
(2007) 01 AHC CK 0110
In the Allahabad High Court

Balrampur Chini Mills Ltd.

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2007) 2 ADJ 347

Hon'ble Judges : Jagdish Bhalla, J;D.V. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.V. Sharma, J.—The instant writ petition has been preferred seeking a direction or writ in the nature of mandamus commanding respondents to assign eight centres, namely Lahari, Kusumaha Deoria Maffi, Sikra Bargah, Bhujaini-I, Sajna Khor, Buknar, Umri Ahara and Parsa Hazzam-I in favour of the petitioner's company and further seeking a mandamus commanding the respondents No. 1 and 2 to allow the petitioner to continue to make purchases from the 4 cane centers, namely Lahari, Buknar, Sikra Burgah and Kusamah Deoria from where the petitioner has been permitted to make cane purchases during the pendency of the appeal before the Appellate Authority.

2. At the very outset, it would be apt to mention certain facts as to how this matter has come up before this Division Bench.

Petitioner, namely, Balrampur Chini Mills preferred a writ petition bearing No. 354/MS of 2006 inter-alia praying for a direction to the respondents to assign 8 centers in favour of the petitioner company. By the judgment and order dated 10th March, 2006 the writ petition was allowed by the learned Single Judge. Feeling aggrieved by the order dated 10.3.2006 of the learned Single Judge, Basti Sugar Mills Company Limited and another preferred a SLP before the Hon'ble Supreme Court. The Hon'ble Apex Court by the order dated 5.5.2006 disposed of the appeal with a direction that the matter shall be heard by a

Division Bench de novo keeping in view the scope and ambit of Section 15 of the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 and Rule 22 of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954. It was also provided in the order that the Cane Commissioner shall send his report latest by 15th September, 2006 and thereafter the matter should be disposed of by the end of October, 2006. The order dated 5.5.2006 of the Hon''ble Apex Court reads as under:

Heard learned Counsel for the parties.

Leave granted.

Considering the special and peculiar circumstances involved in this case which appears to be of perennial character, we dispose of the petition with the following direction and observations:

The High Court shall re-hear the matter keeping in view the scope and ambit of Section 15 of the U.P.Sugarcane (Regulation of Supply & Purchase) Act, 1953 and Rule 22 of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 (in short the "Rules"). In the meantime, the Cane Commissioner after following the procedure in the aforesaid provisions shall send his report to the High Court latest by 15th September, 2006. Thereafter the High Court shall take up the matter for hearing and is requested to make effort to dispose of the writ petition by the end of October, 2006. It is agreed that in view of the importance of the issues involved, the matter shall be heard before a Division Bench. This order will be operative for the sugar cane season 2006-2007. The impugned order of the High Court is modified to the aforesaid extent. The High Court shall hear the matter de novo taking into account the facts already on record. It shall permit the parties to bring further material on record for effective adjudication of the issues. It goes without saying that since the matter is being remitted to the High Court, the report of the Cane Commissioner has to be given keeping in view the scope and ambit of Section 15 and Rule 22 and uninfluenced by any observations made by the High Court in the impugned order.

The contempt proceedings shall stand quashed.

The appeals are disposed of accordingly.

3. The matter came up before the Division Bench on 28.10.2006 and the order passed by the Hon''ble Apex Court was produced before us and at the joint request of the parties the matter was postponed for 30.10.2006. On 30.10.2006, learned Counsel for the petitioner raised certain objections to which the learned Additional Advocate General appearing for the State sought time for filing response and accordingly the date i.e. 2.11.2006 was fixed. On 2.11.2006, an order for producing certain relevant record was passed. On 6.11.2006, learned Counsel appearing for the petitioner was not available as such the case was adjourned. Thereafter various dates were fixed and at time Counsel were accommodate on account of their busy schedule. Learned Counsel for the parties

could conclude their arguments by 30th November, 2006. On the date of conclusion of arguments, learned Counsel for the parties stated that they would like to give written arguments within three days but the same were made available only by 12th December, 2006.

4. It would be relevant to mention here that in compliance of the orders passed by the Hon''ble Apex Court in Civil Appeal No. 2555 of 2006 Basti Sugar Mills Ltd. v. Balramapur Chini Mills. Ltd. after exercising the power u/s 15 of the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 read with Rule 22 of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954, the instant order dated 14.09.2006 has been passed by the Cane Commissioner, Uttar Pradesh for the supply of sugarcane during the crushing season of 2006-2007. These orders would be subject to the direction of this Court.

5. At this outset it may be relevant to refer that Cane Commissioner has taken into consideration certain aspects and the comparative tables which are enclosed with the report with respect to Balrampur Chini Mills Ltd., unit Babhnan, District Basti. We find that three separate orders were issued and comparative tables were also enclosed to show as to how he proceeded in the matter and formed the opinion for the supply of sugarcane for the session 2006-2007.

6. The objections to the proposed cane reservation order in respect of Basti Sugar Mills Ltd., Govindnagar Sugar Mills Ltd., Walterganj and Babhnan unit of Balrampur Chini Mills Ltd. were filed by the petitioner. The relevant objections raised by the petitioner are as under:

The Cane Commissioner Uttar Pradesh, Lucknow instead of submitting a report as directed by the Hon''ble Apex Court has filed the cane reservation orders in respect to these factories and no reason has been given why a particular center is to be reserved in favour of a particular sugar mill. Thus, he has not given report based on reasons and recommendations and without reasons it is worthless and it does not assist the court in deciding as to which centre are to be allocated to which sugar mill.

7. The Cane Commissioner was directed to submit his report in view of the scope and ambit of Section 15 of the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 (hereinafter called as the Act) and Rule 22 of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 (hereinafter called as the Rules), but he did not consider and follow the provisions of Rule 22 and merely submitted the proposed reservation order in respect of these three factories. The materials on which the said calculation has been arrived, have not been submitted by the Cane Commissioner U.P. Lucknow. The Cane Commissioner ought to have submitted the report by estimating the cane requirement for the three sugar mills in question, but he proceeded to determine the estimated cane requirement under the provisions of Section 12 of the Act and after notifying the requirement for Babhnan Unit of the petitioner company at 148.48 lac quintals, for the respondent Basti Sugar Mill at 86.40 lac quintals and for the Walterganj

Sugar Mill at 84.80 lac quintals, has proceeded to make a proposed reservation order on the said premise.

8. Normally, the revision lies against the notification of requirement u/s 12 (3) of the said Act. However, since the Hon'ble Apex Court desired that for the crushing season 2006-2007, instead of the normal authorities exercising their powers under the Act, this Court should decide the matter and accordingly, the petitioner is impugning the notified requirement of cane before this Court by way of these objections. The cane requirement has been notified through notification dated 5th August, 2006. Even prior to the season 2006-2007, the estimated requirement under the provision of Section 12 of the Act was being determined at the installed capacity and number of crushing days, accordingly for the Babhnan Unit of the petitioner company, the requirement for the season 2006-2007 based on the installed capacity of 10000 TCD was to be assessed which as such had to be 180 lac quintals. However, instead of doing so, the Cane Commissioner U.P. Lucknow, in violation of the orders passed by the Hon'ble Apex Court, has notified the estimate of requirement for the Babhnan Unit of the petitioner company at 148.48 lac quintals. The said requirement has also not been notified. True copy of the notification dated 17th July 2003 has been filed alongwith the copy of cane reservation order for the season 2002-2003, in which the Cane Commissioner U.P. Lucknow had assessed the season of the Babhnan Unit of the petitioner company on 180 days and allotted cane accordingly. It is submitted that the said requirement has also not been notified based on the calculation which has been taken for the other mills, namely, the average crush of the best month + 80% of the expanded capacity x 160 days.

9. In the year 2003, the Cane Commissioner U.P. Lucknow calculated the cane requirement on an installed capacity of 8000 TCD and from 2003 till 2006, the petitioner company enhanced its installed capacity by 2000 TCD and, therefore, based on the formula of best month average into 80% of the expanded installed capacity the requirement of the petitioner company should have been $8800 + 2000 \times 80\% = 10400$ TCD x 160 days and thus there is a deviation, as instead of 180 days only 160 days has been taken into consideration and again with respect of Babhnan Unit the requirement was assessed at 148.48 lac quintals.

10. The Cane Commissioner U.P. Lucknow has also disregarded the capacity of the Babhnan Unit of the petitioner company, which should have been at 10400 TCD, but has also disregarded the fact that for the Babhnan Unit the season was of 180 days. Thus, it should have assessed the requirement on the basis of 180 days crushing. The Cane Commissioner also deliberately disregarded the expansion, which has already been achieved by the Babhnan Unit of the petitioner company after the last assessment, made in the year 2003. He should have permitted the expansion as per the norms fixed. The best month average of the Babhnan unit of the petitioner company is 8800 TCD, the expansion completed is 2000 TCD, which is being continuously adopted by the petitioner company is 180 days and therefore, the requirement u/s 12(2) should have been

notified as 187.30 lac quintals. It is further objected that the requirement of Babhnan unit of the petitioner company has been notified taking the best month average at 8800 + expansion at 400 TCD x season of 160 days = 148.48 lac quintals. The Cane Commissioner reduced the requirement by 38.72 lac quintals by adopting a different methodology and has increased the requirements for the Basti and Walterganj Sugar Mills.

It is further alleged that the expansion of Basti Sugar Mills is nowhere completion and the expanded capacity would only be available to the sugar mill by the end of December, 2006, but even then expansion has been permitted and the requirement has been notified at 86.40 lac quintals, whereas seeing the previous performance, the requirement should have been assessed at 73.60 lac quintals.

It is further urged that the Cane Commissioner has wrongly allocated 199.90 lac quintals of cane to M/s. Basti Sugar Mills Company Ltd. as the company is not in a position to draw and crush the sugarcane as per its installed capacity. Similarly the best month average crush of Walterganj Chini Mill was 2900 TCD, the Cane Commissioner has accepted their expansion of 3000 TCD. The Cane Commissioner has not only increased the requirement manifold, but has accepted the expansion, even though it is well within the knowledge of the Cane Commissioner that Walterganj Chini Mill will not be able to achieve the expansion by the end of January, 2007. The data was submitted by the Babhnan unit of the petitioner company, which was also corroborated by the best month average, as also by the crushing data, which reflected that on several occasions the Babhnan unit of the petitioner company was achieving a crush of about 90,000, 90200, 92100, 93000. This fact demonstrates that in the previous session itself the expansion of 10000 TCD had been completed and the necessary trials were being made so as to fully achieve the installed capacity. True copy of the response as filed by the Petitioner Company on 9/16 May, 2006 in response to the circular letter dated 25.4.2006 issued by the Cane Commissioner has been brought on record. Thus, the Cane Commissioner had wrongly assumed the expansion at 600 TCD even though the expansion from the previous assessment had been increased by 2000 TCD without any justification. The Babhnan unit of the petitioner company after coming to know that the Cane Commissioner has issued a corrigendum when certain discrepancies have been pointed out by another sugar mill, the petitioner company vide representation dated 5.9.2006 represented that their expansion should also be rectified and accordingly the reassessment should be made but no action was taken by the Cane Commissioner.

It is said that the Cane Commissioner misdirected himself and has deliberately completed the said exercise illegally and has allotted the cane in excess to the respondents Basti Sugar Mill and Walterganj Sugar Mill. Accordingly the Cane Commissioner acted malafidely in order to favour the respondents Basti Sugar Mill and Walterganj Sugar Mill. Thus, in view of the direction of the Hon'ble Apex

Court, the Cane Commissioner has to submit his report keeping in view Section 15 of the U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953 and also in terms of Rule 22 of the U.P. Sugar Cane (Regulation of Supply and Purchase) Rule, 1954, vis-à-vis each factory. The Cane Commissioner deliberately estimated the requirement of petitioner company wrongly from 187.20 lac quintals to 148.48 lac quintals. The petitioner company made a representation on 29.08.2006 and 5.9.2006 and informed the Cane Commissioner that the Cane area in respect of Vikramjot Cane Cooperative Society, Babhnan and Munderwa Cane Cooperative society have been shown in excess of actual cane area by 12371 hectares. The area intimated by the District Cane Officer and the Dy. Cane Commissioner in respect of these three societies is actually more than the cultivable area in respect of some growers. Therefore, while taking into consideration the production of cane for the said three societies, it was represented that the cane area of 27687 hectares may only be taken into consideration instead of 40059 hectares, which is infact the cane area available with the petitioner company. This error has come into notice while preparing the check list. It was further represented that the said fact was noticed that the Survey staff in some cases has mentioned the cane area of the growers more than their cultivable area, which is not at all possible. It is also alleged that the calculations about the production are based on incorrect figure of the cane area, which inflated the cane production by 71.51 lac quintals. Thus the cane area which actually stands allotted to the petitioner company is 33201 hectares instead of 45572 hectares, which amounts to an allocation of production of 91.90 lac quintals actually and not 252.06 lac quintals as shown by the Cane Commissioner, U.P. Lucknow. Thus, actually 6016 lac quintals cane production has been allotted less than the requirement of the petitioner company.

