

(2013) 11 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 18816, 18919, 19497 of 2011 and 3824 of 2012

Batala Cooperative Sugar Mills Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0056

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—This order will dispose of four identical writ petitions bearing CWPs No. 18816 of 2011 (Batala Cooperative Sugar Mills Ltd. v. Union of India and another), CWP No. 18919 of 2011 (Bhogpur Cooperative Sugar Mills Ltd. v. Union of India and another), CWP No. 19497 of 2011 (Morinda Cooperative Sugar Mills Limited v. Union of India and another) and CWP No. 3824 of 2012 (Nawanshahar Cooperative Sugar Mills Limited v. Union of India and another). All the four writ petitions are arising out of the similar set of facts and same questions of law are involved. The impugned order dated 8.8.2011 (Annexure P-9) is common in all the four writ petitions. Subsequent recovery order dated 23.8.2011 is common in three cases whereas in CWP No. 3824 of 2012, order dated 24.1.2012 (Annexure P-10) has been additionally passed, but on the similar lines and in terms of the above said order dated 8.8.2011 (Annexure P-9). However, for the facility of reference, facts are being culled out from CWP No. 18816 of 2011. Facts first.

A brief narration of the essential facts would be required to unravel the controversy involved in all these writ petitions. The petitioners herein are the sugar mills located in the State of Punjab and challenging the validity of order dated 8.8.2011 (Annexure P-9) which was passed by respondent No. 1 dismissing the representations of the petitioners, which they filed in compliance

of the orders dated 12.8.2010 (Annexure P-6) passed by a Division Bench of this Court deciding together five Letter Patent Appeals.

2. The core question involved in all these four cases relates to the validity of fixation of levy sugar price under the Sugar (Price Determination for 1972-73) Production Order 1972 ("1972 Order" for short). Petitioners alleged that levy sugar price fixed by respondent No. 1 was on lower side and detrimental to their interest. Sugar being an essential commodity, is regulated by the provisions of Essential Commodities Act 1955 ("1955 Act" for short) and the rules/orders issued thereunder. Exercising its powers u/s 3(3C) of 1955 Act, respondent No. 1 issued an order dated 7.11.1972 alongwith schedule-1 (Annexure P-1), thereby determining different prices for different grades of levy sugar for different states and relevant extract of the schedule, reads as under:-

3. Feeling aggrieved against the above said fixation of levy sugar price allegedly on the lower side, petitioner sugar mills approached this Court by way of four writ petitions bearing CWP No. 780, 781, 782 and 766 of 1973. It is undisputed fact on record that price of sugar was controlled under 1972 Order issued under the 1955 Act. The concept of levy sugar came to be introduced in the year 1967, under which 60% sugar was to be supplied by the sugar mills at a fixed price and the remaining could be sold in the open market at a free price. In the month of December 1971, sugar mills associations agreed to supply 60% which came to be increased to 63.5%, of the total sugar produced at the rate of Rs. 150 per quintal and the balance could be sold in open market. Out of 63.5% of the total quantity to be supplied by the sugar mills at a fixed price, 3.5% was kept reserved for export commitment of the Central Government. Order Annexure P-1 came to be issued fixing price of levy sugar at different rates specified in the schedule attached to the order for different grades of sugar and for different States. The rates fixed for the State of Punjab have been extracted here-in-above.

4. Owing to the nature of controversy pertaining to the fixation of levy sugar price and changing circumstances, including the increase in the production of sugarcane, manufacturing cost and other relevant factors, Union of India set up Tariff Commission, which submitted its report in the year 1969. It was recommended by the Commission that to fix uniform rates throughout the country was neither practical nor feasible, because of different fact situation of every State. Fixation of price was recommended on the basis of zones.

5. Accordingly, sugar policy had to be reviewed from time to time, keeping in view the demand and supply, export commitment and reasonable incentive to the manufacturers as well as to the cane growers. Thus, policy of partial decontrol was thought to be the most appropriate alternative of the complete control and decontrol, so as to enable the sugar mills to pay a higher price for sugarcane than the minimum statutory price as an incentive to the cane growers. Simultaneously, sugar mills were going to be compensated by sale of their balance production of sugar in the open market on higher price than the levy

sugar price fixed by the Central Government.

6. When the situation improved in the first half of 1971, it was thought appropriate to remove the control on price. However, because of increase in the price, coupled with another important event, i.e. strained relations with Pakistan resulting into conflict, it was again considered necessary to control the price. An understanding was arrived at between the sugar mill owners and the Central Government for supply of 63.5% sugar through fair price shops @ Rs. 150 per quintal for a period of six months w.e.f. 1.1.1972 till emergency would last, whichever was earlier. However, in the year 1972, when the sugar mills started expressing their reservation to continue with the supply at the fixed rate of Rs. 150/-, a control order came to be issued w.e.f. 1.7.1972. During this period, the Tariff Commission was also asked to conduct a fresh enquiry into the changed circumstances with special reference to the cost structure of sugar industries. In the above said factual backdrop, order Annexure P-1 came to be issued by the Union of India, fixing levy sugar price in terms of 1972 Order.

