

## **BOMBAY HIGH COURT**

Satara Sahakari Sakhar Karkhana Ltd

Vs.

State, (Bombay)

Writ Petns. Nos. 5913 of 1987, 1 of 1988

(Sawant, Kolse-patil and Guttal, JJ.)

23.09.1988

### **JUDGEMENT**

#### **Sawant, Kolse-patil. J.**

1. By its judgment of December 16, 1987, a Division Bench of this Court had referred the first of the above Writ Petitions, namely, Writ Petition No. 5913 of 1987 to Hon'ble the Chief Justice for constituting a Larger Bench in view of what it considered to be a conflict between the view taken consistently by the Division Benches at Bombay and the views expressed by the Division Bench at Aurangabad in Writ Petition No. 22 of 1987. (The Division Bench has also stated in its referring judgment that the view expressed in Writ Petition No. 22 of 1987 (before the Aurangabad Bench) is in conflict with the view expressed by a Bench at Bombay in its decision reported in *Rahuri Sahakari Sakhar Karkhana Ltd. v. State*<sup>1</sup>). The Hon'ble the Chief Justice has therefore referred the said Petition to a Full Bench.

Four other Petitions, i.e. Writ Petitions Nos. 1811, 1870, 1901 and 1913 of 1987 pending before the Aurangabad Bench on the same point were also subsequently transferred to Bombay for hearing before the Full Bench. In addition, two more Writ Petitions were presented directly before us, namely, Writ Petitions Nos. 181 of 1988 and 263 of 1988. The petitioners in Writ Petition No. 1 of 1988 have also intervened before us.

2. Writ Petition No. 5913 of 1987 is filed by a Co-operative Sugar Factory. Writ Petitions Nos. 1811, 1901 and 1913 of 1987 are filed by the Sugarcane growers who are not members of any Co-operative Sugar Factory; whereas Writ Petition No. 263 of 1988 is filed by the member sugarcane growers of a Co- operative Sugar Factory. Writ Petition No.181 of 1988 is filed by a Joint Stock Company; whereas the Intervener in Writ Petition No. 1 of 1988 is a Co- operative Sugar Factory.

3. The question of law which has been raised and which arises out of the apparent conflict in the

views taken by the Division Bench at Aurangabad and the Benches at Bombay concerns the validity of the Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) Order, 1984 (hereinafter referred to briefly as the State Order). It may be mentioned in this connection that the Benches at

<sup>1</sup> AIR 1987 Bom 248

Bombay, except the Bench which decided the matter reported in *Rahuri Sahakari Sakhar Karkhana Ltd. v. State*<sup>2</sup> were not called upon to test the validity of the State Order on the ground of the deprivation of the sugarcane grower of the best price available to him. Its validity was challenged only on the ground of the alleged illegality of the restriction on the freedom to sell and purchase the sugarcane, except to and by the factories, as the case may be, named in the Order. However, it appears that before the Aurangabad Bench, in Writ Petition No. 1344 of 1983 decided on January 30, 1987, two contentions were specifically raised, namely, (1) that the directions given in the decision reported in AIR 1987 Bombay 248 (supra) for amending the State Order were not followed and (2) that the sugarcane growers were deprived of the best price by prohibiting them from supplying the sugarcane to a factory of their choice. The Aurangabad Bench accepted both the said contentions and allowed the sugarcane growers to supply the sugarcane to any sugar factory of their choice.

4. In addition to the other contentions which have been raised in this and other petitions, the question which is common to all the petitions and which arises out of the referring judgment, therefore, is whether the State Order is valid although (a) the directions for its amendments given in AIR 1987 Bombay 248 and other decisions are not carried out and (b) the freedom of choice is denied to the growers to choose their purchasers. Before we answer the questions, it is necessary to refer to the relevant provisions of the law.

5. Admittedly the State Order is made in exercise of the powers granted to the State Government under the Sugarcane (Control) Order of 1966 issued by the Central Government under Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the Central Order).

The relevant provisions of the Essential Commodities Act, 1955 (hereinafter referred to as the Act) may briefly be summarized as follows :

The Act has been placed on the Statute book for the control of the production, supply and distribution of, and trade and commerce in, certain commodities in the interests of the general public. The commodities of which the production, supply, distribution, etc. is thus controlled are called essential commodities and have been named in Section 2(a) of the Act. Sugar and sugarcane are such commodities. Section 3 of the Act gives very wide powers to the Central Government for regulating or prohibiting the production, supply and distribution, and trade and commerce in essential commodities, and the power specifically includes the power of controlling the price at which any essential commodity may be bought or sold, or prohibiting the withholding from sale of such commodity, and of requiring any person holding in stock, or engaged in the production, or in the business

of buying or selling of the commodity, to sell the whole or a specified part of the quantity held in stock or produced or received by him. The Act further makes the contravention of an order made under Section 3 a cognizable offence and prescribes punishment for the same.