By the aforesaid methodology, the Cane Commissioner, U.P. Lucknow has, infact, required the petitioner company to draw about 100% of the cane allocation to make good their requirement of 187.20 lac quintals, while for the respondent Basti Sugar Mill by effectively reducing the care area has increased the availability of cane production by more than 50% to Basti Sugar Mill. Thus, the Cane Commissioner has committed manifest error in determining the cane area. The cane centres of the closed Munderwa Sugar Mill, namely, Lahri, Buknar, Sikrabargah, Umari Ahara, Bhujaini-I and Sajna Khore have been continuously allotted to Babhnan unit of petitioner company for the last 6-7 years . Similarly, the 5 centres of Gaura Chowki Society, namely, Chandradeep Ghat, Barhni Chafa-I, Barhni Chafa-II, Puraina Bhawanigang and Bankati and Aila Masahi of Govindnagar Society have been continuously allotted to the Babhnan unit of the petitioner company for about four years and two villages, namely, Aila and Masahi for the last 15 years.

The five cane purchase centres of the Gaura Chowki Cane Union had been reserved to the petitioner by the State Government, vide its order dated 9.4.1999. The petitioner company has invested a huge sum for development of cane. The efforts made by the Babhnan unit of the petitioner company in

different ways for development of cane has raised availability of cane 146.87 lac quintals in 2005-2006. In view of the submissions made above, Walterganj Sugar Mill has no claim under rule 22 of the U.P. Sugarcane (Regulation of Supply & Purchased Rules 1954 for allotment of above centres.

It is further averred that the Munderwa and Gaura Chowki societies in their proposal recommended and resolved for allotment of the respective centres concerning them for the allotment in favour of the petitioner. The societies, namely, Munderwa, Gaura Chowki and Govindnagar in reservation meeting of 4.9.2006 held by the Cane Commissioner, U.P. Lucknow, recommended for allotment of the above centres to Babhnan unit of the petitioner company. The cane Director of Aila Masahi area and village Pradhans of both these villages have also given their recommendations for allotment of these villages in favour of the petitioner. On the representation of the Cane growers of Aila and Masahi, the District Cane Officer, Basti, after enquiry into the matter, recommended to the Cane Commissioner, U.P. Lucknow that the cane of the said two villages cannot be transported conveniently, as such, recommended that the cane of the said area be attached to the petitioner company.

The District Cane Officer, Gonda in his recommendation dated 2.9.2006 had recommended that the centres of cane union Gaura Chowki, namely, Barhni Chafa-A, Barhni Chafa-B, Chandradeep Ghat, Puraina Bhavaniganj and Bankati be assigned in favour of the petitioner company. Although the expansion in capacity of 3000 TCD of Walterganj is lacking far behind and is not expected to be completed and commissioned prior to January, 2007 but their requirement has been fixed by the Cane Commissioner, U.P, Lucknow, on their proposed expanded capacity, i.e., 3000 TCD from the beginning. Thus, they have been favoured with excess quantity of cane by 44.80 lac quintals in case of Walterganj Sugar Mill and 6.40 in case of M/s. Basti Sugar Mills Company Ltd. Thus, Basti Sugar Mills Company Ltd., as also Walterganj Sugar Mill have been favoured with extra cane of 51.20 lac quintals. The Cane Commissioner U.P., Lucknow, himself notified in the bonding policy, which had been circulated for the year 2006-2007, that the mills would be required to draw cane @ 55-65%; i.e., at least minimum drawl of 55% had been fixed as bench-mark for the sugar mills of the State and, therefore, could not have made the recommendation for reducing the drawl percentage less than 59%, which had been kept for the Babhnan Unit under any circumstances.

The Cane Commissioner, U.P. Lucknow, has also made cane reservation order for the Meerut and Saharanpur Districts and different yard- sticks have been taken in assessing the cane requirement illegally. As regards Walterganj Sugar Mill, it had been required to draw 64% in the previous cane crushing season, even though in the crushing policy the Cane Commissioner, U.P. Lucknow has called upon each Mill to increase their drawl percentage in comparison to the previous year, has reduced the percentage from 64% to 59% while for the petitioner mill has increased the drawl from 54% to 59%, which on the face of it, is incorrect.

It is further averred in the objection that drawl percentage has been reduced by 8%, which will result into increase of allotment of 16.74 lac quintals of cane to the Walterganj Sugar Mill and by reducing the drawl percentage from 44% will increase an allotment of 49.72 quintals to the Basti Sugar Mills Company and by increasing the drawl percentage from 54% to 59% will result in reduction of 22.90 lac quintals of cane of the petitioner company.

Thus, the Cane Commissioner should have acted fairly and reasonably in accordance with the rules and he should have also required all the sugar mills, namely, Babhnan Unit of the petitioner company, as also the mills, which are situated in the same region having the same climatic, geographical condition to draw as per the cane policy. But it appears that the Cane Commissioner acted illegally in not assessing the entire area and entire production available in making the proposed reservation order. It is apparent that there is a huge difference between the area Basti Sugar Mill Company Ltd. and the figures of the cane area mentioned in the proposed reservation order in respect of Basti and is therefore incorrect. The actual cane area is at least 30% more than the shown cane area. In case the correct figure of the cane area is taken then Basti would not be entitled to allotment of the centres, which have been proposed to be allotted to them because the cane production of all these centers are also actually 30% more than what has been reflected in the proposed reservation order.

As regards Walterganj Sugar Mill, it has malafidely shown the cultivable area wrongly. The Cane Commissioner has taken into consideration the figures, which have been fudged by both the respondent mills and made recommendation accordingly without scrutinizing them. In the area operation of the Babhnan, Vikaramjot and Munderwa Society the cane area of some growers has been shown more than the cultivable area and this was determined after examining the check list. That in view of the fudging of the documents by the respondents, the petitioner applied for supply of the "Survey Gasti Registers" pertaining to the Basti and Walterganj Sugar Mill, which has not been supplied to the petitioner company. It is further urged that as per Rule 22 (h) also the Basti Sugar Mill is not entitled for the recommended centres. Thus, the Cane Commissioner has not submitted the report stating true fact.

In respect of Walterganj Sugar Mill, the Cane Commissioner, U.P. Lucknow, has deliberately sustained the fudged figures of the cultivable area as 36120 hectares as against 59585 hectares, whereas the cane area available is 16247.55 hectares only, thus the cane intensity is not only 27.26%, which if measured under the parameters of Rule 22 (h) would leave the Walterganj Sugar Mill with no legs to claim any further cane allotment. Accordingly, the report regarding the cane reservation for the year 2006-2007 is erroneous. The Cane Commissioner has wrongly justified the reduction of cane allocation in respect of Babhnan Unit of the petitioner company. Walterganj Sugar Mill have been allotted by the Cane Commissioner in his draft reservation order Chandradeep Ghat, Bankati, Barhni

Chafa-I, Barhni Chafa-II, Puraina Bhawaniganj centres of Chandradeep Ghat area on which there can be no claim by them. They were divided from one original centre, namely, Chandradeep Ghat, which has been a reserved area of the Babhnan Unit of petitioner company for the last many years. It is further submitted that the petitioner company made payment of cane price regularly to its cane growers and so far as the payment of cane price and commission is concerned, has always been good. About Walterganj Sugar Mill, State Government directed the Cane Commissioner to take into consideration the observation of this Court while making the reservation order for the season 2004-2005. But this has not been taken into consideration. Similarly, about two villages, namely, Aila and Masahi initially they were reserved in favour of Babhnan Unit of the petitioner company in the year 1991-1992. The petitioner company set up a new centre by the name of Aila Masih, which cane centre is 14 kms from the Mill Gate of the Babhnan Unit of the petitioner company, therefore, Rule 22 is also in favour of the petitioner company.

The appeal filed by the Walterganj Sugar Mill has been dismissed by the State Government and the writ petition filed against the same was also dismissed. The petitioner is purchasing cane of these villages since 1991-1992. The Cane Commissioner is acting with a malafide intention only to favour respondents, as such the Hon''ble Apex Court directed that a report would be submitted by the Cane Commissioner before the High Court and the allotment would be considered thereafter. However, as the same officer continues to be the Cane Commissioner, for the present year also, he, therefore, disregarded the directions of the Hon''ble Apex Court. The petitioner company specifically stated before the Cane Commissioner and had filed supporting documents to show that the expanded capacity of the Babhnan Unit of the petitioner company is operational and would start crushing at 10000 TCD, but they were not taken into consideration. In this year, Mankapur Unit of the petitioner company will also start its first cane crushing season. The Cane Commissioner has recommended 21 cane purchasing centres of Babhnan Unit of the petitioner company having about 29.61 lac quintals of cane, although Mankapur Cane Union has recommended only 11 centres in favour of Mankapur Chini Mills and 14 centres in favour of Babhnan Unit of the petitioner company. The petitioner company demanded 13 centres from Basti and 9 centres of Walterganj Mill to make up the deficiency likely to occur due to commissioning of new unit i.e. Mankapur Chini Mills, Datauli, but the Cane Commissioner ignored the demand and did not recommend any centre in favour of the petitioner. Although the Walterganj Cane Union itself recommended for new cane purchasing centres, namely, Ektwa, Majhauwa, Aganiapur and Nonaha to attach in favour of the petitioner, as these centres are very near to Babhnan and convenient for the cane growers. Accordingly, this Court may set aside the proposed reservation order made by the Cane Commissioner and after fixing a uniform drawl percentage may also direct the allocation of sugarcane to the petitioner company from the centres, as demanded by it.

On behalf of respondents 3 and 4 against the order of reservation passed by the Cane Commissioner dated 14.9.2006, objections have been filed. It has been averred that the issue in dispute in the aforesaid writ petition is only the allotment of 8 purchase centres, namely, Lahari, Biknar, Kusmaha Deoria Mafi, Sikra Bargah, Bhujaini-I, Sajana Khore, Bunknar and Umari Ahara pertaining to Munderwa Society. Thus, this Court is required to hear the issue of "allotment of these 8 Cane Purchase Centres of Munderwa Society" keeping in view of the scope and ambit of Section 15 of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 only and not the whole reservation order of the parties relating to 108 Centres of the answering respondents and 52 Centres of the petitioner. It is averred that the Cane Commissioner has rightly passed the reservation order in respect of six purchase cane centres of Munderwa Society after following the parameters of Rule 22 of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954, but he has erred in allotting the two cane purchase centres of Munderwa Society, namely, Parsa Hajjam-I and Kusumah Deoria in favour of the petitioner for the crushing season 2006-2007. Under the provisions of the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953, the Cane Commissioner vide letter dated 25.4.2006 asked all the sugar mills including the petitioner as well as the answering respondents 3 & 4 to submit their estimated cane requirement for the crushing season 2006-2007. As per the procedure and the provisions of the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953, the answering respondent and the petitioner submitted their estimate of cane requirement for the crushing season 2006-2007 before the Cane Commissioner u/s 12 of the Act, for fixation of the requirement to the sugar mills under the powers conferred under the provisions of the Act 1953 and Rule 22 of the Rules 1954. The Cane Commissioner after considering the provisions and after the recommendations made by the Export Body passed the order u/s 12 (3) of the Act thereby fixing the cane requirement of all the sugar mills in Uttar Pradesh including the petitioner and the answering respondents on 5.8.2006. As per the Act of 1953 if a person is aggrieved by the order passed by the Cane Commissioner u/s 12 of the Act 1953, he can file a revision petition u/s 12 (3) of the Act before the State Government, which is the Revisional Authority. The answering respondent No. 4 being aggrieved by the order dated 5.8.2006, filed a revision petition before the State Government u/s 12 (3) of the Act. The State Government allowed the revision with a direction to the Cane Commissioner to get the enhanced capacity of the answering respondent No. 4 re-assessed at 6000 TCD by the technical committee and fix the cane requirement accordingly. Since the petitioner had no objection against the order passed u/s 12 of the Act, no revision was filed by it before the State Government and the order dated 5.8.2006 has become final.

It may be added that reservation order the Cane Commissioner in the course of making allotment of cane centres for the crushing season 2005-2006 assigned 7 cane centres of close Munderwa Sugar Mill, namely, Lahri, Buknar, Kusumaha Deoria Mafit, Sikra Baargah, Bhujaini-I, Sajna Khor, Buknar & Umri Ahra in

favour of respondent No. 3, i.e. Basti Sugar Mill, Unit Basti and one cane centre, namely Parsa Hazzam-I in favour of respondent No. 4, Govindnagar Sugar Mill, Unit Walterganj.

The Cane Commissioner also passed the reservation order dated 28.10.2005. Feeling aggrieved by the allotment of the said 8 centres of Munderwa Sugar Mill, the petitioner filed a writ petition No. 7004 (M/B) of 2005 before this Court. This Court did not find any merit and rejected the writ petition vide order dated 16.12.2005 on the ground of alternative remedy.

Thereafter the petitioner filed appeal No. 45 of 2005 before the Appellate Authority and respondent No. 1 also filed an application for disposal of the appeal in terms of the prayer in the said appeal.