7. The above said four writ petitions remained pending for regular hearing before this Court for quite some time. In the interregnum, the Hon'ble Supreme Court rendered the judgments in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, and Shri Malaprabha Co-op. Sugar Factory Ltd. Vs. Union of India and Another, besides other judgments on the subject. When the above said four writ petitions came up for hearing, all the writ petitions were dismissed by a Single Bench of this Court, vide order dated 19.1.2001 (Annexure P-5) relying upon the above said two judgments of the Hon'ble Supreme Court. The order dated 19.1.2001 dismissing the four writ petitions was challenged by the petitioners before the LPA Bench, vide LPA No. 1253, 1254, 1259 and 1956 of 2001. After hearing the parties at length and without setting aside the above said order dated 19.1.2010 as such, the Division Bench disposed of all the LPAs vide common order dated 12.8.2010 (Annexure P-6) granting liberty to the petitioners to make a representation to the Secretary, Ministry of Agriculture (Department of Food), who was directed to consider the same and pass an appropriate order dealing with the points which may be raised. As a consequence and in compliance of above said order dated 12.8.2010 passed by the LPA Bench, petitioners moved their respective representations before the respondent authorities. Petitioners appeared before the competent authority, i.e. the Secretary (Food and Public Distribution), who heard the parties, but contentions raised on behalf of the petitioners did not find favour with him. Consequently, he passed the impugned order dated 8.8.2011 (Annexure P-9). Hence these writ petitions.

8. Notice of motion was issued and pursuant thereto, written statement on behalf of the respondents was filed. That is how, this Court is seized of the matter.

9. Learned counsel for the petitioners vehemently contended that respondent No. 2 has proceeded on an erroneous approach, while passing the impugned order dated 8.8.2011 (Annexure P-9), not appreciating the issues raised on behalf of

the petitioners and also ignoring the true import of the mandatory provisions of Section 3(3C) of 1955 Act. He further submits that price for levy sugar for the years 1972-73 fixed @ Rs. 151.36 per quintal was inadequate on the face of it, which ought to have been fixed taking into consideration the price paid by the petitioners sugar mills for the sugarcane and also the actual manufacturing cost. Placing reliance on a comparative study of the sugarcane price provided at Annexure P-3 by the Central Government and Annexure P-4 fixed by the State Government, he submits that respondent No. 2 failed to consider and appreciate the factors provided u/s 3(3C) of 1955 Act while passing the impugned order. He places heavy reliance on the judgment of the Hon''ble Supreme Court in Mahalakshmi Sugar Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, and submits that respondent No. 2 has failed to appreciate the true import of the judgment only because of observations made in para. 66 of it, thus, misunderstood the ratio thereof.

10. He also submits that since Clause 5A was inserted in the sugarcane control order w.e.f. 1.10.1974 the same will not be applicable in the present cases. He next contended that the judgments of the Hon''ble Supreme Court in Mahalaxmi's case (supra), was fully applicable in the present case wherein the State Advisory Price ("SAP" for short), has been held to be one of the relevant factors to be taken into consideration by the Central Government for fixing the levy sugar price. He submits that the judgments of the Hon''ble Supreme Court in The Panipat Co-operative Sugar Mills Vs. The Union of India (UOI), as well as in Anakapalle Co-op. Agrl. and Industrial Society Ltd., Vs. Union of India (UOI) and Others, are not applicable in the present case. Regarding interest, he submits that under the Levy Sugar Price Equalisation Fund Act, 1976 ("1976 Act" for short), petitioners are being charged exorbitant rate of interest, i.e. 15% per annum. He submits that since the petitioners had been pursuing their bona fide litigation right from 1973, they could be charged only @ 12.5%. Finally, he prays for setting aside the impugned order by allowing the present writ petitions.

11. Per contra, learned Additional Solicitor General of India submits that all the points raised by the petitioners were dealt with and decided strictly in accordance with the peculiar fact situation, statutory provisions contained in Section 3(3C) of 1955 Act and the law laid down by the Hon''ble Supreme Court in Panipat Cooperative Sugar Mills" case (supra) and Anakapalle's case (supra), which were the Constitution Bench judgments of the Hon''ble Supreme Court. He further submits that Mahalaxmi's case (supra), was clearly distinguishable on facts as it was pertaining to the determination of price of sugar for the years 1983 to 1985. Further, clause 5(A) introduced in 1972 Order w.e.f. 1.10.1974, dealing with additional price for sugar purchased on or before 1.10.1974, was subject matter of consideration before the Hon''ble Supreme Court in Mahalakshmi's case (supra), which was not the issue involved herein. He next contended that it was only the Central Government, which was competent to fix the levy sugar price and the higher price of the sugarcane, if any, fixed by the State Government would be totally immaterial.

12. Placing heavy reliance on the above said two Constitution Bench judgments of the Hon''ble Supreme Court in Panipat Cooperative Sugar Mill's case (supra) and Anakapalle's case (supra), learned Additional Solicitor General of India contended that since the levy sugar price was determined in accordance with the provisions of 1955 Act and 1972 Order, there was hardly any scope for interference by this Court. Regarding interest, he placed reliance on a Division Bench order dated 3.5.2013 of Allahabad High Court in Bajaj Hindustan Ltd. v. Union of India through Secretary Food & Consumer Affairs rendered in case number (miscellaneous) 1196 of 1999 as well as the Division Bench judgment dated 15.6.2007 in Union of India and others v. Sir Shadi Lal Enterprises and others passed in LPA No. 292 of 2001, which came to be upheld by the Hon''ble Supreme Court vide order dated 3.3.2008, dismissing the Special Leave to Appeal (C) No. 15747 and 15748 of 2007. He submits that since the rate of interest was statutory in nature provided under 1976 Act, petitioners were bound to pay the same. He prays for dismissal of the writ petitions.

13. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in view of the given fact situation of the case and the law laid down by the Hon''ble Supreme Court of India, no interference is warranted at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

14. Following are the three questions of law that fall for consideration of this Court:-

- i) Whether the impugned order fixing the levy sugar price for the year 1972-73 was contrary to the provisions of Section 3(3C) of 1955 Act;
- ii) Whether the impugned order dated 8.8.2011 (Annexure P-9) passed by respondent No. 2 was arbitrary; and
- iii) Whether the petitioners were under legal obligation to pay the statutory interest provided under the 1976 Act.

15. It is an admitted position on record that issue involved herein pertains to the determination of levy sugar price for the year 1972-73 by the Central Government. How the competent authority came at this figure, i.e. Rs. 151.63 per quintal? Details in this regard have been given in Annexure P-3 at page 46 and 47 of the paper book and the same read as under:-

16. Since the principal question revolves around the interpretation of Section 3(3C) of 1955 Act, it would be appropriate to refer to the relevant provisions of Section 3(3C) and the same read as under:-

"(3-C). Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central

Government or a State Government or to an officer or agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3-A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount therefore which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to-

(a) the minimum price, if any, fixed for sugarcane by the Central Government under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon: and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar, and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar.

Explanation - For the purposes of this sub Civil Writ Petition No. 18816 of 2011-14 & other connected cases section, "producer" means a person carrying on the business of manufacturing sugar."

17. A bare perusal of the above said provisions of law leaves no room for doubt that it was only the Central Government, which was competent to fix the levy sugar price, of course, keeping in view the relevant factors provided u/s 3(3C) of 1955 Act.

18. A conjoint reading of the figures contained in Annexure P-3, provisions of Section 3(3C) of 1955 Act, both reproduced hereinabove and the impugned order Annexure P-9 as well as the Division Bench judgment dated 12.8.2010 (Annexure P-6) passed by this Court, would make it clear that respondent No. 2 considered all the relevant factors in accordance with the provisions of Section 3(3C) of 1955 Act, peculiar facts of the present case and other relevant attending circumstances before passing the self contained impugned order dated 8.8.2011 (Annexure P-9), in meticulous compliance of the judgment dated 12.8.2010 passed by the LPA Bench of this Court. The order is not only speaking one, but is supported with sound reasoning. Each and every minute detail has been discussed, considered and appreciated in the right perspective by respondent No. 2, while passing the impugned order Annexure P-9, which has not been found to be suffering from any vice of arbitrariness. Having said that, this Court feels no hesitation to conclude that respondent No. 2 committed no error either on facts or in law and the impugned order deserves to be upheld.

19. Before coming at the judicious conclusion, respondent No. 2 has first referred to the factual background of the case, then he discussed the issues raised before him on behalf of the petitioners and decided the same in meticulous compliance of the order dated 12.8.2010 passed by the LPA Bench of this Court. The

relevant extract of the order passed by respondent No. 2 reads as under:-

"From the material on record, it is found that prior to the issuing of the order of 1972, an informal, arrangement was reached by the Central Government with the sugar industry and a scheme was brought into effect from the 1st January, 1972 under which the industry agreed to voluntarily make available 60% of the monthly releases of sugar at a fixed price of Rs. 150 per quintal ex-factory exclusive of excise duty for D-30 Grade for distribution to domestic consumers through fair-price shops. Similarly, a further 3.5% of the monthly releases were also made available by the factories for meeting export commitments. The rest of the monthly release was available for free sale in the open market.

The agreement with the industry was to remain valid for the duration of the Emergency in the wake of Indo-Pak conflict of 1971 or for a period of six months whichever was shorter. The Indian Sugar Mills Association informed the Central Government on 13th June, 1972 (When the emergency was still in force), that some factories were unwilling to continue the voluntary arrangement beyond 30th June, 1972 and that it had not been possible for the Association to recommend any other scheme. The prices of sugar had also been steadily rising. Therefore, in order to ensure that the domestic consumers continue to procure a reasonable portion of their requirements of sugar at a fair price, the Central Government resorted to the provisions of the EC Act and issued the Sugar (Price Determination) Order 1972 on 15th June, 1972, wherein under, the price for D-29 levy sugar was fixed at Rs. 145.71 per quintal in respect of factories located in the State of Punjab in respect of the sugar season 1971-72. The Sugar (Price Determination for 1972-73 Production) Order, 1972 for the sugar season 1972-73, was issued on 7th Nov., 1972 having due regard to the following additional elements in the cost of production, over and above the escalations recommended earlier by the Tariff Commission:-

(i) A higher minimum cane price which had been increased by about 20% over the minimum price notified for the sugar season 1971-72.

(ii) Increase in the bank lending rates.

(iii) Increase in the Statutory Minimum Bonus from 4 to 8.33%

The Price for the D-29 Grade levy sugar in respect of the factories located in the State of Punjab was fixed at Rs. 151.36 per quintal.