6. It is in exercise of the power granted to it under Section 3 of the Act that the Central Government has issued the Central Order (supra). Under Clause 3 of the Order, the Government has taken power to fix the minimum price of sugarcane payable by producer

<sup>2</sup> AIR 1987 Bom 248

of sugar to the grower of sugarcane. Under Clause 5, the producer of sugar is required to pay an additional price to the sugarcane grower provided the latter falls within the ambit of the Second Schedule of the Order. Clause 6 gives wide powers to the Central Government with regard to the regulation, distribution and movement of sugarcane. Paragraph (d) of sub-clause (1) thereof enables the Government to reserve any area where sugarcane is grown, for a factory having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar, with a view to enabling the factory to purchase the quantity of sugarcane required by it. Paragraph (b) thereof gives power to determine the quantity of sugarcane which a factory will require for crushing, during any year. Paragraph (c) of the sub-clause gives power to fix the quantity or percentage of sugarcane grown by grower or growers, as the case may be, which each such grower by himself, or if he is a member of a co-operative society of sugarcane growers operating in the reserved area, through such society, shall supply to the factory concerned. Paragraph (d) of the sub-clause gives power to direct a sugarcane grower or a sugarcane growers' co-operative society supplying sugarcane to a factory, and the factory concerned, to enter into an agreement to supply or purchase, as the case may be, the quantity of sugarcane fixed under paragraph (c) of the sub-clause. Paragraph (c) of the sub-clause gives power to the Government to direct that no gur (jaggery) or khandsari sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in the license issued in that behalf; whereas paragraph (f) of the sub-clause gives power to prohibit or restrict or otherwise regulate the export of sugarcane from any area (including a reserved area) except under and in accordance with a permit issued in that behalf. Sub-clause (2) of the said clause 6 then states that every sugarcane grower, sugarcane grower's society and factory shall be bound to supply or purchase, as the case may be, the quantity of sugarcane covered by the agreement entered into under paragraph (d) of sub-clause (1), and that any willful failure on the part of any of the parties to do so shall constitute a breach of the provisions of that Order. Clauses 7 and 8 of the Order relate to the power to license power crushers, Khandsari units and crushers and to regulate the purchase of sugarcane by them and to issue directions to the producers of Khandsari sugar, power crushers, Khandsari units crushers and co-operative societies. Clause 9 refers to the power of the Government to call for information from producers of sugar to secure compliance with the provisions of the said Order.

Clause 11 of the Order enables the Government to delegate all or any of the powers under the Order to the State Government or any officer or authority of the State Government.

7. By a Notification of the same date, namely, G.S.R. 1126/Ess/Com/Sugarcane, dated July 16, 1966, the Government of India conferred powers under clauses 6, 7, 8 and 9 of the Central Order among others, on the State of Maharashtra. The State Government in exercise of the power conferred by paragraphs (a), (c) and (f) of sub-clause (1) of clause 6 and sub-clause (a) of clause 9 of the Central Order, issued the State Order, 1984 (supra).

8. What is necessary to note for our purpose is that the Central Order nowhere speaks of the power to fix the maximum price of sugarcane to be supplied to a sugar factory. Further, although the power under paragraph (c) of sub-clause (1) of clause 6 to fix the quantity of sugarcane to be supplied by the sugarcane grower to the factory is taken the power under its paragraph (d) to direct sugarcane grower and the factory to enter into an agreement to supply and purchase, as the case may be, the quantity of sugarcane, fixed under paragraph (c) has not been taken by the State Government under the State Order. Likewise, the power under paragraph (e) of clause 6(1) of the Central Order to direct that no gur or khandsari sugar shall be manufactured from sugarcane has also not been taken by the State Order although it is conferred on the State Government under the notification.

9. We may now refer to the decisions of this Court delivered by the different Benches.

At Bombay, in writ Petn. No. 4830 of 1985 decided on November 26, 1985 and Writ Petns. Nos. 4955 of 1985 and 5082 of 1985, both decided on December 3, 1985 and Writ Petn. No. 5800 of 1986 decided on 20 January 1987, reported in 1987 Co-op TJ 223 (Bom), the following directions were given :

- (i) That the authorities concerned will ensure that no sugar factory enters reserved areas under clause 3 of the State Order of another sugar factory save and except on the basis of an export permit granted to such factory.
- (ii) That where a sugar factory has already been allotted adequate sugarcane according to the crushing licence or licences issued from time to time, no application for export permit or additional quantity will be entertained from such sugar factory.
- (iii) That upon an application being made for export permit to the Permit Officer, the latter will dispose of such application within ten working days of the receipt of such application by communicating the decision in respect thereof to the parties concerned.
- (iv) That an application for export permit will be heard and decided after giving to all the parties affected or likely to be affected an opportunity of being heard.
- (v) That the order granting or refusing the export permit will be a speaking order.
- (vi) That the export permit granted by the Permit Officer will be effective after an interval of three working days from the date on which the order granting the permit is served on the party affected.
- (vii) That if the party affected by the export permit files an appeal to the Director of Sugar against the grant of export permit within three working days from the receipt of such order, the stay of the permit will continue till the disposal of the appeal unless the

Appellate Authority otherwise vacates the stay.