On consideration of all the facts pleaded before the Appellate Authority and hearing both the parties at length, it passed the order dated 16.01.2006, whereby dismissing the appeal of the petitioner and upholding both the reservation orders dated 28.10.2005. Being aggrieved by the dismissal of the appeal, the petitioner filed a writ petition No. 354(M/S) of 2006 before this Court and the same was partly allowed vide order dated 11.3.2006. It is further submitted that the petitioner pleaded before the writ court by filing a supplementary counter-affidavit along with map of the cane area thereby submitting that at present the area allotted to the petitioner as well as the respondents is a compact area. However, upon perusal of the said map it is clear that in order to lift cane from the said 8 centres of Munderwa Sugar Mill, the petitioner would have to cross the entire area of the respondent No. 3 i.e. Basti Sugar Mills, thereby resulting in poaching of cane from the area of respondent No. 3 i.e. Basti Sugar Mills.

The respondents filed SLP against the order of learned Single Judge, which was passed in a mechanical manner. Thereafter the Hon'ble Apex Court remitted back the matter to this Court vide order dated 5.5.2006 passed in Civil Appeal No. 2555 of 2006 (arising out of SLP (C) No. 5487 of 2006). The Cane Commissioner in compliance of the directions of the Hon'ble Apex Court passed the order dated 14.9.2006 in respect of the petitioner as well as the respondents.

As regards the allotment of 8 centres of Munderwa Society for the year 2006-2007 is concerned, the respondents averred as under:

(i) That in the previous season 2005-2006, the respondent No. 3 i.e. Basti Sugar Mills had closed down its crushing operations on 2.5.2006 since no cane was left in the area to be crushed. In view of the cane shortage, the sugar mill managed to crush for only 167 days.

(ii) Respondent No. 3 was given an offer for supply of 90.22 lac quintals of cane from all the cane societies of the area, in actual cane supply of only 73.14 lac quintals made to the respondent No. 3 against its Notified requirement of 80.00 lac quintals. Thus, the cane societies failed to supply even the cane required to

meet the Notified cane requirement of the Respondent No. 3, which amply proves that the actual cane availability in the cane area of the respondent No. 3 is much less than even the cane quantity offered by the societies for crushing.

(iii) On the strength of allotment of Basti Sugar Mills for the season 2005-2006, on the basis of cane availability certain objections were filed.

(iv) It has been averred that to meet the shortage of 14.00 lac quintals of cane, the respondent No. 3 would require an allotment of additional cane production of 38.32 lac quintals on the basis of last years supply and 31.86 lac quintals of cane production on the basis of this years supply fixed by the Cane Commissioner.

(v) That instead of fulfilling the above cane shortage to the respondent No. 3, the Cane Commissioner has without any justifiable reason taken away one cane centre namely "Kusumah Deoria" of Munderwa Cane Society, from the respondent No. 3 and allotted the same to the petitioner.

(vi) That as regards the respondent No. 4 i.e. Walterganj Sugar Mills is concerned, its Notified cane requirement for the previous season 2005-2006 was only 40.00 lac quintals and was accordingly allotted 73.91 lac quintals of cane production. However, even though the cane quantity, allotted was quite less, the respondent No. 4 managed a cane supply of 41.94 lac quintals of cane, out of which cane supplied from the four assigned centres of Munderwa Cane Society was 2.81 lac quintals. The respondent No. 4 had to close down its crushing operations on 9.05.2006 for the season 2005-2006. This aspect has not been considered by the Cane Commissioner.

(vii) It is further averred that considering the actual capacity of respondent No. 4 at 6000 TCD, its cane requirement for the season 2006-2007 would be 96.00 lac quintals.

(viii) It is further averred that since the Cane Commissioner allotted only 143.30 lac quintals of cane quantity to the respondent No. 4 on the basis of cane requirement of 84.80 lac quintals, the cane production that is actually required to be allotted to the respondent No. 4 at its actual cane requirement of 96.00 lac quintals would be 162.22 lac quintals.

(ix) That as regards the present season 2006-2007 is concerned the Notified Cane requirement of the petitioner has been fixed at 148.48 lac quintals, which is an increase of only 12.48 lac quintals i.e. 9.17 % from the previous season.

(x) It has also been averred that the notified cane requirement of respondent No. 4 has been increased to 84.80 lac quintals for the present season 2006-2007 and it would face a shortage of 8.82 lac quintals cane.

(xi) That in order to meet the above shortage of 8.82 lac quintals of cane, the respondent No. 4 would require an allotment of additional cane production of 15.54 lac quintals on the basis of last year's supply and 14.94 lac quintals of cane production on the basis of this year's supply fixed by the Cane

Commissioner. Thus, the Cane Commissioner completely ignored the additional requirement of about 33.91 lac quintals of respondent No. 4.

(xii) It is further averred that the Cane Commissioner has allotted only 143.30 lac quintals of cane quantity to the respondent No. 4 on the basis of cane requirement of 84.80 lac quintals. The cane production that is actually required to be allotted to the respondent No. 4 at its actual cane requirement of 96.00 lac quintals would be 162.22 lac quintals.

(xiii) Thus, the Cane Commissioner has caused a shortage of 11.20 lacs quintals of cane supply to respondent No. 4, for which the Cane Commissioner is required to make additional cane allotment of about 18.92 lac quintals of cane production.

(xiv) That the respondent No. 4 in addition to the cane area /cane centre assigned to it in the present season would require additional cane quantity as detailed above from the areas of neighbouring Munderwa, Khalilabad, Gaur, Gaura Chowki & Vikramjot Cane Societies.

(xv) Thus the Cane Commissioner without any justifiable reason has taken away one cane centre, namely, Parsa Hajjam-I of Munderwa Cane Society and allotted the same to the petitioner.

(xvi) That the petitioner's contention regarding shortage of cane in the season 2005-2006 proved absolutely wrong as the petitioner against its notified requirement of 136.00 lac quintals, crushed 146.87 lac quintals i.e. 10.87 lac quintals in excess, out of which only 3.89 lac quintals was supplied by the Munderwa Cane Society, meaning thereby that in 2005-2006 even without the allotment of cane centres of Munderwa Cane Society, the petitioner managed to crush 6.98 lac quintals of cane in excess of its requirement.

(xvii) It is further averred that the petitioner had admittedly received a total offer of only 129.75 lac quintals, but it managed to crush 146.87 lac quintals, which amply proved that the excess cane purchased by the petitioner than its offer was only by poaching from the area of the respondents.

(xviii) That in view of the excess cane purchase by the petitioner including illegal purchase from the area of respondents, the petitioner Sugar Mill in the season 2005-2006 managed to crush for 177 days, which is 5 days more than that of respondent No. 3 and 10 days more than that of respondent No. 4. Thus, in view of the above, there is no reason as to why the cane centres of Munderwa Society be demanded by the petitioner or be allotted to the petitioner at all.

(xix) That on account of the establishment of a New Unit by the petitioner, namely Balrampur Chini Mills Ltd. Unit Mankapur, the Mankapur Cane Society for the season 2006-2007 out of its 24 cane centres gave its consent for the allotment of 14 cane centres having cane area of 6949 hectares and 30.30 lac quintals of cane production to the petitioner as per the demand of the petitioner in its reservation proposal submitted before the Cane Commissioner. However, the Cane Commissioner in total disregard to the same allotted only 3 cane

centres of Mankapur Society to the petitioner.

(xx) It is further submitted that Balrampur Chini Mills Ltd. in its reservation proposal has specifically excluded the said 14 centres of Mankapur Society from their reservation proposal submitted to the Cane Commissioner for allotment of cane area for the season 2006-2007 and have not made any demand of the said 14 centres, which are within 20 to 25 Kms radius.

(xxi) Thus, the Cane Commissioner committed patent illegality by making allotment of the said two centres of Munderwa Society namely- Kusumah Deoria & Parsa Hajjam -1 to the petitioner, which are meant for the respondents and are only at a distance of about 12-15 kms from the respondents, whereas the distance of the same from the petitioner is 66-72kms.

(xxii) That the Cane Commissioner also ignored the fact that the said centres of Mankapur Society demanded by the petitioner were its "Reserve area centers" and had to be allotted to the petitioner as per its demand in order to meet its Cane requirement of 148.80 lac quintals for the season 2006-2007. Thereafter a chart was given to show society-wise cane availability and on the basis of the said chart, it is absolutely clear that in case the cane Commissioner had allotted the cane area of the above societies to the petitioner, pertaining to the "reserved area", there would have been no occasion or requirement of the petitioner to be allotted any assigned area of Munderwa society at all.

(xxiii) The Cane commissioner has thereby committed manifest error in making assignment of the said two centres of Munderwa Society namely, Kusumah Deoria & Parsa Hajjam -I to the petitioner.

On behalf of the respondents No. 3 and 4 it has been stated that the distance of 8 centres is admittedly nearer to the answering respondents and is almost of 3-4 times from the petitioner than that from the respondents as per the Chart.

11. Further, the most vital fact as regards the location of the said 8 centres is that the petitioner would have to cross the entire area allotted to the respondent No. 3 as well as respondent No. 4 in order to reach the centres in question, which would encourage pouching by the petitioner.

12. As regards the arrangement of cane transportation of the respondents is concerned, it is very efficient and the growers are satisfied by the same. As regards the quantity of cane supplied in previous year, it is urged that respondents Nos. 3 and 4 were satisfied with the allotment and operated very smoothly to the full satisfaction of the growers of the area. As regards the quantity of cane to be crushed, it is averred that notified cane requirement of respondents No. 3 and 4 is 86.80 lac quintals respectively, which is an increase of 8% and 112% respectively from the previous season.

13. Further, as far as the payment of cane price and society commission is concerned, the D.C.O. Basti has himself certified that no cane dues on any account for the previous years is due against the respondents. The Chairman of

the Munderwa cane society has proposed for allotment of the 8 centers in favour of the petitioner, inspite of the tremendous developmental work done by the respondents in the area of Munderwa society and prompt payment of cane price and cane commission to the cane society.

14. As regards the development, it is averred that the respondents Nos. 3 and 4 have spent a total of Rs. 119,33 lakhs for development, whereas the petitioner has spent only Rs. 81.23 lakhs on development activities. Therefore, a comparison of all the above factors of Rule 22 would reveal that all the said factors are in favour of the respondents.

The Cane Commissioner has also failed to appreciate that on account of the fact that the diversion of cane in case of the respondents is almost twice to that to the petitioner, hence the actual cane availability to the respondents would be much less than estimated by the Cane Commissioner.

The Cane Commissioner also failed to consider that in the area of the respondent No. 3 there are 2 crushers and 503 Kolhus, which together crush 32.71% of the total cane production in the area, whereas in the area of the petitioner, there are no crushers and only 330 Kolhus crushing only 18.90% of the total cane production. That all the factors of Rule 22 of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 are in favour of the respondents, hence the said 2 centers namely Kusumah Deoria & Parsa Hajjam-1 should have been allotted to the respondents.

That the respondents No. 3 and 4 managed to operate for only 167 days & 172 days in the previous session, whereas the petitioner sugar Mill managed to crush for 177 net days, which is 10 days more than the respondent No. 3 and 5 days more than the respondent No. 4. It is further averred that in the present session 2006-2007 the petitioner's requirement is in excess of 14.75 lac quintals of cane than its actual requirement, which is absolutely unjustifiable when the respondent No. 3 is not even able to fulfill its notified cane requirement. It is also averred that in the present season 2006-2007 respondent No. 3 i.e. Basti Sugar Mills would be at a shortage of about 14.00 lac quintals of cane which can be made good to some extent by allotment of the said two centres, namely, Kusumah Deoria & Parsa Hajjam-I of Munderwa cane society having about 15.87 lac quintals.

On the strength of the aforesaid contentions, the respondents No. 3 and 4 urged that the order for assignment of two centres of Munderwa society, namely, Kusumah Deoria & Parsa Hajjam-I to the petitioner be quashed and appropriate direction be issued to the Cane Commissioner to allot the said two centres to the respondents.

We have heard the parties at great length and perused the materials on record record.

15. At the outset, we would like to clarify that this Court has to examine the

facts in issue on the basis of the order passed by the Hon''ble Apex Court. This Court has not to look to the contentions of the parties, which were not under consideration of the Hon''ble Apex Court in Civil Appeal No. 2555 of 2006 about the cane reservation order for the season 2005-2006. Consequently, this Court has to decide the matter of cane allotment based on the report of the Cane Commissioner dated 14.9.2006, against which rival objections have been preferred before the Cane Commissioner. Thus, the parties were supposed to confine their arguments in respect of Writ Petition No. 4037 (M/B) of 2006. We would like to further clarify that this Court probably has not to consider any other aspects, which is not to be adjudicated in the light of the pleadings of Writ Petition No. 4037 (M/B) of 2006, beyond the scope of order passed by the Hon''ble Apex Court.