The prices of levy sugar for the sugar year 1972-73 were fixed after taking into consideration the factors mentioned in sub-section (3C) of section 3 of the Essential Commodities Act, 1955 and were in accordance with the formula laid down by the Tariff Commission, 1969. The important aspects of the price fixation then as adopted are briefly explained below:-

(a) The minimum sugarcane price for 1972-73 had been fixed by the Government at Rs. 8 per quintal linked to a recovery of 8.5% with a premium of 9.4 paise for every 0.1% increase in the recovery over 8.5% in accordance with

the principle of full proportionality. The weighted average cane price for each zone has been calculated at this rate on the basis of the estimates furnished by the factories for the year 1972-73.

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Further, the sugar mills have now worked out their ex factory prices based on the actual price of sugarcane paid by them. Sub-section (3C) of section (3), however, permits taking into consideration only of the minimum price of sugar cane while arriving at the price of levy sugar.

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M/s. Malwa Sugar Mills (now Cosmos Industries Ltd.) have referred to the judgment dated 22.9.1993 in the case of Malaprabha Cooperative Sugar Factory Ltd. And judgment dated 31.3.2008 in the case of Mahalakshmi Sugar mills Company Ltd. of Hon"ble Supreme Court to justify taking into consideration of the actual price of sugar cane in the determination of the price of levy sugar for the year 1972-73. The said judgments are not applicable to the levy sugar prices for the year 1972-73 since the Malaprabha judgment dated 22.9.1993 was concerned with fixation of price for the years 1974-75 to 1979-80 only by taking into consideration the additional price of sugarcane under clause 5A of the Sugarcane (Control) Order, 1966. The said clause 5A was inserted in the sugarcane (Control) Order 1966 with effect from 1.10.1974 only and, therefore, is not relevant to the prices of sugarcane for the sugar season 1972-73. Further, Hon"ble Supreme Court had specifically directed the Central Government to re-fix the prices for levy sugar for the sugar years 1974-75 to 1979-80 and not passed any orders with regard to appeals pertaining to other sugar years disposed of through the said judgment dated 22.9.1993. The parties representing, therefore, cannot claim any benefit from the decision of Hon"ble Supreme Court in the case of Malprabaa Cooperative Sugar Mills. Similarly, no benefits can be claimed by the parties representing on the basis of judgment dated 31.3.2008 of Hon"ble Supreme Court in the case of Mahalakshmi Sugar mills Co. Ltd. Since parties representing were not a party to the said case. Hon"ble Supreme Court while laying down the law for the future had kept the direction confined only to the parties before the Court including the interveners. The said case was applicable to the sugar years 1983-84 and 1984-85 only.

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The Central Government while determining the price of levy sugar for the sugar season 1972-73 had given due consideration to the factors mentioned in sub-section (3C) of section 3 of the Essential Commodities Act 1955 like increase in the minimum price of sugarcane, incidence of co-operative societies commission, weighted average recovery and weighted average duration based on estimates obtained from factories for the 1972-73 season, escalation recommended by the Tariff Commission and the incidence of additional bonus. The Central Government had also taken into account a higher amount in consideration as return on the

capital employed. The prices had, therefore, been determined strictly in accordance with the provisions of sub-section (3C) of section 3 of the Essential Commodities Act, 1955 in view of this and position stated hereinabove, the representations filed by sugar mills for revision of the prices of levy sugar for the sugar year 1972-73 cannot be accepted. The sugar mills are directed to immediately pay to the Central Government the excess price realized in terms of the interim order of Hon''ble High Court of Punjab and Haryana together with interest thereon, if not already done, under the Levy Sugar Prices Equalization Fund Act, 1972.

20. A careful reading of the above said reasons assigned by respondent No. 2, while passing the impugned order would show that the impugned order has been passed after due application of mind. The impugned order is based on true facts of the case and correct appreciation of codified as well as judge made law. The judgments rendered by the Constitution Benches of the Hon''ble Supreme Court in Panipat Cooperative Sugar Mill's case (supra) and Anakapalle's case (supra) have been rightly followed by respondent No. 2, at the time of passing the impugned order. In this view of the matter, decision making process adopted by respondent No. 2 has been found to be factually correct and legally justified. Thus, it cannot be said that respondent No. 2 acted without jurisdiction of proceeded on a misconceived approach, therefore, the impugned order deserves to be upheld for this reason also.

21. The judgment dated 12.8.2010 (Annexure P-6) rendered by the LPA Bench of this Court had virtually put the controversy to rest. However, indulgence was shown to the petitioners granting them liberty to approach the respondent authorities by way of appropriate representations, only because the Division Bench could not be assisted adequately by the learned counsel for the parties, in the alleged absence of proper and complete instructions from their respective clients. The relevant operative part of the judgment dated 12.8.2010 passed by the LPA Bench, reads as under:-

"17. Having noticed the resume of facts and the historical developments, we find that as per stand of the Central Government, controlled price was fixed having due regard to relevant factors i.e. minimum price for sugarcane, manufacturing cost, tax payable and reasonable return on capital employed. Return has been taken at 12.05%, which was applicable to the case of the appellants.

18. In Cynamide India Limited, it was observed that price fixation was neither the function nor the forte of the Court. Though the Court had the jurisdiction to enquire into the question whether relevant considerations were gone into, the Court could not re-evaluate the considerations even if price was injurious to some manufacturer or producer. The observations in the judgment are:-

"Price fixation is neither the function nor the forte of the Court. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to inquire into the question, in appropriate proceedings,

whether relevant considerations have gone in and irrelevant consideration kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, inquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of the price fixation are the concern of the executive and we leave it to them. And, we will not reevaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The Court will, of course, examine if there is any hostile discrimination. That is a different "cup of tea" altogether."