(viii) That the Director of Sugar will dispose of the appeal filed with him within ten working days from the receipt of such appeal.

(ix) That if the Director of Sugar in appeal confirms the order of the Permit Officer, the export permit granted if already stayed will continue to remain stayed for a further period of three working days from the date of service of such appellate order upon the affected party.

In Writ Petn. No. 5464 of 1986 decided on December 1, 1986, the following directions were given :

(i) During the pendency of the application for export permit and the appeal from the order of the Permit Officer, the sugarcane from the lands concerned should not be permitted to be taken by anybody;

(ii) The Director of Sugar, i.e. the Appellate Authority should diligently exercise his powers under clause 13(e) of the State Order and seize sugarcane from the factory if it is acquired by such factory in excess of its requirement, and distribute it equitably among the factories, preference being given to those factories which are in short supply of the sugarcane.

These directions were reiterated in Writ Petn. No. 951 of 1987 decided on February 19, 1987, notwithstanding the observations made by the Aurangabad Bench in Writ Petn. No. 1344 of 1986 decided on January 30, 1987, reported in 1987 Mah LR 659 and Writ Petition No. 22 of 1987 decided on February 4, 1987, reported in 1987 Mah LR 712.

It will be evident from the aforesaid directions, that they had nothing to do with the fixation of price of the sugarcane. They related to the right to receive or supply sugarcane as the case may be, from the areas reserved under the State Order de hors the consideration of the price. The question of price was not raised in any of the said petitions nor was it considered. In Petition No. 22 of 1987 decided on February 4, 1987, the Aurangabad Bench was called upon to deal with the difference in the prices paid by the different factories and hence after referring to the decision in AIR 1987 Bombay 248 (supra) the Bench observed that the State Order was bad because the directions given in AIR 1987 Bombay 248, had not been carried out. The Bench further held that sugarcane growers were free to supply their sugarcane to any factory of their choice since they were likely to receive more price for the same. This view of theirs was reiterated by the Aurangabad Bench in Writ Petn. No. 22 of 1987 decided on February 4, 1987, reported in 1987 Mah LR 712 and also in Civil Appln. No. 227 of 1987 in Writ Petn. No. 1344 of 1986 decided on February 6, 1987.

10. The first question that falls for consideration thereafter is whether the directions given by the Division Bench in its decision reported in AIR 1987 Bombay 248 (supra) have been carried out by the State Government. The Aurangabad Bench while holding, in Writ Petn. No. 1344 of 1986,

that they are not carried out, has referred to certain observations in paragraph 24 of the judgment in AIR 1987 Bombay 248 which read as follows :

"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*<sup>3</sup>, Civil service have a high commitment to the rule of law, regardless of covert 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

<sup>3</sup> AIR 1977 SC 2171

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 to deal with it."

The Aurangabad Bench has then observed that it is an admitted position that no amendments as suggested have been carried out to the State Order and has stated as follows :

"However, we think that individual sugarcane growers can ventilate their grievance before us at least and we have no hesitation in holding that the individual cane growers, in the absence of any machinery or any provision to allow them to redress their grievances as suggested, have a right to give their sugarcane to the factory of their choice. The earlier

judgment of this Court itself is indicative that individual sugarcane growers as against the class of sugarcane growers may have their individual grievances and they should be allowed to ventilate those grievances and if the authorities find the grievances made out are such as would entail injustice to them, if not redressed, then such grievances should be looked into and redressed..... we find that the value of the sugarcane produced is one factor which must be considered at the time a grievance of an individual sugarcane grower is before any authority, since value of sugarcane grower has the element of labor which, according to us, is very important. We regard the labour of the sugarcane grower as fundamental and primary for the existence of sugar factories as also availability of sugar for the consumers. We think that the Petitioners have rightly come before us and have rightly demanded that the value of their labour must be given proper compensation in the form of price and which consideration must always outweigh any other consideration so far as individual sugarcane grower is concerned.

In this view of matter, we hold that the petitioners have a right to give the sugarcane grown by them to the deleted Respondent No. 5 - the Mula Sahakari Sakhar Karkhana Ltd. or any other factory of their choice, since they are likely to receive more value in the form of price of the sugarcane grown by them out of their own labour and, accordingly, respondents Nos. 1 to 4 are restrained from asking the sugarcane grown by the petitioners to be given to respondent No. 6 – factory. Rule is accordingly made absolute with no order as to costs."