16. We are conscious of the fact that as per directions of the Hon''ble Apex Court in Civil Appeal No. 2555 of 2006, the sole issue was with regard to the allotment of 8 cane purchase centre of Munderwa Cane Society. A direction has also been issued to give de novo hearing by a Division Bench in respect of the crushing season 2006-2007. It is apparent from the order of the Hon''ble Apex Court dated 5.5.2006 passed in Civil Appeal No. 2555 of 2006 that the issue in dispute is only the allotment of 8 cane purchase centre, namely, Lahari, Kusumaha Deoria Maffi, Sikra Bargah, Bhujaini-I, Sajna Khor, Buknar, Umri Ahara and Parsa Hazzam-I pertaining to Munderwa Society. Consequently, this Court has to consider the allotment of these eight centers with reference to Section 15 of the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 and Rule 22 of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 and not to 108 centers of the answering respondents 3 and 4 and 52 centers of the petitioner.

Thus, we are unable to agree with the contention of the petitioner that this Court has to consider the whole reservation order of the parties relating to 118 centers of respondents 3 and 4 and 52 centers of the petitioner. The petitioner has also not sought any clarification from the Hon''ble Apex Court despite the fact that the above position was repeatedly placed by the respondents 3 and 4 at the time of filing of the objections and also thereafter. Learned Counsel for the petitioner has urged that the report of the Cane Commissioner is incomplete. As per the directions of the Hon''ble Apex Court a complete report was required to assist this Court in taking a decision with respect to three sugar factories for the year 2006-2007. The Cane Commissioner's so called report is not a report at all but a purposed reservation order, which contains no reasons. It is, therefore, not a report as envisaged by the Hon''ble Apex Court and has to be discarded. It has further been urged that the Cane Commissioner's purposed reservation order is completely malafide and tailored to favour respondents No. 3 and 4 to the detriment of the petitioner. The Cane Commissioner has not discussed any of the factors as contained in Rule 22. It is further submitted that out of 8, seven factors are in favour of the petitioner and they have been completely ignored. It has further been urged that purposed drawl percentage was also not taken into consideration. Thus, discriminatory treatment in favour of Basti is impermissible.

The Cane Commissioner has even ignored the earlier reservation orders. He has favoured M/s Bajaj Hindustan Limited and for this year purposed reservation order has favoured Basti by requiring a drawl percentage only of 44% as compared to 59% for both the petitioner and Walterganj. It is further urged that policy guidelines issued by the Cane Commissioner mandating drawl of 55 to 65% is binding on the Cane Commissioner and he cannot depart from it unless the policy is amended. He has further relied over Rule 57 of the U.P.Sugarcane (Regulation of Supply & Purchase) Act, 1954 and the instructions issued by the Cane Commissioner. Accordingly, it has been suggested that there is a deviation. Thus, he has assailed the reservation order by relying upon the two judgments of the Hon'ble Apex Court- (1) Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others, wherein it was held that while Rules and Regulations referred to above are statutory, the policy guidelines are relatable to the executive powers and administration is bound by it. (2) M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise, wherein their Lordships held that the whole objective of such circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. It does not lie in the mouth of the respondents to repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision. Consistency and discipline are of far greater importance than the winning or losing of court proceedings.

17. It has also been argued that the cane requirement of the petitioner as well as of Walterganj has not been correctly taken by the Cane Commissioner. The expansion of Walterganj from 3000 to 6000 TCD is not complete. It is not going to be completed before January, 2007, yet their entire expansion of 3000TCD has been taken by the Cane Commissioner in assessing the requirement of Walterganj. This fact can easily be verified by any independent agency. It has further been argued that the petitioner has commenced its crushing on 8.11.2006 and is running at its full expanded capacity of 10000 TCD. On the other hand, Walterganj has not been able to start its factory because it does not want to expose itself on its expansion being incomplete. In the year 2002-2003, the Cane Commissioner considered the requirement of the petitioner and computed on the basis of a season of 180 days like any western sugar mill. Even without assigning any reason, the Cane Commissioner has departed from it and the petitioner requirement has been taken on the basis of a season of 160 days only.

18. Learned Counsel for the petitioner has tried to convince this Court that in the instant case about the requirement, the petitioner was not under any legal obligation to file any revision u/s 12 (3) of the Act. Accordingly, through this petition a challenge cannot be mounted against the assessment/requirement of Cane crushing for Balrampur and Walterganj Chini Mills. It is further urged that Balrampur Chini Mills - petitioner was not in a position to file a revision u/s 12(3) about Walterganj as the same could have been filed by Walterganj alone and the petitioner cannot be blamed for that.

19. On behalf of the petitioner, it is further submitted that the Cane Commissioner was not required to pass any reservation order or to make any order of assessment of the requirement u/s 12 of the Act. Thus, the assessment made by the Cane Commissioner is illegal. It is further submitted that the petitioner wrote a letter to the Cane Commissioner on 05.09.2006. Accordingly, in view of the order of the Hon''ble Apex Court it was not mandatory to file a revision u/s 12(3) before the State Government. Learned Counsel for the petitioner has also pointed out that cane area has wrongly been assessed by the Cane Commissioner. As per policy while computing the cane area, a care has to be taken that for any farmer the Cane area cannot be more than the cultivable area. The Cane Commissioner's office has figures of the total cultivable area for each farmer. The cane area for several farmers is more than their total cultivable area, which is not possible. The petitioner has relied over the report dated 13.11.2006 of Tehsildar Harraiyya, District Basti stating that the figures are arbitrary and even Tehsildar found that the area of 914 cane farmers has been inflated, as the same are not in consonance with revenue records and this inflated figures should not have been taken into consideration. However, this paper is not available on record. Annexure No. 8 does not contain the copy of this letter. Consequently, typed photocopy relied upon by the petitioner without filing the same on record, has no evidentiary value and is accordingly excluded from judicial scrutiny. Learned Counsel for the petitioner has further relied that the Chairman Munderwa Society asked for correction of the cane area but the Cane Commissioner has ignored all this. Nothing has been placed before this Court as to how the view taken by the Chairman Munderwa Society should be taken into account as true and correct version, specially when the Cane Commissioner has not relied upon it. We further find that there is no supporting evidence on record to corroborate the version of Chairman Munderwa Society. Thus the photocopy of the letter which are not available on record, cannot be considered to be a conclusive evidence on the point of inflated version as suggested by the petitioner.

Learned Counsel for the petitioner has argued that under Rule 22, the factors that have to be taken into consideration except distance are in favour of the petitioner and distance has not to be taken into consideration. Learned Counsel for the petitioner has placed reliance over the U.P.State Coporation v. State of U.P. 1995 1 HVD 238 , wherein learned Single Judge observed that the order was passed only on one factor, namely the distance of the purchase centre from the sugar factory. Other factors, which are relevant in terms of Rule 22 have not at all been taken into consideration. The order does not indicate that the views of the cane growers Cooperative Society were ascertained before passing the impugned order. Consequently, the writ petition was allowed. Reliance has also been placed on another judgment of learned Single Judge in DCM Shriram Industries Ltd., Unit Daurala Sugar Works and P.V. Bakre Vs. State of U.P. and Others, wherein it was observed that the requirement is estimated for each sugar factory u/s 12 for the purposes of reservation/assignment u/s 15. The guiding

factors mentioned under Rule 22 are only a tool to achieve the basic objective of fair distribution of sugarcane. The provisions of Rule 22 have therefore to be read as a means to achieve the basic purpose of the Act and to not a provision to obstruct the achievement of the basic goal of equal distribution. Further at para 23 it was observed that one individual factor as per Rule 22 in itself is not sufficient to form the basis for upsetting the order passed by the Cane Commissioner. In this connection reliance has also been placed on another decision, namely, Govind Nagar Sugar Limited Vs. State of Uttar Pradesh and Sahkari Ganna Vikash Samiti, wherein the distance requirement was considered.

Again reliance has been placed on the case of Diwan Sugars Ltd. v. Appellate Authority and Ors., wherein the learned Single Judge mentioned that it is clear that the factors under Rule 22 have to be taken into consideration. Lastly, the reliance has been placed upon Triveni Engineering and Industries Ltd. Vs. State of U.P. and others, In this context after considering the guidelines and various provisions of the Act at para 12 held that "----- the provisions of the Act and Rules show in unmistakable terms that the order for assignment or reservation of an area has to be passed after taking into consideration various factors and it cannot be based upon one solitary consideration. May be in a given case one single factor may far out weight the effect of all other remaining factors. For example, an area may be right of the gate of the Sugar Mill and in such a situation distance alone can be taken into consideration for assigning or reserving that area in favour of that sugar factory. It is for the authorities, who are experts in the field, to take into consideration all the factors and after balancing them pass appropriate orders which best sub-serve the interest of the sugar factory and the cane growers".

Learned Counsel for the petitioner has contended that the Cane Commissioner was not supposed to pass any order as per the directions of Hon"ble Apex Court and he was required to submit a report for the assistance of this Court as the final decision has to be taken by this Court. Therefore, the question of judicial review or judicial restraint or Wednesbury"s unreasonableness does not arise.

Elaborating his arguments, learned Counsel contended that the order passed by the Cane Commissioner can not be treated to be an order under the Act. Consequently, the decision about reservation/assignment of centers for the year 2006-2007 fall within the domain of the decision of this Court and Cane Commissioner is deprived of taking any decision in this matter. It is further pointed out that the Cane Commissioner was not justified in taking low drawl of some factories and accordingly it cannot be presumed that the low drawl of 44% for Basti comes within the purview of justified limits. It is also added that in private sector low drawl has been taken for two sugar factories, namely, Basti and Shakumbari. Learned Counsel for the petitioner further submitted that Article 14 mandates that similar drawl has to be taken for all and taking a low drawl for a sugar factory means giving them more cane area as compared to their requirement which is to be treated a hostile discrimination.

It is further submitted that low drawl taken for some other person in violation of the standard norm would not justify a low drawl for Basti Sugar Mill. Consequently, the Cane Commissioner acted discriminatorily as he has not assigned any reason as to why low drawl should be taken for Basti. It is further submitted if the drawl of Basti was taken at standard 59%, Basti's Sugar Mill requirement would be fulfilled from far fewer centres and it would be seen that Basti would have an excess of 50 lac quintals of cane proposed for it. These 50 lac quintals could have been allocated in favour of the petitioner and Walterganj to fulfill their requirements. In this way the requirements of Walterganj would get fulfilled from the excess cane of Basti and the disputed centres thus not have to be allocated to Walterganj. Thus Basti's drawl percentage is, extremely relevant for a decision in this matter. On the aforesaid contention the petitioner has claimed six Munderwa centres, namely, Umari-Ahara, Lahri, Bhujaini Pratham, Sajna Khor, Booknor and Sikra Bargah.

Mr. S.C.Mishra, Senior Advocate, appearing on behalf of respondents No. 3 and 4 has refuted the arguments of the petitioner justifying for giving six centres of Munderwa centres to Walterganj. He has submitted that on the basis of increased capacity of Walterganj from 2500 TCD to 5500 TCD for Cane requirement fixation, the notified Cane requirement increased from 40.00 lac quintals to 84.80 lac quintals, which is an increase of 112% from the previous season. In comparison the capacity of Balrampur has increased from 8000 TCD to 9280 TCD, notified cane requirement increased from 136.00 lac quintals to 148.48 lac quintals, which is an increase of only 9.17% from the previous season. Thus, the Cane Commissioner was justified in assigning six centres of Munderwa societies to Walterganj and the petitioner cannot claim any vested right over the same.

Counsel for the respondents No. 3 and 4 has placed reliance on a map contained in Annexure R-9. According to him, it reveals that the said six centres are at a distance of 15-30 km from Walterganj, and at a distance of 65- 80 km away from Balrampur. It has been pointed out that in order to reach the said six centres of Munderwa Society, Balrampur will have to cross the entire area of Basti Sugar Mill as well as Walterganj Sugar Mill, which would definitely provide an ample scope of poaching to Balrampur. It was being done in the previous years by Balrampur as total offer by their own statement was 129.75 lac quintals, which shows that excess quantity of cane was purchased illegally by poaching in the area of the respondents.

Mr. Mishra has further argued that in previous season Basti whose notified cane requirement was fixed at 80.00 lac quintals could receive cane supply of only 73.14 lac quintals. However, Balrampur kept on harping as it had been allotted only 234.59 lac quintals of cane in the last season, due to which Balrampur was suffering shortage of 6.98 lac quintals. However, the petitioner against its notified requirement of 136.00 lac quintals crushed 146.87 lac quintals, i.e. 10.87 lac quintals in excess and 17.12 lac quintals more than the cane offered from the societies. He also pointed out that the Basti had to closed its crushing

operation on 2.5.2006, since there was no cane left to be crushed thereby managing to crush for only 167 days. However, Balrampur crushed for 177 days, which is ten days more than that of Basti and five days more than Walterganj.

On behalf of the respondents No. 3 and 4, it has been vehemently argued that Basti cannot be camped to Babhnan as no cane centers out of the 8 centers in dispute have been allotted to Basti. Consequently this Court, if need be, may compare the drawl with Walterganj, whose drawl has been fixed equal to that of Babhnan at 59%. It is further argued that the Cane Commissioner arrived at a decision on the recommendation of an expert body which has considered the cane production, its supply and crushing for the entire province, accordingly no question of malafide arises in this case. The Cane Commissioner had a reason for fixing 44% drawl for Basti Sugar Mill, because in the area of Basti there are two crushers and 503 Kolhus which together crush 32.71 % of the total cane production in the area, whereas in the area of Babhnan there are no crushers and only 330 Kolhus crushing only 18.90% of the total cane production. Thus, the diversion in case of Basti is almost "twice" to that of Babhnan.