What the learned Signal Judge appears to have held is that the matter was covered by this principle followed in Shri Sitaram Sugar Co. Limited.

19. No doubt Shri Malaprabha Coop. Sugar Factory Limited was concerned with fixation of price for the years 1974-75 to 1979-80 and was distinguishable to that extent, the fact remains that except for the issue of Clause 5A of the Sugarcane Control Order, in other respects, fixation of price of sugar was upheld and to this extent learned Single Judge was justified in holding that the issue was covered by judgments in Shri Sitaram Sugar Co. Limited and Shri Malaprabha Coop. Sugar Factory Limited. In the present case, Clause 5A of the Sugarcane Control Order is not applicable, the same having been introduced after 1.10.1974.

20. We have also noticed above that price of sugar for the year 1972-73 was upheld by the Hon'ble Supreme Court in Anakappale Coop. Agricultural and Industrial Society Limited and Allahabad High Court in Deoria Sugar Mills. As regards judgment of Delhi High Court, the same relates to the year 1980-81.

21. Thus, though we are of the view that no particular point has been shown to us which may justify interference with the fixation of price under the impugned order, learned counsel for the appellants stated that in absence of proper instructions from his client, he could not raise some of the points which he could have raised if he had all the instructions. Learned counsel for the respondents was also unable to properly assist the court for want of instructions as stated by him. Order of stay has been operative for the last almost 37 years. We do not find any ground to further adjourn the matter to enable the counsel to seek instructions. Number of adjournments have already been granted. Still, while closing the matter as far as this Court is concerned, we consider it proper to give indulgence to the appellants to make a representation to the Secretary, Ministry of Agriculture (Department of Food) who may consider the same and pass an appropriate order dealing with the points which may be raised within three months from the date of receipt of the said representation and a copy of this order. Interim order granted by this Court which was continued during pendency of these appeals will continue till such an order is passed. On passing of such an order, interim order so granted will cease to operate, subject to such order that

may be passed on the representation.

22. The appeals are disposed of accordingly.

22. Before arriving at the above said conclusion, the LPA Bench discussed, considered and appreciated all the relevant facts of the case, because it was not a short order, but a detailed judgment covering every aspect of the matter. Further, on the issue of difference between notified price and free market price sugar, the LPA Bench observed as under:-

"Due to wide difference between the notified price and the free market price of sugar, the manufacturer gets sufficient margin which enables him to pay a higher price for sugarcane."

During the course of hearing, learned counsel for the petitioners could not substantiate any of his arguments, so as to make out a case for interference at the hands of this Court. The basic fallacy in the arguments raised by the learned counsel for the petitioner was that he wanted this Court to follow the judgment of the Hon''ble Supreme Court in Mahalakshmi Sugar Mill's Case (supra), which was rendered by a Bench of two judges in different set of circumstances relating to determination of price of sugar for the sugar years 1983-84 & 1984-85 and also while interpreting the scope of Clause 5A, which came to be inserted in 1972 Order w.e.f. 1.10.1974, whereas issue involved herein, as noticed hereinabove, pertains to the determination of levy sugar price for the year 1972-73. Another fallacious argument raised by the learned counsel for the petitioners was that two Constitution Benches of the Hon''ble Supreme Court in Panipat Cooperative Sugar Mill's case (supra) and Anakapalle's case (supra), were distinguishable. However, after careful perusal of the abovesaid two judgments, it was found that the issue involved before the Constitution Benches of the Hon''ble Supreme Court was pertaining to the determination of price of levy sugar for the year 1970-71, i.e. before introducing Clause 5A in 1972 Order. Further, in Anakapalle's case (supra), the issue that fell for consideration before the Hon''ble Supreme Court was exactly the same, which is involved herein. Thus, the argument raised by the learned counsel for the petitioner in this regard has been found to be without any merit and cannot be accepted, as such.

23. Learned counsel for the petitioner places heavy reliance on the judgment of the Hon''ble Supreme Court in Mahalakshmi Sugar Mill's case (supra), but the same has been found to be distinguishable on facts. The distinguishing features are clear from the bare reading of para Nos. 6, 46 and 66 of AIR, which read as under:-

"In these appeals, we are concerned with the determination of price of sugar for the sugar years 1983-84 and 1984-85.

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Determination of a price is required to be carried out keeping in view certain factors specified therein. The term "having regard to" plays an important role in

the matter of construction of the relevant provisions of the Act. If a price is determined without applying the principles underlying the factors enunciated in Section 3(3C) of the Act, the superior courts can issue requisite direction.

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That is how the Central Government itself understood the decision of this Court in Malaprabha-I. It explicitly said so in the counter affidavit filed in Bharat Sugar Mills. Indisputably, for the purpose of determination of the price of levy sugar, it called for the relevant materials from each of the owner of the sugar mill. It is, therefore, too late in the day for the Central Government to contend contra."

24. Since the above said judgment in Mahalakshmi's case (supra) was rendered on entirely different set of facts involving the issue of determination of price of sugar for the years 1983-84, 1984-85 as well as deciding the scope and ambit of Clause 5A, which was inserted w.e.f. 1.10.1974 in the 1972 Order, the same has been found to be clearly distinguishable on facts and is no help to the petitioners.