11. It is thus obvious that the direction, the non-carrying out of which was made the basis of its decision by the Aurangabad Bench was one which related to the fixation of price of the sugarcane without hearing the sugarcane growers and for which there was no machinery provided in the State Order. It is not so much the price or the difference in the prices paid by the different factories, but the want of machinery to hear the sugarcane growers before fixing the price and to redress their grievance in that behalf that weighed with the Aurangabad Bench in holding that in the absence of such a machinery the sugarcane growers are free to sell their cane to any factory of their choice. We have therefore to find out whether the State Order as it then existed or as it exists today, had or has made a provision for any such machinery.

12. While considering the question of the fixation of prices, the sugarcane growers will have to be divided into two categories, viz. those who are and those who are not members of the co-operative sugar factories. We may, for the purpose of convenience, call them members and non-members. On behalf of the sugar factories, as well as the State Government and the Director of Sugar, our attention is invited to the Model Bye-Laws framed by the Registrar of the Co-operative Societies for the co-operative sugar factories in the State. We are also informed that they have been adopted by all the co-operative sugar factories. Bye-laws Nos. 63, 64, 64A, 65A and 65B deal with the fixation of price of sugarcane and deduction of certain amounts from the prices paid to the members.

Bye-law 63 states that the Board of Directors of the factory will give advances to the members

against the price of the sugarcane supplied by them, by prior permission of the Director of Sugar and the Deputy Registrar of the Co-operative Societies and in accordance with their directions and after making deductions for certain purposes. Bye-law 64 states that the price of the sugarcane supplied by the members, shall be as fixed by the Board of Directors every year. The Board of Directors will fix the price according to the constitution, the object and the bye-laws of the society and after taking into consideration the financial transactions and conditions of the year. The bye-law then makes an exception to this general rule and states that so long as the share capital invested by the Government is not refunded completely and/or the loan taken from the Industrial Finance Corporation or from any Central Financial Institution supplying funds for fixed capital assets is not fully repaid, the price to be paid to the members shall be that as fixed by the State Government. For the purposes of our discussion, we will refer to this period briefly as the debt- period. Bye-law 64A states that whenever it becomes necessary for the factory to purchase sugarcane from non-members outside its jurisdiction, the factory shall take permission of the State Government for such purchase. However, during the debt-period the price to be paid to the non-members shall be that as will be fixed by the State Government before the beginning of the crushing season. Bye-law 65A mentions the deductions to be made from the price payable to the members for raising non-refundable deposit from them, the rate of such deductions and the rate of and the manner of its disbursement and the interest to be paid on such deposit. Bye-law 65B gives power to the Board of Directors to collect deposits by making deductions from the price to be paid to all sugarcane suppliers and states that such deposits shall be used only for the expansion of the factory and other capital expenditure. The bye-law also lays down the rate of interest to be paid on such deposits. 12-A. It is apparent from the above bye-laws that during the debt-period, the prices to be paid to both the members and the non-members are to be fixed by the State Government, and the factory cannot pay more price. We are informed across the Bar that there are as yet many debtor-factories.

13. As far as members are concerned, they are bound by the bye-laws of their factories and they cannot make any grievance that they are prejudiced for want of a machinery to hear their grievance in the matter of the fixation of price. Even otherwise, before the Government, they are represented by their elected Board of Directors and it is legitimate to presume that the Board of Directors will protect their interests. We are informed that the State Government constitutes a Committee of Ministers to fix the prices of the sugarcane every year after the crushing season is over and the total financial results of the factory are known. The Committee fixes the prices factory-wise. There is, therefore, every reason to believe that the Committee hears the Board of Directors of each factory before fixing the final price payable to its suppliers of sugarcane. If it does not do so, it will have to do it hereafter.

14. However, as far as the non-members are concerned, they are certainly not bound by the Bye-laws. Nor are they represented by anyone before the Committee. In view of the provisions of the State Order, they are required to supply their sugarcane to the factories named in the Order. They are thus placed in a double jeopardy, and an absence of machinery to hear them before the price

is fixed may result in injustice to them.

15. What is more, under the State Order, the State Government has no authority to fix the maximum price payable to the sugarcane grower. As has been pointed out above, the State Order issued under the Government of India Notification No. G.S.R. 1126/ESS/ Com/Sugarcane dated the 16th July 1966 confers on the State Government powers contained in clauses 6, 7, 8 and 9 of the Central Order. However none of the said clauses of the Central Order confers power even on the Government of India to fix the maximum price payable to the sugarcane grower. This being so, according to us, although the maximum price payable to the members of the sugar factory may be fixed by the State Government under the Model Bye-law 64 (supra), and therefore, may be binding on the Board of Directors and the members of the co-operative sugar factory (and that too during the debt-period) such price fixed under Bye-law 64A in respect of the sugarcane supplied by the non-members will not be binding on them, although it may be binding on the Board of Directors in the sense that the Board of Directors is prohibited from paying more than the said price.