It is further contended that the Cane Commissioner in view of the Indo- Nepal Trade treaty has been permitting the Sugar Mill situated in Nepal to purchase the unbonded cane from the cane area being allotted to Basti for several years. Hence in the garb of drawing unbonded cane from the area of Basti by the Sugar Mill situated in Nepal, there is huge illegal diversion of cane from the cane area of respondent No. 3, which is in much excess of the permissible unbonded cane. Thus, the Cane Commissioner was justified in fixing 44% drawl for Basti Sugar Mill.

It has further been contended that the Technical Committee, which is an expert body, was appointed by a Cane Commissioner to ascertain the capacity of Babhnan. It assessed the capacity at 9280 TCD for this season. Babhnan had not challenged the said fixation in revision u/s 12(3) of the Act. Thus, on the basis of the above capacity of 9280 TCD cane has been allotted at same drawl of 59% to both Babhnan and Walterganj, which cannot be, hence no grievance is left for Babhnan. Thus the demand of Babhnan for cane allotment on the basis of enhanced capacity of 10400 TCD is not justifiable.

Learned Counsel for the petitioner has pointed out that the estimate of sugarcane prepared by the Cane Commissioner u/s 12(3) of the Act is erroneous for the purpose of reservation and assignment of area. Since no challenge was mounted against that estimate, accordingly the petitioner cannot be permitted to agitate the same before this Court. Thus, the Cane Commissioner was justified in reserving and assigning the Cane centres. Learned Counsel for the respondents have vehemently repelled the arguments of the petitioner that Basti and Walterganj would not be able to finish their expansion before mid January. In this regard, it is urged that the Technical Committee appointed by the Cane Commissioner after scrutinizing the documents submitted by the Basti and Walterganj and after inspection of the Sugar Mills concluded that Basti and

Walterganj would operate at their expanded capacity of 5400 TCD & 5300 TCD respectively for the season 2006- 2007. Hence the said allegation is baseless and without any substance.

Learned Counsel for the respondents Nos. 3 and 4 has also repelled the allegation of Babhnan of fudging its cane area during survey to give inflated cane area to Balrampur and show less cane area of Basti. It is further pointed out that in the season 2006-2007 the cane requirement of the Babhnan would be fulfilled by its own cane area and it would not be able to grave the cane centres of Munderwa Cane Society from Basti and Walterganj. It is further argued that the demand of Babhnan that its cane requirement should be fixed at 180 crushing days is not tenable in the eye of law because in the Eastern Uttar Pradesh cane requirement has been fixed at 180 crushing days. The demand of Babhnan being without any basis was rightly rejected by the expert body and the Cane Commissioner.

It is further urged that all the five cane centres of Gaura Chowki Society were being operated by Walterganj for the last 20 years and Babhnan somehow manage to get the said centres allotted in its favour for the last three seasons by hiding its actual cane availability in its own reserve area. Similarly the cane center Aila Masih of Govindnagar Cane society was being operated by Walterganj, since 1932 to 1996, except for a brief period of 8 to 9 years. The respondent No. 4 has increased the capacity by 112%. In view of the provisions of Rule 22 of U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954, the Cane Commissioner was fully justified in discarding the claim of the petitioner.

Learned Counsel for the petitioner has invited attention to Rule 22, wherein 8 factors have been prescribed for making consideration of allotment of cane centres. On behalf of respondents No. 3 and 4, it has been submitted that all the six centres have rightly been assigned to respondents No. 3 and 4, for the reason that the petitioner who was poaching the sugarcane from a distance of 65-81 kms. had no justification to claim these centres for the reason that all the 8 centres almost 3 to 4 times are nearer to the respondents than the petitioner, which are at a distance of 12 kms to 36 kms. It is further urged that the transport facility is very efficient as these centres are nearer to the mills of Basti and Walterganj 3-4 times and the cane growers are fully satisfied with this arrangement. On the other hand, the transport facility is not efficient to the centres of the petitioner, accordingly second factor is also in favour of Basti and Walterganj.

Learned Counsel also added that the respondents Nos. 3 and 4 purchased 23.67 lac quintals from the cane offered of 34.73 lac quintals, which is about 68.15% from all the cane centres of Munderwa society and contrary to it, the petitioner purchased only 3.89 lac quintals out of 8 centres after passing of the impugned order dated 10.3.2006. Consequently, the petitioner does not match with the respondents as he has purchased only 14.70 lac quintals out of 28.17 lac quintals, which is only about 50% . It is further suggested that in the previous

years reservation order of all the 8 centres, in dispute alongwith the remaining 14 centres of Munderwa Society were allotted to the respondents who operated till 24.03.2006 to the full satisfaction of the growers; while the petitioner operated only 22-25 days and this factor is also rightly taken into consideration in favour of Basti and Babhnan.

Respondents No. 3 and 4 have further pressed that notified cane requirement of 3 and 4 is 86.40 lac quintals and 84.80 lac quintals respectively, which is an increase of 8% and 1125% respectively from the previous season. Contrary to it, the notified cane requirement of the petitioner is 148.48 lac quintals, which is an increase of only 9.17% from the previous season. Thus, on the point of quantity of cane to be crushed, the expert body rightly advised the Cane Commissioner that this factor is in favour of Basti and Babhnan. Our attention was drawn to the fact that payment of cane price and commission in previous year were promptly paid to the cane growers by Basti and Walterganj, while the payment was made by the petitioner in normal time and thus apparently this factor is also in favour of the Basti and Walterganj.

It has further been urged that the view of the cane society is also in favour of Basti and Walterganj as the growers are satisfied with the tremendous development work done by the respondents and they are willing to supply cane to the respondents. Consequently, the view of the Chairman Munderwa society, who is under the thumb of the petitioner has rightly been ignored by the Cane Commissioner. Our attention was further drawn by the respondents No. 3 and 4 to the fact that cane area of these 8 centres increased from 4727 hectares to 10080 hectares with 113% increase from previous year and cane production increased from 26.25 lac quintals to 58.28 lac quintals with 122% increase from previous year. It is further suggested that Basti and Walterganj have spent Rs. 119.33 lakhs on development work excluding the amount spent on staff, while the petitioner has spent only 81.23 lakhs on development work excluding amount spent on staff. Consequently, this factor is also in favour of Basti and Walterganj.

Thus, learned Counsel the respondents No. 3 and 4 has tried to justify for assigning 20 centres of Munderwa Cane society to Walterganj. He has further argued that as 8 factors of Rule 22 have to be considered in this case and on the basis of his submissions it can be gain said at this stage that the Cane Commissioner has rightly allotted these centres to respondents No. 3 and 4 and the proposed reservation order for the year 2006-2007 with respect to the allotment of these 6 centres does not require any interference, while it has been urged that two centres of Munderwa society has wrongly been assigned in favour of Babhnan and on this count it requires interference by this Court. Our attention was further drawn the fact that the purview of order dated 5.5.2006 passed by the Hon''ble Apex Court has wrongly been construed by the petitioner that the matter relates to adjudication of all the issues. Learned Counsel for the respondents No. 3 and 4 has further argued that the drawl percentage of all

sugar mills should be fixed within 55% to 65% as per the policy of the Cane Commissioner is not tenable because the said parameters cannot be applied strictly nor has been followed either in previous season or in the present season. The Cane Commissioner on the basis of "crushing capacity, Geographical situation, last year's drawl, diversion in the sugar mills area etc." which have been referred to in para 3 of the proposed reservation order fixed drawl percentage as low as 29% on the one hand and on the other hand as high as 84% and above for different sugar mills. It is contended that the drawl percentage in case of Bajaj Group Mills has been fixed a drawl of about 74% ranging upto 84%, while in the case of Balrampur Sugar Mills it has fixed only between 55%-59%.

It is further urged that the Babhnan has made a demand for cane allotment on the basis of its self proclaimed enhanced capacity of 10400 TCD, while Technical Committee has not considered this requirement as correct and accordingly, the cane requirement was properly fixed. It is further urged that the order passed by the Cane Commissioner on the point of cane requirement at 148.48 lac quintals for the season 2006-2007 is final and binding upon the petitioner, which has been passed in accordance with the provisions of the Acts and Rules. Consequently, the estimate of sugar prepared by the Cane Commissioner u/s 12(3) of the Act is conclusive and final for the purpose of reservation & assignment of cane area. In this context, reliance has been placed on Govind Nagar Sugar Ltd. Vs. State of U.P. and others,

20. Learned Counsel for the respondents No. 3 and 4 has further submitted that the Technical Committee which is an expert body, appointed in pursuance of Office Order dated 4.5.2006 has ascertained the capacity of Babhnan for the season at only 9280 TCD. Babhnan has not challenged the Office Order nor the said capacity fixation in revision u/s 12(3) of the Act and also admitted before this Court. Thus on the basis of the above capacity of 9280 TCD, cane has been rightly allotted at same drawl of 59% to both Babhnan & Walterganj. Thus, there is no grievance of Babhnan and Balrampur. Since, the Babhnan has nowhere assailed the finding of Technical Committee fixing the capacities of the sugar mills on the point of expansion and crushing days and allotment of these 8 centres and fudging of 8 centres, it is now not justifiable to reject the recommendation of the Cane Commissioner on the point of cane reservation.

21. Learned Counsel for the respondents has further contended that the Cane Commissioner has issued a detailed instruction about the joint survey of cane area of growers. Survey work is conducted jointly and both the surveyors i.e. representative of sugar mill and Cane Supervisor of concerned cane development council signed jointly on the "Gashti Survey Register". It has been contended that the cane requirement was rightly adjudged and the petitioner has failed to point out or furnish any details or produce any document that the figures were fudged in the cuturable area. Thus, on this count also the reservation order cannot be set aside. It is further submitted that as per the averment of Babhan,

Walterganj in its reservation proposal submitted to the Cane Commissioner in the last season had shown cultivable area of 54,685 hectares in its reserved area, however in the reservation proposal submitted this year by Walterganj the said figure of cultivable area has been shown as only 36,120 hectares. The Senior Cane Development Inspector of Cane Development Council, Walterganj and Basti, who is the only authorized officer for verification of cultivable area as well as cane area of a Sugar Mill has vide his certificate dated 10.11.2006, duly verified the above fact that out of total cultivable area of 54,685 hectares, the area which is the reserved cultivable area of Basti Sugar Mill, in Govindnagar Society, comprises of about 18,565 hectares and this cultivable area of 18,565 hectares is already included in the total cultivable area of 1,04,666 hectares, in the reserved area of Basti Sugar Mills. It means that the actual cultivable area pertaining to the reserved area of Walterganj Chini Mill is only 36,120 hectares (54,685 hectares-18,565 hectares). Therefore, the allegation of fudging of cultivable area is a wild goose chase and has been coined with jaundice eyes. It is further argued that the figure of 54,685 hectares was corrected to 36,120 hectares, for which there appears to be no grudge to the petitioner.

22. Mr. S.C.Mishra has further argued that reservation proposal filed by Govindnagar Society relates to two villages - Aila and Masih pertaining to Walterganj Mill Gate. According to the resolution dated 14.08.2006 the Society passed the resolution in favour of Walterganj, considering the increased capacity of Walterganj.

23. Mr. S.C.Mishra has argued that as regards Gaura Chowiki Society, the petitioners have no claim in respect to the said 5 cane centres as being reserved centres of Walterganj. They have been returned back in view of its increased capacity and increased cane requirement of 112% from 40.00 lac quintals to 84.80 lac quintals in the present season. The Cane Commissioner has adhered to Rule 22 of the Rules, 1954.

24. Learned Counsel for the respondents No. 3 and 4 has submitted that instead of Deputy Cane Commissioner, Gorakhpur, Deputy Cane Commissioner Devei Pattan Mandal should have given his report regarding the said 5 centres of Gaura Chowki, as suggested by the petitioner is totally misconceived for the reason that the report regarding these 5 centres was given by Dy. Cane Commissioner, Gorakhpur and not by the Dy. Cane Commissioner, Devi Pattan Mandal. This report was never objected, hence such belated objections are not tenable.

25. Lastly it has been argued that in the last season Babhnan as per petitioner's pleading was allotted cane quantity of only 234.59 lacs quintals for crushing, out of which it managed a cane supply of 146.87 lac quintals. Thus, there is no justification for allotment of extra 17.47 lac quintals of cane production to the petitioner. Thus, Babhna would require only 2.72 lac quintals in addition to the cane available to it in the last season to meet its additional requirement of 1.61 lac quintals in the present season, hence in the present season Babhnan is in excess of 14.75 lac quintals of cane that its actual requirement. Accordingly,

remaining 2 centres of Munderwa Society, namely, Kusumah Deoria and Parsa Hajjam -I if are allotted to Walterganj, Babhnan would still be in excess of 1.60 lac quintals and easily achieve its cane requirement of 148.48 lac quintal for the present season.