25. In view of the foregoing discussion, the answer to the first question posed above is and has to be an emphatic No. It is so said, because the impugned orders fixing the levy sugar price for the year 1972-73 have not been found to be contrary to the provisions of Section 3(3C) of 1955 Act. In this regard, a bare perusal of the details given in Annexure P-3, reproduced hereinabove, will make it clear that the respondent authorities considered all the relevant factors while determining the levy sugar price, strictly in accordance with the provisions of Section 3(3C) of 1955 Act.

26. On the same analogy, answer to the second question posed hereinabove, also goes in favour of the respondents and against the petitioners, because the impugned order dated 8.8.2011 passed by respondent No. 2 has been found to be factually correct and legally justified.

27. The abovesaid view taken by this Court also finds support from the Constitution Bench judgments in Panipat Cooperative Sugar Mill's case (supra) and Anakapalle's case (supra) as well as the judgments of the Hon'ble Supreme Court in Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc., and Gupta Sugar Works Vs. State of U.P. and Ors,

28. The relevant observations made by the Hon'ble Supreme Court in para Nos. 24 and 30 of the judgment in Panipat cooperative sugar mill's case (supra), which can be gainfully followed in the present case, read as under:-

In order to appreciate the meaning of clauses (a), (b), (c) and (d), it must be remembered that ever since control on sugar was imposed, Government had set up expert committees to work out cost-schedules and fair prices. Starting in the beginning with an All-India cost schedule worked out on the basis of the total production of sugar, the factories were later grouped together into zones or regions and different cost-schedules for different zones or regions were constructed on the basis of which fair prices were worked out at which sugar was

distributed and sold. The Tariff Commission in 1958 and the Sugar Enquiry Commission in 1965 had worked out the zonal cost-schedules on the basis of averaged recovery and duration, the minimum and not the actual price of cane, the averaged conversion costs and recommended a reasonable return on the capital employed by the industry in the business of manufacturing sugar. This experience was before the legislature at the time when sub-sec. 3C was inserted in the Act. The legislature therefore incorporated the same formula in the new sub-section as the basis for working out the price. The purpose behind enacting the new sub-section was threefold, to provide an incentive to increase production of sugar, encourage expansion of the industry, to devise a means by which the cane producer could get a share in the profits of the industry through prices for his cane higher than the minimum price fixed and secure to the consumer distribution of at least a reasonable quantity of sugar at a fair price.-Whether these objectives have, through, the working of the new sub-section, been realized or not is a different, matter. But there can be no doubt that these were the objectives, for which the sub-section was passed. The incentive to secure, increased production and expansion of the industry was to leave a certain portion of the stock free for sale in the open market, the assumption being that the industry would get a better price in such market than the price determined under the formula incorporated in sub-section 3C.

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The basis of a fair price would have to be built on a reasonably efficient and economic representative cross-section on whose workings cost-schedules would have been worked out and the price to be determined by Government under sub-sec. 3C would have to be built. A claim that such a price has to be determined unit-wise and a reasonable return has to be ensured to each unit or that such a price with such a return would be in respect of that part of its stock required to be sold under sub-sec. 2(f) would appear to be inconsistent with the concept of partial control, the background in which it was evolved and the objects which it attempted to secure. Such a policy meant determination of a fair price on the basis of which a producer would be paid for part of his stock required to be sold to Government. Such a price would have to be determined having regard to the four factors set out in the sub-section. Though factors (a) and (c) would be static, factor (b) would largely depend on variables, such as duration and recovery, the prices of fuel, labour etc. differing from zone to zone and sometimes within the zone, necessitating averaging and costing by selecting a representative cross-section of units for that purpose and arriving at a cost-schedule which would do justice to the weak and the strong alike. If this be the true meaning of clause (b), it must mean securing a reasonable return to the industry and not to each unit, irrespective of whether it is economic or reasonably efficient or not, or only in respect of its stock required to be compulsorily sold to Government. A unit-wise fixation of price as suggested by counsel, and payment on the basis of a price so worked out would mean perpetuating inefficiency and mismanagement, and depriving the partial control

policy of the incentives for economy and efficiency inherent in it. We are, therefore, satisfied both on the language of the sub-section, the background in which it was enacted and the mischief the legislature sought to remedy through its working that the true, construction is that a fair price has to be determined in respect of the entire produce, ensuring to the industry a reasonable return on the capital employed in the business of manufacturing sugar. But this does not mean that Government can fix any arbitrary price, or a price fixed on extraneous considerations or such that it does not secure a reasonable return on the capital employed in the industry. Such a fixation would at once evoke a challenge, both on the ground of its being inconsistent with the guidelines built in the sub-section and its being in contravention of Arts. 19(1)(f) and (g), and 31.