16. The learned Advocate General confronted with this situation faintly tried to rely upon paragraph (vi) of sub-clause (6) of clause 4 of the State Order to contend that the power to fix the maximum price is traceable to the said provision. Clause 4 deals with "grant of license for crushing cane" and sub-clause (b) thereof lays down the conditions that the licensing Authority may impose while granting the license. After enumerating specific conditions in paragraphs (i) to (v) which deal with the minimum and maximum quantity of sugarcane that shall be crushed, the period during which the license shall remain valid, the date of starting of the crushing as well as the date of closure of the factory and the areas from which the factory shall draw its sugarcane, paragraph (vi) which is in the nature of a residuary condition reads -"Any other matter which the licensing Authority may deem fit". The contention of the learned Advocate General is that this residuary clause clothes the licensing Authority with the power to fix the maximum price payable by the factory to the sugarcane grower. With respect, we are unable to agree with the contention because the Central Order under which the State Order is issued itself does not take such power. It is also doubtful if such power could have been read in the said residuary paragraph even if the power to fix the maximum price was taken by the Central Government under the Central Order and conferred upon the State Government. But to that question we need not address ourselves here.

17. The position in law which therefore emerges is that the State Government has under the State Order no power to fix the maximum price payable to the sugarcane growers. Hence the members of the non-debtor factories as well as the non-members are not bound by the prices fixed by the State Government. Only the members of the debtor factories are bound by the fixation of such prices and that too under the aforesaid byelaw of their factory. Hence the members of the non-debtor-factories and the non-members in all cases are entitled to prices for their sugarcane as fixed by or agreed to by the Board of Directors as the case may be. If this is so, then it is futile to contend that even the non-members and the members of non-debtor-factories are not entitled to

prices more than those fixed by the State Government under the said bye-law. In the case of the members, they have to look to the internal machinery in the factory for fixing the price. In the case of the non-members the price will depend upon the agreement between them and the factory. If there are any grievances of the members against the fixation of the prices by their factory, they have to agitate them within the frame work of the Maharashtra Co-operative Societies Act and the bye-laws of the factory. In the case of non-members, they have a choice either not to supply the sugarcane to any of the factories or to sell it to the highest bidder.

18. This latter freedom of the non-members is however rendered nugatory by the provisions of Clause 3 of the State Order read with its schedules. Clause 3 deals with the "reservation of areas" and reads as follows : -

"3. Reservation of areas. -

(1) Having regard to the crushing capacity of sugar factories and, the yield of sugarcane in the reserved area, and the need for production of sugar, the area as specified in each of the schedules is hereby reserved for the factory mentioned in that schedule, with a view to enabling it to purchase the quantity of sugarcane required it.

(2) Subject to the provisions of clauses 4 and 5 of this Order, no sugar factory shall purchase cane or accept supplies of cane from cane growers, except from the area reserved for that factory."

In view of the aforesaid provisions of sub-clause (2) of clause 3, no sugar factory can purchase cane or accept supplies of cane from a cane grower except from the area reserved for that factory as mentioned in the schedules to the order. The Schedules mention the areas which are exclusively allotted to the different factories and also those which are allotted in common with other factories. The sugarcane growers in the former areas cannot sell their product except to the factory to which their area is exclusively allotted whereas the growers in the latter areas can choose only between the factories to which the overlapping areas are allotted and between none else. We are informed that the exclusive areas are so allotted to the factories in the Schedules that as far as possible all the members of the respective factories are covered by them. The effect so far as the non-member sugarcane growers in the area exclusively reserved for a factory however is that they have only one option open to them, viz. not to supply the sugarcane to the factory if the price offered by it is not adequate. And if he cannot make use of the sugarcane for any other purpose he has only to resign himself to his fate by allowing his crop to go waste. In the case of overlapping areas, he is faced with the same Hobson's choice but vis-a-vis more than one factory. If the price offered by all the factories which are allotted the said area is equally inadequate, he has no choice but to accept the fait accompli. Even if, therefore, there is no power in the State Government to fix the maximum price, the price offered by the factory or factories to which the area concerned is allotted becomes the maximum price for the grower. In a case where the factory or factories happen to be the debtor-factories, this virtually means the price fixed by the State Government. In the case of non-debtor-factories the price is the one dictated by the factory

or factories to which the area is allotted. In no case therefore the grower can get the market price for his produce.