26. In view of the above submissions, it has been suggested that over both these two centres of Munderwa Society, respondents No. 3 and 4 have a better claim than that of the petitioner and they should also be taken away from the petitioner.

27. We have pondered over the matter and before the considering the rivals submissions of the parties, we may point out that the petitioner, respondents No. 1 to 4 have no objections about the figures, which have been furnished before us. Consequently, the figures that have been placed before us are admitted to the parties and thus we rely over those figures. Also every endeavour has been taken to compare the same with the available record.

Thus, we propose to discuss the issue on the admitted figures also.

It would be advantageous to have a glance on the relevant provisions of the Act and Rules. The U.P. Sugarcane (Regulation of Supply and Purchase) Act 1953 has been passed to regulate the supply and purchase of sugarcane required for use in sugar factories and Gur, Raab or Khandsari sugar manufacturing units. The underlying idea of the Act is to ensure the maintenance of reasonable supply of sugarcane to producers and to provide for other allied matters, which include a fair return to the cane growers as well. The interests of cane growers and sugar manufacturers have to be protected. At the same time, balance is to be maintained amongst sugar producers inter se. "Assigned area" as per Section 2(a) of the Act means an area assigned to a factory u/s 15. "Crushing season" has been defined in Section 2(i) of the Act as the period beginning on 1st October of any year and ending on 15th July next following. As per Section 2(n) of the Act "reserved area" means the area reserved for the factory under order of reservation of sugarcane areas made under Rule 125B of the Defence of India Rules, 1962 and when no such order is in force, the area specified in an order made u/s 15.

Sections 12 and 15 of the Act and Rule 22 of the Rules being relevant, are reproduced below in extenso for instant attention.

12. Estimate of requirements.-

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

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

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

15. Declaration of reserved area and assigned area.-(1) Without prejudice to any order made under Clause (d) of Sub-section (2) of Section 16, the Cane Commissioner may, after consulting the Factory and Cane-growers" Company-operative Society in the manner to be prescribed:

(a) reserve any area (hereinafter called the reserved area), and

(b) assign any area (hereinafter called an assigned area), for the purposes of the supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned.

(2) Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.

(3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner.

(4) An appeal shall lie to the State Government against the order of the Cane Commissioner passed under Sub-section (1)

Rule 22. In reserving an area for or assigning an area to a factory or determining the quantity of cane to be purchased from an area by a factory, u/s 15, the Cane Commissioner may take into consideration-

(a) the distance of the area from the factory,

(b) facilities for transport of cane from the area,

(c) the quantity of cane supplied from the area to factory in previous year,

(d) previous reservation and assignment orders,

(e) the quantity of cane to be crushed in the factory,

(f) the arrangements made by the factory in previous years for payment of (purchase tax), cane price and commission,

(g) the views of the Cane-growers" Company-Cooperative Society of the area,

(h) efforts made by the factory in developing the reserved or assigned area.

It would be appropriate to proceed further with the above background.

It should also be noted that in exercise of powers conferred by Section 16 of the Act, U.P., Sugarcane (Supply and Purchase) Order, 1954, has been promulgated. Under Clause 3 of the said order the occupier of a factory is required to give an

estimate by 31st October to the Cane Commissioner about the quantity of cane that is required by it. Under Clause 3(2), a cane grower or a cane growers' Cooperative Society may within 14 days of the issue of an order by the Cane Commissioner reserving or assigning an area u/s 15 of the Act, has to make an offer to supply the cane grown under the said reserved area to the occupier of the factory. Clauses 3 and 4 talk about the agreement to be entered into in the prescribed form between the occupier of the factory and the Cooperative Societies of the reserved area for the purchase of sugarcane. The purchase of sugarcane has to be for the entire crushing season and there is also a stipulation that the cane grown in the reserved or assigned area of a sugar factory shall not be purchased by any other person except the sugar factory concerned. It is gleaned from the various provisions of the Act, Rules and the above referred Order of 1954 that various factories submit an estimation of their requirements according to their crushing capacity on the basis of which the Cane commissioner passes the order of reservation. The philosophy is to ensure the maintenance of reasonable supply of sugarcane to the sugar producers and securing, on the other hand, the interest of cane growers.

28 The Hon'ble Supreme Court had an occasion to test the constitutionality of the Act in the case of Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, wherein the Supreme Court after tracing the history of the enactment upheld the validity of the Act and thus upheld the powers of the Cane Commissioner under the Act in the matter of Regulation of supply and purchase of sugarcane to the sugar factories and other sugar manufacturing units.

29. The main purpose of the Act is, to provide mechanism for reasonable, necessary, sufficient and continuous supply of sugarcane to the sugar factories in the crushing season keeping in mind the interest of the cane growers, the Cane Growers' Cooperative Societies, the sugar factories and also inter-se interest of the sugar factories. The supply of sugarcane to the sugar factories in the quantity which may be reasonably required by them for production in a particular season or seasons is to be regulated by the provisions of this Act. While watching the interest of the sugarcane growers", it is implicit and obligatory upon the authorities to strike a balance in the interest of sugar factories and cane growers. Since there may be sugar factories more than one in number, which may claim certain areas as the reserved area looking to their location, the obligation extends upon the authorities to watch the inter-se interest of such sugar factories also.

30. With a view to materialize regular supply of sugarcane in a healthy congenial and peaceful atmosphere and by avoiding any such order or action which may cause or is likely to cause any unhealthy competition between the sugar factories or cane growers or which may create or is likely to create any law and order problem or which may give an opportunity or is likely to give an opportunity to the sugar factories or cane growers to exploit their position illegally, the Cane Commissioner has been vested with the powers to reserve an area by allotting

specific sugarcane centers to the sugar factories after following the procedure prescribed under the Act and the Rules. The orders so passed by the Cane Commissioner can be subjected to an appeal u/s 15 (4) of the Act before the State Government. The powers of the Cane Commissioner and the State Government are coordinate and coextensive to each other. The Cane Commissioner while passing the order of reservation u/s 15 (1) of the Act has to take into consideration various factors and so is the case, in appeal, when the matter is being considered by the State Government.

31. The scheme of the Act with respect to supply and purchase of the cane finds specific mention in Chapter III. This Chapter provides for determination of estimated quantity of sugarcane and in what manner and by whom the areas would be declared as reserved area or assigned area besides the manner and procedure to be adopted in doing so.

32. The purport and import of Section 12 has to be gathered from the object and purpose of the Act. The Act is a regulatory Act which regulates the supply, and purchase of sugarcane required by the sugar factories for getting reasonable, sufficient supply of sugarcane in a particular crushing, is to be quantified by taking into consideration, not only the interest of the sugar factories but also the interest of the Cane Growers' Cooperative Societies and other sugar factories. The Act, therefore, provides a procedure for calculating the overall requirement of sugarcane which may be needed by the respective sugar factories in a particular crushing season and for the purpose of assessing this requirement, the provisions of Section 12 have to be adhered to. The estimate which is to be prepared u/s 12 is for the purpose of Section 15 of the Act. Section 15 deals with the declaration of reserved area with the declaration of reserved area and assigned area. The very opening words of Section 12 namely "the Cane Commissioner may for the purpose of Section ." leaves no room of doubt that his estimate is to be prepared for the purpose of Section 15 which in consequence means that such an estimate shall form the basis of allotting reserved area or assigned area to particular sugar factory.

33. The provisions of Section 12 have been incorporated for facilitating the work of the Cane Commissioner and also to put a check from orders of reservation or assignment being arbitrary. The Cane Commissioner and Sugar Factory both have knowledge of the requirement of sugarcane, even before the orders of reservation are passed.

A duty has been cast upon the Cane Commissioner to require the occupier of each factory to furnish in the manner and by the date specified in an order issued by the Cane Commissioner, an estimate of quantity of cane which would be required by a factory during such crushing season or seasons as may be specified in the order. The Cane Commissioner, therefore, has to issue an order by means of which he would make the occupier of every factory to furnish the estimated quantity of cane as per requirement of the sugar factory for a particular crushing season or seasons which should be done in a manner and by

the date specified by the Cane Commissioner. The Cane Commissioner again is obliged to examine every such estimate and has the liberty to modify the same and with such modification, if any, the publication of the estimate is done for the purpose of making it known to all sugar factories that the estimate prepared by them for the requisite quantity of sugarcane for a particular crushing season or seasons has been accepted by the Cane Commissioner with or without any modification. In case any sugar factory is not satisfied with the estimate so modified or otherwise may file a revision before the Prescribed Authority. It has been stated that the State Government is the Prescribed Authority under Rule 23 A of U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (hereinafter referred to as the Rules for short) and the period for filing such revision is 14 days. After estimate are published, the survey, etc. shall be made u/s 18 for the purpose of Section 15. It is inherent that while making an area reserved for sugar factory, the total yield of sugarcane which is likely to occur in that area is to be taken into consideration. The areas are reserved basically for continuous and proper supply of sugarcane to every sugar factory so that it may run smoothly throughout the crushing season with the best possible recovery.

In the case of *Basti Sugar Mills Co. Ltd. v. The State of U.P. and Ors.* 1994 2 HVD 308 this Court took a view that the Cane Commissioner passes an order of reservation on the estimate, as prepared u/s 12 of the Act which estimate is prepared before the crushing season starts. The facts and figures on the basis of which these estimates are prepared before the start of the crushing season may vary during the progress of the season and the actualities and the developments which come to light with the progress of the crushing season and have a bearing on the estimates on the basis whereof the orders regarding reservation and assignment are passed before the beginning of the season cannot be ignored. In fact, the determination of the area to be reserved and assigned in effect has to be a continuous process depending upon the exigencies of the situation and the changing factors which come to light with the progress of the crushing season. The factors on which the estimates are chalked out before the beginning of the crushing season may vary during the progress of the crushing season and in order to adjust the equities, such developments which take place and new factors which come to light if brought to the notice of the concerned authorities, may justify alterations and modifications in the boundaries of the reserved area or may warrant change, in the assignment ordered at the beginning of the season. The scheme of the Act vests the authorities concerned with ample jurisdiction to vary or alter the reserved or assigned area during the currency of the crushing season to meet the exigencies of the situation. This is obvious from what has been specifically proved for in Sections 15 and 16 of the Act.

34. A combined reading of Sections 12 and 15 would lead to a conclusion that at the time of declaration of reserve and assigned area u/s 15 the estimate as published u/s 12 shall be the basis for consideration by the Cane Commissioner for the purpose of quantifying the requirement of sugarcane for every sugar factory. The requirement of "estimate" and thereafter the allotment of reserved

area is reasonable procedure for which no exception can be taken. The controversy arises when the sugar factory or occupier of a sugar factory do not either submit their estimate as provided u/s 12 (1) or if the estimates are submitted the same is modified by the Cane Commissioner or in any case any estimate which is published by the Cane Commissioner with respect to a sugar factory which attains conclusiveness either by filing or not filing the revision before the Prescribed Authority and such sugar factory at any time before the order of reservations is passed by the Cane Commissioner, claims more sugarcane as against the published estimated requirement of sugarcane u/s 12.

35. Section 12 of the Act which requires the sugar factory to submit their estimate of required sugarcane in the manner prescribed by the Cane Commissioner by means of order, the provisions of Rule 21 of the Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (hereinafter referred to as the Rules for short), is also of much significance. Rule 21 which falls in Chapter VI deals with the "reservations and assignment of area reads as under:

(1) The occupier of a factory shall by August 31, each year apply to the Cane Commissioner, in Form 1, Appendix III, for the reservation or assignment of an area for supply of cane to the factory during the ensuing crushing season.

(2) The Cane Commissioner may, for special reason, entertain an application for reservation or assignment of an area, made after the commencement of a crushing season.

(3) Every such application shall be accompanied by a Treasury receipt showing that a fee of rupees two has been deposited in the local treasury.

36. A bare perusal of the aforesaid Rule would indicate that the occupier of a factory by 31st August each year shall apply to the Cane Commissioner in Form-I, Appendix-III for reservation or assignment of an area for supply of cane to the factory during ensuing crushing season. Sub-clause (2) gives power to the Cane Commissioner to entertain application for reservation or assignment of an area made after commencement of the crushing season, of course on some special reason. If Section 12 is to be read along with Rule 21, it would be found that the requirement to be performed under Rule 21 is to be done at a later date after the whole exercise is undertaken u/s 12. It has been stated at Bar as well by the learned Addl. Advocate General that the estimates u/s 12 are prepared some time in March and April every year, whereas the requirement of submitting an application for reservation and assignment of an area in Form I, Appendix-III is at a later date i.e. upto 31st of August. This Form has many Heads and bears the heading "Application for reservation and assignment of area". In part A of the said Form, besides other particulars which are to be given by the occupier, item No. 4 requires the particulars of crushing of cane in the last three seasons which means quantity crushed in the lac quintals, number of working days, date of starting and closing the operation in the last three seasons wherein Part B item No. 10 mentions the name of purchasing centers that may be reserved or

assigned and also the details of Rail or Road have to be given. In item No. 11 the names of any new road or rail center proposed to be added or deleted or transferred from the existing lists of villages attached to various centers are to be provided. The classification of the heads in Form I has been made in a manner so as to make it convenient to the Cane Commissioner to reserve such area and number of cane centers to a sugar factory which would be sufficient to meet the requirement of regular supply of sugar cane for the quantity which would be crushed in the ensuing crushing season. The various particulars which are required to be given in a Form provide a date and idea regarding actual crushing done by the sugar factories in the last three seasons and also the areas reserved or assigned to it in the last three years.