Similarly, the law laid down by the Hon^{ble} Supreme Court in *Anakapalle's* case (supra), aptly apply to the facts of the present case. The relevant observations made in para. 31 of the judgment are as under:-

"Sub-section 3C itself lays down the various components of determining the price of sugar. Clauses (a), (b) and (c) relate to the total cost which consists of the minimum price of sugar-cane as fixed by the government, the manufacturing cost and the duty or tax. Clause (d) relates to the return on the capital employed. The very fact that clause (a) provides that the minimum price fixed for the sugarcane has to be taken into account shows that the actual cost is immaterial. Moreover under this subsection price can be fixed according to certain zones. While doing so it is altogether impossible to take the actual cost of each manufacturer or producer and fix the price accordingly. In such a case the methods followed by the Tariff Commission have stood the test of time and the sub-section itself incorporates or embodies the principles which have been followed in price fixation of sugar. It is not therefore possible to say that the principles which the Tariff Commission followed in fixing the prices for different zones are either not recognized as valid principles for fixing prices or that simply because in case of some factories the actual cost was higher than the one fixed for the zone in which that factory was situate the fixation of price became illegal and was not in accordance with the provisions of sub-s. (3C). It has not been denied that the majority of sugar producers have made profits on the whole and have not suffered losses. It is only some of them which assert that their actual cost is far in excess of the price, fixed. That can hardly be a ground for striking down the price fixed for the entire zone provided it has been done in accordance with the accepted principles. The methods employed by the Tariff Commission 1969 in preparing the cost schedules as also the formulae for working out cost schedules for the future are fully set out in the Commission's report and have been also discussed in the connected case (supra). We need not go over the same matters again."

The law laid down by the Hon^{ble} Supreme Court in *Cynamide India's* case (supra) was followed by the LPA Bench, while rendering the above said judgment dated 12.8.2010 (Annexure P-6) and the relevant operative part thereof, has

been reproduced hereinabove. Para. 4 of the judgment of the Hon''ble Supreme Court in Cynamide India's case (supra), is not being reproduced here again, for the sake of brevity and in order to avoid repetition.

The Hon''ble Supreme Court in para. 4, 8, 11 and 12 of the judgment in Gupta Sugar Work's case (supra), held as under:-

This will be the parameter and the limitation of inquiry by Courts whenever the price fixation of any essential commodity is called into question. The Court does not act like a Chartered accountant nor acts like an income tax officer. The Court is not concerned with any individual case or any particular problem. The Court only examines whether the price determined was with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination.

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In this view of the matter, the primary consideration in the fixation of price would be the interest of consumers rather than that of the producers. Moreover, we think that since the petitioners are allowed to sell freely at any rate they like the remaining 50% of the sugar (after excluding the 50% which they have to give for levy) as also the produce by the second and third process, the loss if any caused to the petitioners would be minimal.

xx xx xx

The exercise provided under the Act was intended ultimately to serve the interest of consumers. It is fundamental in the entire scheme of the Act. But then, the interest of the industry as a whole cannot be left out. It is also required to be borne in mind. The levy price of sugar should ensure reasonable return to the industry. That is one of the guidelines provided under sub-section 3C of Section 3 of the Essential Commodities Act. But that does not mean that the interest of producers should outweigh the interest of consumers. It would be tilting the balance too much. Such a contention in our opinion, also runs afoul of our earlier analysis.

It is true that there is no express reference to Panipat and Anakapalle in the judgment in New India Sugar Works. But the judgment need not be a digest of cases. It need not be written like a thesis. The decision in New India Sugar Works may be brief, but not less predictable on the principles of Panipat and Anakapalle. There this Court found the levy price reasonable even from the point of view of the industry. This Court took into consideration the liberty reserved to manufacturers to sell freely 50% of the Sugar manufactured and also 100% of the produce by 2nd and 3rd processes. This Court was of opinion that by such a free sale the industry could get reasonable return. We agree with this conclusion and see no reason for reconsideration.

29. In view of the law laid down by the Hon''ble Supreme Court, referred to hereinabove, this Court feels no hesitation to conclude that respondent

authorities have arrived at judicious conclusion, while taking into consideration all the relevant factors, including manufacturing cost at the time of determining the levy sugar price, because of which no fault can be found with the impugned order Annexure P-9, passed by respondent No. 2 and the same deserves to be upheld.

30. Now coming to the third question posed hereinabove, the relevant provisions of 1976 Act contained in Section 2(b)(ii) and Section 3(3)(b), which are relevant in the present cases, read as under:-

"In this Act, unless the context otherwise re-quires:-

xx xx xx

(b) "excess realization", in relation to each grade of levy sugar:-

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(ii) includes any realization representing the difference between the controlled price and the price allowed by the court by as interim order, if such interim order is set aside, whether by the court which made the order or in appeal or revision.

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3(3)(b) the interest due on so much of the amount of any excess realization made on or after the date of such commencement as is not credited to the Fund together with interest at the aforesaid rate of twelve and a half per cent per annum within sixty days from the date on which such amount was realized shall be at the rate of 15% per annum from the date such amount was realized by the producer."

The above said provisions of law fell for consideration before the Division Bench of Allahabad High Court in M/s. Bajaj Hindustan Limited's case (supra) and the relevant observations made in the judgment, read as under:-

"At the very outset, Mr. K.C. Kaushik, learned Additional Solicitor General of India submits that the petitioner has challenged the demand of interest of excess realization of levy sugar price for the year 1973-74. He further submits that this question has already been decided by the Delhi High Court, vide its judgment dated 4.12.2000 in Writ Petition No. 5274 of 2000, Sir Shadilal Enterprises Ltd. And others v. Union of India and others that the interest on excess realization of levy sugar price is payable by this sugar company, but, in the said case, w.e.f., the date of judgment, whereby the fixation of price for the year 1982-83 (involved in that writ petition) was upheld by the High Court in the case of Modi Industries.