19. This discussion touches the second point that falls for our consideration viz. whether the State Order is bad for infringing the sugarcane-grower's rights to sell his product to the highest bidder or at the market price. We have already pointed out that so far as the members are concerned, they are bound by the Bye-laws which make a binding contract between them and the factory. They cannot therefore complain of the infringement of their rights if the factory or the State Government, as the case may be, fixes any price under the Bye-laws. The fixation of the price in their case is independent of the State Order and even in the absence of any Order under the Act, the members will be bound by the price so fixed under the Bye-laws. However, as far as the non-members are concerned, unless the maximum price is fixed under the Act they will not be bound by it. What however cannot be done directly is in practice indirectly achieved by clause 3 of the State Order and in particular by sub-clause (2) thereof, as pointed out above by confronting the sugarcane grower with the Hobson's choice. Whether such a consequence is intended or not, that is the inevitable result of the said provisions.

20. It may be contended that the sugarcane grower being aware of the State Order and therefore of the restriction on the sale of his produce can be said to have voluntarily submitted to such situation. It is open to him to grow any other crop. Yet he grows sugarcane and shows his readiness and willingness to accept whatever price his produce will fetch in the restricted market. Since the State Order does not restrict the price but only the market and the sugarcane grower willingly produces for such restricted market, no right of his under Article 19 can be said to have been infringed. For the same reason his right under Article 14 cannot be said to be violated even if the adjoining grower gets a higher price because he happens to fall in another zone which is allotted to a different factory or factories which pay a higher price. This line of reasoning however ignores certain basic facts. In the first instance, the zones are revisable periodically and will vary according to the dictates of the factors beyond the control of the grower such as the establishment of the new factories and the closure of the existing factories, the crushing capacity of the existing and the new factories, their good or bad management, their financial soundness or weakness, their capacity to produce by-products from the sugarcane, the availability of water and other inputs, etc. These factors vary from time to time. Secondly, sugarcane is not a yearly but a seasonal and alternate crop. The season varies from 14 to 18 months and after each crop, the land has either to be left fallow or diverted to another crop. Thirdly, it is not easy to divert the land to other crops, at will. Apart from the availability or otherwise of the necessary inputs for growing other crops, the availability of market for such crops during the relevant period has also to be taken into consideration before switching on to their production. The agricultural production by its very nature is not resilient and its elasticity over a period of years varies from region to region. The farmer is virtually stuck to his land which is his only and inelastic asset. He has therefore few options open to him. Hence the very basis of the present contention viz. capacity to diversity of production is wanting.

21. That brings in sharp focus the need to ensure his legitimate due to the farmer, i.e. the sugarcane grower in the present case. Although as pointed out above, under the Act the Central Government has powers to fix the maximum price of the sugarcane, the Central Government has not taken it under the Central Order. The power of the Central Government to fix the prices of the essential commodities is contained in Section 3 of the Act. Under sub-section (1) of the said section, if the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

Under sub-section (2) an order made under sub-section (1) may provide, among other things –

(a) and (b) xxx xxxxxxxxxxxxxxxxxxxxxxxxxxx

(c) for controlling the price at which any essential commodity may be bought or sold.

(d) and (e) xxxxxxxxxxxxxxxxxxxxxxxxxxx

(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity, -

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him.

to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Sub-section (3) then lays down the price which shall be paid to the person selling the essential commodity in compliance with the order made with reference to clause (f) of sub-section (2) reproduced above. That subsection reads as follows :

"(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefore as hereinafter provided : -

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale."

Sub-section (3 A) of Section 3 makes similar provision with regard to the fixation of price when the Central Government is of the opinion that it is necessary so to do for controlling the rise in prices, or preventing the hoarding of any foodstuff in any locality.

22. The aforesaid provisions of the Act show that the legislature has paid due attention to the payment of price to the vendor of any essential commodity when he is compelled to sell the whole or a specified part of his produce or goods whether to public agencies or to other persons as may be specified in the Order made under the Act. That price has to be consistent with the controlled price, if any, and when there is no controlled price it has to be calculated at the market rate prevailing in the locality at the date of sale. Admittedly there is no controlled price for the sugarcane. What is fixed is the minimum price and the additional price under the Central Order. Under the State Order however there is no power to fix even the minimum or additional price. That apart, since there is no controlled price fixed for the sugarcane, what is obligatory to pay to the sugarcane grower under sub-Clause (c) of sub- s.(3) of Section 3 of the Act is the price calculated at the market rate prevailing in the locality at the date of the sale.