37. Section 12 deals with the estimate of sugarcane, which is likely to be consumed by a sugar factory in a particular crushing season whereas Rule 21 requires the sugar factory to apply for an area, which it wishes to get under reservation order or by assignment u/s 15 for the purpose of having the required supply of sugarcane as determined u/s 12 (i). Apparently, the two provisions operate in two different fields and deal with two different aspect of the supply of sugarcane but in substance it is the quantity of sugarcane, which is essentially required to be determined for continuous supply to the sugar factory.

38. The requirement of giving the details of actual quantity of the sugarcane crushed for the last three seasons coupled with the area reserved and the new areas proposed gives an opportunity to the Cane Commissioner to regulate the supply of sugarcane in a more effective manner so that it meets the object of the Act. The contention of the learned Counsel for the petitioner that a joint reading of provisions of Section 12 and Rule 21, does not make the estimate prepared u/s 12 conclusive and final, does not take into account at all, that Section 12 quantifies the sugarcane required whereas Rule 21 apparently requires the declaration of such area reserved or assigned which may be capable of supplying the estimated required sugarcane. The estimate thus prepared u/s 12 and duly published by the Cane Commissioner which has not been challenged in revision before the State Government or if challenged, such estimate which has been ultimately finalized by the State Government shall be final only for the limited purpose for declaration or reserved or assigned area u/s 15 of the Act. The words "for the purpose of Section 15" occurring in Section 12 speak about the intention of the Legislature and its significance. "Purpose" means the result, which is desired to obtain and which is kept in mind in performing an action. The corollary is that the provisions of Section 12 have been incorporated in the Act for achieving the desired result and determination of estimate so made has to be kept in mind by the Cane Commissioner in performing duties u/s 15. The same phraseology has been used in Rule 21 also. The distinction as pointed out earlier is that u/s 12, it is quantity of the sugarcane which is estimated and under Rule 21 it is the area which is required to be reserved or assigned for meeting the said requirement of sugarcane u/s 15.

39. No doubt the term "estimate" denotes a rough calculation or rough assessment which may vary when actually determined but in view of opportunity given to the sugar factory for providing estimate u/s 12(1) and thereafter the exercise to be undertaken by the Cane commissioner who is to examine the requirement objectively before publishing the same in accordance with Sub-clause (2) of Section 12 attaches an element of finality to the aforesaid determination. The finality is further reflected when an opportunity has been provided by means of statutory right of revision against the notification of the Cane Commissioner. The purpose, therefore, is that the Cane Commissioner may have an exact picture as far as possible with respect to entire cane available in the area and the requirement of every sugar factory, as in the absence of such an assessment, it may not be possible for the Cane Commissioner to make a just order of reservation u/s 15(1). In case every occupier of the sugar factory is permitted to ignore the estimate published u/s 12 at the time of passing of reservation order u/s 15, the whole scheme of the Act may not be effectively carried into. Thus, if the Cane Commissioner relies upon the estimate prepared u/s 12 for the purposes of declaration of reserved or assigned area u/s 15(1) unless there is something very exceptional, it cannot be said that any illegality has been committed by him. This does not mean that even if a sugar factory bona fide requires more sugarcane than the quantity estimated for such sugar factory, would not have any right to take any additional sugarcane or Cane Commissioner would not have any authority or power to allot more sugarcane by making further reservation of area or assignment in his favour. The supply of sugarcane by means of reservation and assignment of an area is a continuous process throughout the crushing season and as and when the shortage is felt, to the satisfaction of the Cane Commissioner by a sugar factory, it can be made good either by making reservation or assignment of further area. Thus, there are two stages under the Act for declaration of reserved area or assigned area, namely; (1) u/s 15 initially, i.e., at the start of crushing season when the reservation has to be made and (ii) secondly at all point of time during the entire crushing season when additional sugarcane is required by any sugar factory.

40. The answer to the first question, therefore, is that the estimate prepared under the order of Cane Commissioner himself u/s 12 of the Act has to be adhered to by the Cane Commissioner at the time of passing an order of allotment u/s 15 (1) of the Act, unless there are exceptional reasons which might intervene or crop up between the period when the estimate has been published and the reservation order is made u/s 15 (1) (not adversely affected the rights and interest of other sugar factories, cane growers and cane Societies etc.) as well as by the sugar factories. The sugar factories cannot raise any grievance against the estimate so prepared at that stage, yet it is always open to the Cane Commissioner to allot more reserved area or assign further area if he is satisfied about the necessity of providing more sugarcane to any factory, during the crushing season, in accordance with the provisions of the Act and the Rules.

41. Section 15 provides for declaration of reserved area or assigned area which

reservation or assignment has to be done in relation to a particular factory. The words in Sub-section (1) of Section 15 namely "...after consulting the factory and cane growers" Cooperative Society in the manner to be prescribed, the Cane Commissioner shall reserve any area or assign any area for the purpose of supply of sugarcane to a sugar factory would not mean that wherever the word factory, cane growers and Cane Growers Cooperative Society has been used is to be read in plural. In Sub-section (2) of Section 15, it has again been provided that where any area has been declared reserved area for a factory, the occupier or such factory shall, if so directed by the Cane Commissioner, purchase all the Cane grown in that area, which is offered for sale to a factory. Likewise in Sub-section (3) of Section 15, it has been provided that where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to a factory, as may be determined by the Cane Commissioner. Sub-sections (2) and (3) of Section 15 deals with the quantity of the sugarcane available area as the case may be and cast a duty and obligation upon such sugar factory to whom the area has been reserved or assigned to purchase the sugarcane from the cane growers of that area which is offered for sale to the factory. In case the liberty is given to the cane growers to sell any quantity of sugarcane to any sugar factory in a case where the area has been reserved or assigned to two sugar factories or more than two sugar factories, the purpose and the meaning of Sub-sections (2) and (3) of Section 15 would be defeated.

42. The power of the Cane Commissioner to cancel the area of reservation or assignment of an area or alter the boundaries of reserved or assigned area also supports the view that in case of any necessity to allot existing, one reserved area or assigned area to two or more than two sugar factories the same can be done by altering the boundaries. The alteration of boundaries would necessarily mean the exclusive privilege of a particular sugar factory of getting the supply from the area so demarcated and not to two or more than two sugar factories. Section 16 also supports the said premises.

43. Rule 22 also speaks for reservation and assignment of a reserved area to "a factory" and determination of the quantity of cane to be purchased by the factory u/s 15. Besides this under the provisions of U.P. Sugarcane (Supply and Purchase) Order, 1954, an agreement has to be entered into. An agreement with respect to offer by a cane grower or "Cane Growers" Cooperative Societies from a reserved area has to be executed in Form-A to the Appendix attached to the Act, for achieving the main object and purpose of continuous sugarcane supply to the sugar factory without there being any change of exploitation and unhealthy competition between the cane growers and the Cane Growers Cooperative Societies or inter-se producers of sugar, the reservation and assignment of an area has to be done in a manner which protects the interest of all the parties and gives a reasonable return of their investment to the sugar factories permitting the units to run economically and also securing the interest of the cane growers and their societies. The scheme, therefore, postulates for

reservation and assignment of an area to one factory at a time and if one particular area is permitted to be occupied by two or more factories for the purchase and sale of sugarcane by willing cane growers the same may lead to various complications and inequitable distribution of sugarcane.

44. The State Government in appeal exercises the same powers which are exercised by the Cane Commissioner while making a declaration with respect to reserved or assigned area. It is incumbent upon the authorities to take into consideration besides other relevant factors, guidelines, enumerated in Rule 22 of the Rules. It goes without saying that guidelines enumerated in Rule 22 are not exhaustive but are only enumerative which necessarily have to be taken into consideration by the Cane Commissioner for achieving the very goal of the Act, i.e. the regular supply of the reasonable quantity of sugarcane to sugar factory in such a manner so as to permit the reasonable return of their investment and to continue smooth production of sugar during the entire crushing season and on the other hand to protect the competitive interest of the sugar factories inter-se and also the interest of the cane growers and the Cane Growers' Cooperative societies. etc.

45. Rule 22 makes it clear that in reserving an area, the Cane Commissioner may taken into consideration the distance of the area from the sugar factory, facilities for transport of cane from the area, the quantity of cane supplied from the area to the factory in previous year, previous reservation and assignment order, the quantity of cane to be crushed in the factory and the arrangements made by the factory in previous years for payment of purchase tax, cane price Commission and the views of the Cane Growers' Cooperative Societies of the area, efforts made by the factory in developing the reserved or assigned area.

Rule 22 gives some guidelines as to how the power of assigning or reserving any area has to be exercised by the Cane Commissioner. It mentions several factors which have to be taken into consideration. Apart from the distance of the area from the factory, the facility of transport, previous reservation and assignment orders, quality of cane to be crushed in the factory, views of the Cane growers Cooperative Society, arrangements made by the factory for payment of price etc, in previous years and efforts made by the factory in developing the area have also to be taken into consideration. Sub rule (b) lays emphasis upon facilities for transport which is also important inasmuch as in a given care an area may be at a shorter distance from one factory than another but on account of better facility of transport it may be more convenient for the Cane growers to supply sugarcane to the factory which is at a greater distance. Similarly Sub rule (f), which makes the payment of price in earlier years relevant, is very important from the point of view of cane growers. If the factory has defaulted in payment of price and the dues of the Cane-growers are not paid for a long time, they would not be willing to supply their produce to such a factory. Prompt payment of price is of primary importance to the Cane-growers as it takes almost a year before sugarcane crop is ready for harvesting. The cane growers who have nurtured their crop for about

a year would not like to wait for further period if they have made the supply to the sugar factory. Under Sub-rule (h) effort made by the factory in developing the area for producing more and better quality of cane also becomes relevant. If a factory has invested heavy amount in developing an area as a result where of the quality of sugarcane has improved, naturally. It would like the said cane to be supplied to its factory. The cumulative effect of the factors as laid down in Rule 22 of the Rules has to be looked into while reserving or assigning any area, which is reproduced as under:

The factors mentioned in Rule 22 of the Rules framed under the Act only provide guidelines which are not exhaustive but are only enumerative. Further any single factor mentioned therein cannot be taken to be conclusive but cumulative effect to all the factors has to be taken into account along with the other relevant criteria and material including the developments which take place during the currency of the crushing season in order to arrive at a conclusion while striking a delicate, just and equitable balance between the competing interest in the matters relating to reservations of an area or assignment of an area as indicated hereinbefore.

In *Triveni Engineering Industries Ltd. v. State of U.P. and Ors.* (supra); this Court held that the Act and rules show in unmistakable terms that the order for assignment or reservation of an area has to be passed after taking into consideration various factors and it cannot be based upon one solitary consideration. May be in a given case, one single factor may far outweigh, the effect of all other remaining factors must be considered. The distance factor alone can be taken into consideration for assigning or reserving the area. It is for the authorities, who are experts in the field, to take into consideration all the factors and after balancing them pass appropriate orders which may best serve the interest of the sugar factory and the cane-growers. In case a statutory Tribunal has exercised its discretion on the basis of irrelevant considerations or without regard to relevant considerations, certiorari may be issued to quash the order.

46. Applying the aforesaid principles of law, laid down by this Court read with Section 15 (4) of the Act and Rule 22 of the rules, we find that the impugned orders are not based only upon distance factor. They have taken into account the crushing capacity, the drawl percentage and number of days of working as well as the arrangements made for payment in the previous year. The authority has also taken into account the reserve area made available to petitioner, with reference to its crushing capacity and demand in the current year. The fact that petitioner sugar mills has made investment in the area is one of the factors of Rule 22 (b) of the rules, but that by itself, cannot be a ground to continue the reservation in favour of petitioner's mills for all times to come.

47. At the cost of repetition we may further refer that in view of the directions of the Hon'ble Apex Court this Court has considered the allotment of these eight centres with reference to Section 15 of the Act, 1953 and Rule 22 of the Rules,

1954.

48. In *M/s. Triveni Engineering & Industries Ltd., etc. v. State of U.P. and Ors.* (supra), a Division Bench of this Court at para 12 took a view it is for the authorities, who are experts in the field to take into consideration various factors and after scrutinizing them pass appropriate order. In this context, we find that learned Counsel for the respondents has rightly pointed out that out of 8 factors as contained in Rule 22, the petitioner has failed to demonstrate that on the points of transport facilities, can supply in the previous years, previous years reserved quantity of cane to be crushed, development efforts, views of cane society and payment of cane price are in their favour. The petitioner admits that on the point of distance of the cane centres, the claim of the petitioner cannot be discarded in the light of the decision in *M/s. Triveni Engineering & Industries Ltd's case* (supra). We have also considered the views of the learned Single Judges as referred to by the petitioner, but we cannot ignore the views taken by the Division Bench of this Court in *M/s. Triveni Engineering & Industries Ltd.* (supra) because both the parties rely on them and we do not find any infirmity in the conclusion arrived at para 12 on the point of factors of Rule 22.

