appearing for the petitioners in Writ Petition No. 4918 of 1984 contends before us that by the note appended to the Schedule, even new membership *qua* exclusive area is also prohibited. In our view, that is not the import of the said note. The prohibition contemplated is *qua* the overlapping villages. If an area is exclusively reserved for a sugar factory and it falls within the area of operation of the said Co-operative Sugar Factory, then there cannot be any prohibition or restriction for enrolment of any membership with regard to the exclusive area. This position is conceded by Sri Singhavi, the learned Counsel appearing for the respondents.

24. So far as Writ Petition No. 708 of 1986 is concerned, apart from the general submissions, a contention is also raised regarding the price paid by the Vinayaka Sahakari Sakhar Karkhana, which is practically a sick unit. However, in view of the concessions made by the respondents incorporated in the judgment hereinbefore, it is not necessary to deal with this aspect of the matter any further and the petitioners will be at liberty to approach the appropriate authorities in that behalf. We hope that if such an approach is made, the authorities concerned will decide the matter in accordance with law, keeping in view the concessions made by the respondents. It was also contended that while making payments, unreasonable and unwarranted deductions are made.

It is quite obvious that the deductions which are not permitted by law could not be made from the said price, while making payments to the sugarcane growers.

If any such deductions are made, then the cane growers are entitled to approach the Director of Sugar or some other competent authority in that behalf and the said authorities are obliged to look into the matter. As observed by the Supreme Court in *Narendra v. Manikrao*[10], 'Civil services have a high commitment to the rule of law, regardless of convert commands and indirect importunities of bosses inside and outside the Government. Lord Chesham said in the House of Lords in 1958, "He is answerable to law alone and not to any public authority." A complaint was also made by the growers that they have no say in fixing the price of sugarcane nor they are represented on the Committee constituted by the Government. The huge profits earned by distilleries etc. are never shared. According to them, the interest of sugar factories only are looked after and they are left in the lurch or at the mercy of the sugar factory owners. In the affidavit filed in reply, the under Secretary to the Government of Maharashtra has explained as to how the Committee is constituted and what factors are taken into consideration for fixing the price. We hope that the Government and the said Committee shall take into consideration the grievance made by the cane growers about the price paid to them as well as the illegal deductions made by the factory owners. So far as the other grievance made in this Writ Petition is concerned, it has become academic at this stage and hence we do not propose

[10] AIR 1977 SC 2171

to deal with it.

25. In the view which we have taken, the Writ Petitions are partly allowed. The respondents are directed to carry out necessary amendments in the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) Order, 1984 as well as the Schedules in tune with the observations made in this judgment. However, in the circumstances of the case, there will be no order as to costs.

Petitions partly allowed.