23. As pointed out earlier the Central Order is issued under Section 3 of the Act. Under clause 6 of the Order, the Central Government has taken power to regulate distribution and movement of sugarcane. The provisions of paragraphs (a), (c) and (f) of sub-clause (1) of the said clause, read together bring the case of the sugarcane growers in the present case squarely under sub-section (3) of the Act. The allocation of the areas/zones under the State Order is made by virtue of the powers derived by the State Government under paragraphs (a), (c) and (f) of sub-clause (1) of clause 6 of the Central Order, as stated above. Hence the sugarcane growers in the present case are entitled to the price calculated in accordance with the provisions of Section 3(3)(c) of the Act. That is the mandatory provision of the Act and a direct or indirect fixation of the price less than the price stipulated under the said provision will render the allocation of areas and/or zones under the State Order *ultra vires* the Act.

24. Hence the non-member sugarcane grower can for his product insist upon the market price in the locality at the date of its sale, and if it is not paid by the factory or factories to which his area is allotted he will be free to sell the same to any other factory or factories as the case may be. To be valid the State Order must make a provision for ensuring such price to the non-member sugarcane grower. The market price may be as agreed between the parties, and in case of a dispute, as decided by the authority that may be created under the order. In so far as the present State Order fails to make any provision to that effect it is liable to be struck down. In this view of the matter, we find that the view expressed by the Aurangabad Bench, with respect, is not too wide as was sought to be contended, although the reasons given by the Bench for holding the said view and its parameters are different from those discussed above.

25. We are therefore of the view, that unless provisions for the following are made in it, the State Order will not be valid –

- (i) The sugarcane growers who are not members of the factory or factories to which they are required to supply their sugarcane shall be paid for the sugarcane supplied by them the price calculated at the market rate prevailing in the locality at the date of the sale;
- (ii) The market rate may be as agreed between the parties, namely, the sugarcane grower and the factory or factories concerned. If there is any dispute over it, the same should be resolved by an independent authority which may be created under the Order such as the one under clause 12 of the present Order. The authority concerned should decide the dispute expeditiously after hearing the parties and by a speaking order;
- (iii) No unauthorized deductions of any account should be made by the factory from the price to be paid to the sugarcane grower without his consent. The State Order should provide for a machinery similar to the above to hear and grant to the sugarcane grower, expeditious relief if he has any complaint in that behalf.

26. In view of what we have held in paragraph 13 above with regard to the fixation of price of the sugarcane supplied to the debtor-factories, it is also necessary that the State Government which fixes the price of sugarcane under bye-law 64 of the Model Bye-laws should fix such price factorywise and only after hearing the Board of Directors of each such factory.

27. We have already pointed out above the directions given by this Court from time to time in the past. They have as yet not been incorporated in the State Order. Hence the following provisions will also have to be included in the State Order :

- (i) An export permit or permit to take sugarcane from an area not reserved for a particular factory should be granted only after hearing all the parties affected or likely to be affected. The application for export permit should be disposed of within ten days;
- (ii) The order granting or refusing the permit should be a speaking order. The permit should be made effective only after an interval of three clear working days excluding the day on which the copy of the order is served on the affected party;
- (iii) If within the period of three days an appeal is preferred, the Permit Officer's order should be immediately stayed;
- (iv) The stay of the Permit officer's order should continue either till the disposal of the appeal or till the express vacation of the stay. The order continuing or vacating the stay should be passed after hearing the concerned parties;
- (v) The appeal should ordinarily be disposed of within 10 days of its being filed;
- (vi) During the pendency of the application for export permit and the appeal from the order of the Permit Officer, the sugarcane from the lands concerned should not be permitted to be taken by anybody;

28. On behalf of the sugarcane growers, both members and non-members, it was also pointed out that there is no provision made in the State Order to prevent and punish the malpractice indulged

in by some of the sugar factories to discriminate between the sugarcane suppliers while lifting their produce. It was alleged that the sugarcane is not lifted according to the dates of its plantation but according to the likes and dislikes of the authorities that be in the factories. This is an invidious method increasingly practised for personal and political reasons and there is no protection provided against it in the Order. Since the sugarcane growers are tied down to particular factories, apart from the vice of discrimination from which it suffers, such a practice, if prevalent, is bound to lead to a helpless bonded peasantry. That the provisions of the Order should be capable of being so abused and should contain no remedy to protect the grower against it, is a sufficient reason to invalidate it. Hence, it is necessary that the State Order should also make a suitable provisions casting a mandatory obligation on the factories to lift the sugarcane strictly according to the dates of their plantation. The Order should also provide for a suitable independent machinery to dispose of the complaints received in that behalf within three days of the receipt of the complaint and to grant relief to the complainant including compensation for the delay in lifting the sugarcane. The provision made in clause 5(1)(d)(ii) for giving permission to another factory to take the sugarcane in such cases, is not a sufficient protection to the sugarcane grower in such circumstances, since the initiative rests with the other factory or factories.