Being aggrieved, the Union of India preferred an appeal before the Division Bench. Thereafter, vide its judgment dated 15.6.2007, it was directed that the fixation of price of levy sugar stands covered by the decision in the case of Malaprabha Cooperative Sugar Factory v. Union of India and that the sugar

companies are liable to pay interest on excess realization of levy sugar price in pursuance of the interim orders of the High Court with effect from the date of said excess realization in accordance with the terms of LSPEF Act. When the SLP against the judgment and order dated 15.6.2007 was preferred before the Apex court, it was dismissed vide judgment and order dated 3.3.2008. Under these circumstances, the instant writ petition has lost its efficacy."

Similar question arose before Delhi High Court in Sir Shadilal's case (supra) and law laid down in para. 12, 18 and 19 of the judgment, is as under:-

"On the pleadings in the present case, the following issues arise for determination:-

xx xx xx xx

(ii) on the question of payment of interest on the excess realization, what is the effect of the LSPEF Act, 1984 and is the impugned judgment of the learned Single Judge sustainable in terms of the said statute.

xx xx xx

Turning to the case on hand, not only is there no challenge to the LPSEF Act, but even in the cross objections or the written submissions filed by the respondents they have not questioned the applicability of the LPSEF Act and the liability to make the payment in terms thereof. The impugned judgment of the learned Single Judge also does not notice the provisions of the LPSEF Act. There is therefore no basis for the contention of the respondents that the recovery should be restricted to the 50% of the principal amount. In terms of the LSPEF Act, 1984 the direction issued by the learned Single Judge restricting the interest from the date of judgment in Modi Industries is unsustainable in law. It has been pointed out in the affidavit dated 11.3.2002 filed on behalf of the Union of India in these proceedings that the loss to the Exchequer in view of the non payment of the excess realization by the sugar factories including the respondents herein is in the excess of Rs. 6.13 crores.

For all of the above reasons, this Court concludes that in terms of LSPEF Act 1984 interest is payable by the respondent sugar producers from the date of the excess realization and is not restricted to the period after the date of the judgment of the Hon'ble in Modi Industries Ltd. To this extent the impugned order dated 4.12.2000 of the learned Single judge is set aside. The cross objections are without merit and are rejected. The Union of India will now proceed to recover the balance interest on the excess realization by the respondent sugar manufactures for the year 1982-83 in terms of the LSPEF Act 1984."

31. In view of the above unambiguous provisions of law contained in 1976 Act reproduced above, interpreted by two Division Bench judgments, referred to hereinabove, answer to the third question is in the affirmative. It is held that the petitioners were under legal obligation to pay the statutory interest as provided

under 1976 Act. The petitioners have not been found to be entitled for any relaxation in this regard. Sympathy of this Court as sought by the learned counsel for the petitioners would amount to misplaced sympathy, which would cause unwarranted financial loss to the public exchequer and will also run counter to the law laid down by the Hon''ble Supreme Court in *Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others*,

The relevant observations made by the Hon''ble Supreme Court in paras No. 36 to 39 in *Teri Oat's case (supra)*, which can be gainfully followed in the present case, read as under:-

SYMPATHY:

36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.

37. As early as in 1911, Farewell L.J. in *Latham v. Richard Johson & Nephew Ltd.*, (1911-13 AER reprint p. 117) observed:

"We must be very careful not to allow our sympathy to affect our judgment with the infant plaintiff. Sentiment is a dangerous will O" the wisp to take as a guide in the search for legal principles."

(See also *Ashoke Saha Vs. State of West Bengal and Others*,

38. In *Sairindhri Ddolui v. State of West Bengal*, 2000 (2) S.C.T. 441 : (2000) 1 SLR 803, a Division Bench of the Calcutta High Court wherein (one of us Sinha, J. was a Member), followed the aforementioned dicta.

39. This Court also in *C.B.S.E. and Another Vs. P. Sunil Kumar and Others*, rejecting a contention that great injustice would perpetrate as the students having been permitted to appear at the examination and having been successful and certificates had been issued in their favour, held:

"... We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students..."

32. Reverting back to the facts of the present case and respectfully following the law laid down by the Hon''ble Supreme Court as well as Delhi and Allahabad High Courts in the judgments, referred to hereinabove, the irresistible conclusion is

that the petitioners have no case either on facts or in law. The levy sugar price was correctly determined by the respondent authorities after taking into consideration all the relevant factors provided u/s 3(3C) of 1955 Act.

33. Similarly, the impugned order passed by respondent No. 2 was based on true facts and circumstances of the case as well as in accordance with the relevant provisions of law. The impugned action taken on behalf of the respondents has neither been found to be arbitrary nor unreasonable. Further, learned counsel for the petitioners failed to point out any jurisdictional error or patent illegality apparent on record of the case. No substantive argument was put into service by the learned counsel for the petitioners for convincing this Court to take a different view than the one taken hereinabove. Thus, the impugned order dated 8.8.2011 (Annexure P-9) passed by respondent No. 2 deserves to be upheld.

34. No other argument was raised.

35. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that in the given fact situation of the present case, all the four writ petitions are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out. Resultantly, all the four writ petitions stand dismissed, however, with no order as to costs.