Consequently, we are of the definite opinion that earlier also the Division Bench attached prime importance to the opinion of the experts in a relation to the allotment of sugarcane under Rule 22. The cumulative effect of all the 8 factors as referred to in Rule 22 has to be taken into consideration by the expert body, which assist the Cane Commissioner to provide cane arrangement for the entire State. The main consideration of the expert body is to keep a balance between the interest of sugar factories and the cane growers. A comprehensive scheme has been provided under the Act for assignment or reservation of an area and the basis for doing so. Consequently we do not agree with the contention of the petitioner that simply the petitioner lacks merit on the point of distance of 8 centres, all or other factors in his favour. Respondents No. 3 and 4 vehemently argued that the factors taken into consideration by the expert body in determining the cane requirement cannot be questioned specially under the circumstances that the Cane Commissioner's order was quasi judicial in nature, the same was not challenged, consequently, it has become final.

We further find that the Cane Commissioner has no authority to pass any order of assignment or reservation of an area except after examining the power under the Acts and the Rules. The Hon'ble Apex Court has not issued any direction or parameters that the Acts and Rules would not be taken into consideration and they would be of no avail in determination of sugarcane allotment to a particular mill. Consequently, the contention of the learned Counsel for the petitioner appears to be not sustainable in the eye of law that the Cane Commissioner was proposing the reservation of cane sugar only on the basis of Hon'ble Apex Court's direction and not under the Act. The Cane Commissioner was duty bound to obey the command of the Hon'ble Apex Court in the light of the various provisions of Acts and Rules. He was required to adhere the Rules for compliance

of the orders of the Hon''ble Court. In case we accept the contentions of the petitioner a vary anomalous situation would arise that the Cane Commissioner with no authority or guidelines has to exercise his powers, which would not be quasi judicial in nature. Consequently, we may presume that this power would not be derived from the provisions of the Acts and Rules, referred to above. To our mind this would be an extreme situation. This Court is not going to adopt a criterion, which has the force of deleting the provisions of the Act, which have been found constitutional by the Hon''ble Apex Court in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others,

49. Thus, the Hon''ble Apex Court has already upheld the validity of the Act as well as the powers of the Cane Commissioner under the Act. Thus, we discard the version of the petitioner on the point that the Act has no application in this case and the order passed by the Cane Commissioner was not in accordance with law, but has to be treated in accordance with the directions of the Hon''ble Apex Court and the final allotment has to be made by this Court.

To the best of our belief, the Hon''ble Apex Court directed the Cane Commissioner to furnish the details for judicial scrutiny so that the finality may be attached on judicial scrutiny by this Court after hearing the rival submissions of the parties. It too is in accordance with the judgment of the Hon''ble Apex Court in Ch.Tika Ramji's case, (supra). Consequently, the Cane Commissioner exercised statutory powers and proposed an order in the form of the report, which is before us. The report has statutory effect and is not a waste paper.

Thus, the Cane Commissioner while passing the order of reservation u/s 15(1) of the Act has taken into consideration all relevant factors and as such the argument of learned Counsel for the respondent that the report of the Cane Commissioner with respect to above two centers be discarded, is baseless and is not tenable.

As discussed above, in the lime light of the scope of the provisions of the Act and Rules, on consideration of various facts and factors, the decision arrived at by the Cane Commissioner with the assistance of expert body cannot be brushed aside on the surmises and conjectures. This Court is not satisfied that any discriminatory treatment was given by the Cane Commissioner. We also do not find any merit in the submissions of the petitioner that the Cane Commissioner has departed with the policy or guidelines, which was issued in determining the area.

It is not the case of the petitioner that the Cane Commissioner after calling the report has not passed the reservation order. We do not find any merit that since no reason has been assigned with the report as to how he could conclude on the point of reservation, it should be discarded. Parties have furnished details before us and it is admitted that the data or statistics, which was available was considered by the expert body and thereafter on the guidelines and after adhering to the Act and Rules the matter was considered. Legally, the Court

cannot direct the statutory authority to exercise its discretion in a particular manner.

The Hon'ble Apex Court had an occasion to consider the scope of discretion exercised by a public authority in the matter of U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others, , wherein it has been observed as under:

12. The court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law. The court could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion according to law.

50. Thus, on the aforesaid pronouncement of law, the Hon'ble Apex Court held that the High Court cannot substitute its own wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law, and the review cannot be permitted and in case, review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The Court pointed out that the duty of the Court is to confine itself to the question of legality.

Again the Hon'ble Apex Court in Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, has held in para 18 as under:

18. Therefore, to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the Four Corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

Consequently, the assertion of the petitioner is not tenable in the eye of law that this Court has to issue allotment order and discard the decision of the Cane Commissioner, who has performed the powers conferred by the relevant Act and the Rules.

Learned Counsel for the petitioner has pointed out that yet there is another aspect that the Cane Commissioner wanted to favour both Basti Sugar Mill Ltd. and also Govind Nagar Sugar Ltd., Walterganj Basti and has deliberately not submitted the report as required, rather he illegally and arbitrarily proposed a reservation order, so that the factors do not become subject matter of consideration by this Court, which could result in tearing apart from the step-motherly treatment, which is being meted out to the petitioner.

On the contrary, on behalf of the respondents 3 and 4 it has vehemently been argued that the Cane Commissioner has decided the matter in accordance with law and without furnishing any details of mala fide it is not possible for the

petitioner to raise the finger over the conduct of the Cane Commissioner. It has further been urged on behalf of the respondents 3 and 5 that the assessment of the Cane Commissioner in favour of the petitioner by depriving respondents 3 and 4 from two centres, does not mean that he acted mala fide in this case. Sri S.C.Misra, Senior Advocate further argued that there should not be any grievance to the petitioner being gainer of two centres and the discretion so exercised by the Cane Commissioner in favour of the petitioner about two centres can not be said to be a mala fide action. Learned Additional Advocate General has submitted that on re- appraisal of the entire issue, the Cane Commissioner passed the reservation order in accordance with law. It has further been urged on behalf of the State Government that without any material on record, it is not open for the petitioner to say that action of the Cane Commissioner should be considered as biased.

At this out set our attention was further drawn to the fact that Cane Commissioner exercised his power u/s 12 of the Act and thereafter order of reservation u/s 15 of the Act was passed. Learned Additional Advocate General further submitted that the petitioner and respondents 3 and 4 were required to submit their estimated cane requirement for the crushing season 2006-2007. Thereafter the Cane Commissioner considered the recommendation made by the Export Body and passed the order u/s 12 of the Act and thereby fixed requirement in favour of petitioner and respondents 3 and 4.

It is further urged that if a person is aggrieved by the order passed by the Cane Commissioner u/s 12 of the Act, a Revision Petition u/s 12 (3) can be filed before the State Government, which is the Revisional Authority. Respondent No. 4, who was aggrieved by the order of the Cane Commissioner dated 5th August, 2006 filed Revision u/s 12 (3) of the Act, but the petitioner was satisfied with the order passed by the Cane Commissioner as he has not filed any revision against the same and subsequently, it is not open for him to say that he has not availed the statutory remedy of filing revision because the matter has to be decided by the Court and not by the Government. It has further been submitted on behalf of the State of U.P. that it was mandatory on the part of the petitioner to avail the remedy available u/s 12 (3) of the Act. The procedure so adopted by the Cane Commissioner cannot be questioned because of the fact that after passing the order by the Cane Commissioner, no revision was preferred by the petitioner, accordingly the order became final and now it is not open for the petitioner to agitate the matter, which he cannot do under the Act in a collateral manner. Accordingly, he is estopped to object the same in these proceedings.

Thereafter in exercise of powers u/s 15 (4) of the Act, the Cane Commissioner passed the reservation order. Therefore, it would be a wild goose chase to say that the Cane Commissioner acted in a malafide manner. The Cane Commissioner acted in accordance with law, adhered to the procedure, heard the objections and passed the reservation orders for the entire province including in favour of the petitioner and respondents 3 and 4. Consequently, no motive can

be attributed against the Cane Commissioner, who has discharged his duties his lawfully.

On being specifically questioned whether a revision is maintainable against the order of the Cane Commissioner, it has been admitted by the learned Counsel for the petitioner that remedy u/s 12 (3) of the Act was not availed by the petitioner under the impression that this Court has to adjudicate over the matter and pass appropriate order. We agree with the contention of the learned Addl. Advocate General that ignorance of law is no excuse and this Court has to deal with the matter in accordance with the directions of the Hon'ble Apex Court. But the statutory requirement under the Act has to be adhered to by all concerned. It would not be out of place to mention that the petitioner was in a position to avail the remedy and challenge the order of the Cane Commissioner dated 5th August, 2006 about the estimated cane requirement like respondents 3 and 4, but the remedy available to him was not availed of and thereafter it has been challenged by him before this Court on the ground of mala fide.

It is a settled proposition of law that mala fide means want of good faith, grudge, improper motive or ulterior purpose. "Malice" means and implies spite or ill-will. Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fide where it is alleged, depends upon its own facts and circumstances. An order is "mala fide" when there is malice in law although there is no malice in fact. The malice in law is to be inferred when an order is made contrary to the objects and purposes of the Act. Whether in any particular case this is so or not must depend upon the facts and circumstances of the case.

The administrative action must be said to be done in good faith, if it is fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in a good faith. And administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

In this context, we have to consider the object of the Act and the procedure so adopted under the Act. The petitioner has failed to point out any discrepancy in the procedure. He has also failed to point out as to how the order is arbitrary and does not stand to reasonableness, especially when all the sugar mills were called to submit their estimated cane requirements for the crushing season 2006-2007. The parties to the petition also furnished their details and thereafter the Export Body over all assessed the cane requirement not only of the petitioner and

respondents 3 to 4, but of the entire province and the Cane Commissioner passed the impugned order. Respondents 3 and 4, who were aggrieved by the order, preferred revision as provided u/s 12 (3) of the Act. We have already referred that remedy was available to the petitioner as well. The petitioner probably was satisfied with the order and accordingly has not filed any revision against the order and after giving second thought when the order was passed by the Cane Commissioner for the entire State, he has started agitating the issue on the ground of malafide. The word "malice" in common acceptance means and implies "spite" or "ill-will". Once redeeming feature in the matter of attributing bias or malice is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record. For this purpose maliciously means no more than knowingly. In this context, we find that since the plea of mala fide involves two questions, namely, (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power, we find that there is not an iota of evidence to justify any personal bias or oblique motive on the part of the Cane Commissioner. Nothing has been said on this count against the Cane Commissioner. Consequently, on this count we feel that the petitioner has failed to provide even an iota of evidence, which may lead to an impression that the Cane Commissioner acted on any personal bias or with oblique motive in passing the impugned order against the petitioner. On the contrary, we find that on the basis of requirement of law vis-à-vis other factors were considered by an Export Body and thereafter the order was passed by the Cane Commissioner. Consequently, it is not possible to form any opinion of personal bias or oblique motive as the object behind passing the order by the Cane Commissioner was on the estimated requirement of cane. Further we find that the petitioner has failed to point out any circumstance to show whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. Consequently, there is a complete vacuum of reliable and clinching evidence and for want of any evidence it is not possible to infer that the Cane Commissioner has not acted in accordance with law.

At the cost of repetition, we may further refer that expression "mala fide" is not meaningless jargon and it has its proper connotation. A bald statement is not enough malice or mala fides can only be appreciated from the records of the case. There cannot possibly be any set guideline in regard to the proof of mala fide where it is alleged, depends upon its own facts and circumstances. In this context, we find that there is no cogent evidence available on record to establish that the action of the Cane Commissioner was biased or malafide in this case.

The Cane Commissioner adopted a uniform procedure, inviting the cane requirement from all concerned factories/mills thereafter assessed the requirements and passed a composite order for the entire province. The petitioner declined to avail the remedy available u/s 12 (3) of the Act, for the reason best known to him and the reasons given by him are not convincing that

the petitioner has impression that the Government has nothing to do in this matter and the court has to deal with the matter only. We do not find any substance in the contention of the learned Counsel for the petitioner that it was not necessary to file any revision u/s 12(3) of the Act and consequently, the petitioner is at liberty to challenge the order before this Court without availing the remedy u/s 12(3) of the Act. In the aforesaid background, we find that neither the Cane Commissioner committed any fraud on his power nor acted maliciously, but passed the order after exercising his powers u/s 12 of the Act. Further, for the reasons stated hereinabove, we hold that without material on record it is not possible to hold that the action of the Cane Commissioner is mala fide or he acted in a manner contrary to the object of the law.

51. In the wake of above discussions and proposition of law, referred to above, the report of the Cane Commissioner is accepted and no interference is required in the order dated 14.10.2006 passed by the Cane Commissioner in exercise of our jurisdiction under Article 226 of the Constitution.

52. Accordingly, the writ petition is dismissed.

53. Costs easy.