29. On behalf of the sugar factories, a grievance of a different nature was made before us. It was contended that the areas allotted or the zones created under the State Order are not equitable and result in discrimination between the factories. The normal economic working of any sugar factory is of 160 days. Hence sugarcane supply to each factory should be sufficient to enable it to work to its full crushing capacity at least for 160 days. It is submitted that on account of the zones created under the Order, some factories have an abundance of supply of sugarcane enabling them to work for very many days in excess of 160 days while others starve of the sugarcane and cannot work for more than a few days. Some of them do not even commence production. The plant, machinery and labor remain idle in such factories and huge investment which includes loans from the Government and financial institutions goes waste. Besides, the inequitable allocation results in glut of sugarcane in some areas. The factories in the glut areas do not always take all the sugarcane and the growers in the area are forced either to allow the crop to go waste or divest it for the production of khandsari sugar or jaggery if it is possible to do so. In the process, they may suffer forced losses. But, more often, the concerned factories lift the surplus sugarcane according to their convenience to suit their prolonged crushing season which runs sometimes even till the end of June. The delay thus caused in lifting the produce lends to lower recovery of sugar putting the grower to an enormous avoidable loss. Some of the factories also acquire sugarcane in excess of their requirement when others are short of their essential quota. It is for this reason, among others, that in Writ Petition No. 5464 of 1985, this Court had directed the Director of Sugar to exercise his powers under clause 13(1)(c) of the State Order more diligently and seize such excess sugarcane and distribute it among the needy factories. There is no doubt that the Order will become vulnerable if on account of the compulsory zoning, it results in inequitable distribution and immiseration (discrimination) of the farmers as submitted above. It is true that the zones are so created under the Order that as far as possible the sugarcane

of the members of each co-operative factory is allotted to the same factory. There are however exceptions to this rule, and besides the co-operative factories, there are factories in the private sector which are allotted areas under the Order. Further, under the Order even the co-operative factories are allotted areas, particularly the overlapping areas, where they can command sugarcane from growers who are not their members. Although therefore it is true that under the bye-laws of the co-operative sugar factories, the members are bound to supply their sugarcane to their factories which are in turn bound to accept it, under the Order, even the co-operative factories are allotted sugarcane which does not belong to their members. Indeed as was pointed out to us, some members of a cooperative factory may have to supply their sugarcane to other factory and instances are not wanting where one factory sells its surplus sugarcane to another factory or factories.

30. Indeed the object of Section 3 of the Act and of the State Order is to ensure equitable distribution of the essential commodities, in the public interest. The preamble of the State Order in terms states that –

"Whereas the Government of Maharashtra had in the year 1980, appointed a Committee of Experts for making recommendation 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 licence 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;"

the State Government has issued the Order. The primary function of the Order is therefore to ensure that all sugar factories in the State work optimally i.e. to their full crushing capacity at least for 160 days. The zones must therefore be created to fulfil the said objective. Clause 5 of the Order makes some provision for diversion of sugarcane to other factories, under certain circumstances. The note which was tendered on behalf of the State to the Court which decided the matter reported in AIR 1987 Supreme Court 248 (supra) also states that the zones are revisable every three years. The provisions of clause 5 however are not adequate and the statement contained in the note in question has not been incorporated in the Order as yet.

31. It has therefore become necessary to direct that firstly, the State Order should specifically provide that the zones created under it shall be revised every three years after taking into consideration all the relevant factors affecting the supply of sugarcane to the factories. Secondly, the zones should be so created under the Order as will ensure supply of sugarcane to all factories sufficient to enable them to work to their full capacity at least for 160 days in each season. Thirdly, the order should specifically provide that no factory shall acquire sugarcane in excess of its requirement calculated over 160 days, so long as any other factory or factories are not assured of sufficient supply of sugarcane for 160 days. The order should provide for seizure of sugarcane acquired in excess of the above optimum requirement, and for its distribution among the needy factories according to the degree of their need. Lastly, the Order should provide for constant monitoring by the Director of Sugar of the production and supply of sugarcane to ensure that no sugarcane goes waste, that the sugarcane is lifted in time and that as far as possible no factory works below its crushing capacity and for less than 160 days each season. The Director of Sugar should dispose of complaints received in that behalf expeditiously after hearing all the parties concerned and by a speaking order.

32. The directions given in paragraphs 25, 26, 27 and 31 above should be implemented forthwith and wherever they are entitled, the petitioners should be given the necessary reliefs as expeditiously as possible. The directions given above with regards to the fixation of the prices to be paid to the members and non-members of the cooperative sugar factories will apply from 1987-88 season. The rest of the directions will apply prospectively from this date onwards. Writ Petition No. 263 of 1988 which was admitted by us is disposed of accordingly with no order as to costs. The other petitions will go back to the respective Division Benches for decisions in the light of our findings and directions, above.

Order accordingly.