

(2017) 02 AHC CK 0093
In the Allahabad High Court
Case No : Writ C No. 1680 of 2017

L.H. Sugar Factories Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 15(4)

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 22

Citation : (2017) 3 ADJ 246 : (2017) 2 AILLJ 769 : (2017) 2 AllWC 1388 : (2017) 121 ALR 847

Hon'ble Judges : Mahesh Chandra Tripathi, J.

Bench : Single Bench

Advocate : Writ C No. 1680 of 2017.; Nishant Mehrotra, Advocate, for the Petitioner; C.S.C Alpana Dwivedi and Rohan Gupta, Advocate, for the Respondent; Writ C No. 4072 of 2017.; Rohan Gupta, Advocate, for the Petitioner; C.S.C, Alpana Dwivedi and Nishant Mehrotra, Advocate, for the Respondent; Writ C No. 4993 of 2017.; Ravindra Singh, Advocate, for the Petitioner; C.S.C. Nishant Mehrotra and Rohan Gupta, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Mahesh Chandra Tripathi, J.. - The counter affidavit filed on behalf of fourth respondent i.e. Co - operative Cane Development Society Limited, Baheri, District Bareilly in Writ C No.4072 of 2017 is taken on record.

2. The leading Writ C No.1680 of 2017 has been filed by L.H. Sugar Factories Ltd. against the order dated 6.1.2017 passed by Special Secretary, Sugar Industries and Cane Development Department, Lucknow by which the State Government has, in exercise of appellate powers under Section 15 (4) of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 read with Rule 23 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (in short the Act of 1953 and Rules of 1954 respectively), partly allowed the appeal in question and

reserved/assigned three purchase centres namely Guladiya Atahussain, Pipariya Kanak and Mudiya Navibux to the six respondent Sugar Mill and amended the reservation orders passed by the Cane Commissioner U.P. at Lucknow dated 12.11.2016.

3. In the connected Writ C No. 4072 of 2017 Kesar Enterprises Ltd., Baheri, District Bareilly has prayed for quashing the same impugned order dated 6.1.2017 to the extent the Appellate Authority has declined to assign the Cane Purchase Centres namely Damkhodi B, Nadel, Ariya Bojh, Budha Badalpur - 1 and Budha Badalpur - 2 to it and for direction to the first to third respondents to allow it to purchase the sugarcane from the aforesaid cane purchase centres. In Writ C No.4993 of 2017 the Co-Operative Cane Development Union Ltd. Baheri, District Bareilly through its Chairman Kendra Pal Singh is before this Court assailing the same impugned order dated 6th January, 2017.

4. Since the controversy involved in these writ petitions is similar and the order impugned in these writ petitions is the same, therefore, all these writ petitions are being decided by this common order. For the sake of convenience, the facts of Writ C No.1680 of 2017 are being noted below:-

5. The petitioner, L.H. Sugar Factories Ltd. is a Public Limited Company incorporated and registered under the Companies Act, 1956. The petitioner sugar mill is situated at Pilibhit, U.P. It is engaged in manufacture of white crystal sugar through vacuum pan process having crushing capacity of 11500 TCD (Tones Crushed Per Day). It has been claimed that on the basis of the crushing capacity of the petitioner, its requirement is 174.30 lakh quintals for a crushing season of 180 days. The Cane Commissioner, U.P., Lucknow in exercise of powers conferred under Section 15 of Act of 1953 passed an order on 12.11.2016 assigning Cane Purchase Centre Dumkhoda-II to the petitioner sugar mill after curtailing from the allotment of sixth respondent i.e. Kesar Enterprises Ltd., Baheri, District Bareilly. In the present crushing season, the petitioner sugar mill has started its crushing from 11.11.2016.

6. In pursuance of the letter of the Joint Cane Commissioner dated 16.11.2016, the District Cane Officer issued a letter dated 17.11.2016 fixing the date of hearing on 21.11.2016 on the application so moved by the sixth respondent against curtailment of cane purchase centres, which were allotted to the petitioner and other factories. On 21.11.2016 the authorised representative of the petitioner appeared before the third respondent i.e. Cane Commissioner, U.P. Lucknow and requested to provide the copy of the application filed by the six respondent. Finally the Cane Commissioner had passed an order dated 21.11.2016 and modified/reviewed its previous reservation order and bifurcated the Cane Purchase Centre Damkhoda in two parts namely Damkhoda-B First and Damkhoda-B Second and allotted Damkhoda-B Second in favour of the six respondent.

7. Against the said order the petitioner had proceeded to prefer a Writ Petition

No.28654 (M/B) of 2016 and a Division Bench of Lucknow Bench of this Court had allowed the writ petition on 2.12.2016 with following directions:-

"Heard learned counsel for the petitioner, learned standing counsel and Sri Anurag Kumar Singh, learned counsel representing the respondent No.4, Sri K.S.A Pawar has also been heard on behalf of the respondent No.3, Cane Commissioner Uttar Pradesh, Lucknow.

During the course of arguments, learned counsel representing the respondents have stated that they do not propose to file any counter affidavit.

It has been contended by the petitioner that the impugned order dated 21.11.2016 as a matter of facts, amounts to review the earlier order passed on 12.11.2016 passed by the Cane Commissioner which appears, is not available to under Section 15 of the Uttar Pradesh Sugarcane (Regulation of Supply & Purchase) Act, 1953. It has further been submitted by the learned counsel for the petitioner that the Cane Commissioner under Section 15 of the Act, cannot be permitted to revisit his order repeatedly. A Division Bench in the case of U.P. Kisan Sahkari Chini Mills Limited. v. State of U.P. and others (2006 (2) ALJ 730, observed that Cane Commissioner has been vested with the powers of completely reviewing its earlier order. Similar view has been expressed by another Coordinate Bench of this Court in its judgment and order dated 17.11.2016 passed in Writ Petition No.27357 (M/B) of 2016: M/s. Triveni Engineering and Industries Ltd. v. State of U.P. and others,. The Division Bench in the said judgment has clearly mentioned that there may be extremely emergent and unsurmountable situations where the Cane Commissioner may exercise his power of cancelling of an order of reservation or alter the boundary so reserved or assign any like manner. However, said power can be exercised only in case where any particular mill faces an unforeseen closure on account of labour problem or failure of machinery or an accident/fire destroying the crops and some natural calamities and the like.

In view of the circumstances laid down by the Division Bench in the case of M/s. Triveni Engineering and Industries Ltd. (supra), the power of cancellation of an assigned or reserved area available to the Cane Commissioner cannot be equated with the power of review.

When we examine the impugned order in this prevision we find that the same cannot be permitted to be sustained in terms of the parameters laid down by the Division Bench of this Court in the case of M/s. Triveni Engineering and Industries Ltd. (supra). The case has no such circumstances where it is permissible for the Cane Commissioner to revisit his earlier order which finds mentioned in the impugned order.

For the reasons aforesaid, the writ petition is allowed and the order dated 21.11.2016 passed by the Cane Commissioner and is contained in Annexure No.1 to the writ petition is hereby quashed. However, the respondent No.4 is permitted to challenge the order dated 12.11.2016 passed by the Cane

Commissioner as contained in Annexure No.2 to the writ petition by filing an appeal before the Appellate Authority under Section 15 (4) of the Act. If the appeal is so preferred by the respondent No.4, the Appellate Authority shall consider and proceed to decide the same in accordance with law expeditiously say within a period of 15 days from the date of the appeal so preferred, along with a certified copy of this order."

8. Consequently, the sixth respondent had preferred an appeal before the State Government under Section 15 (4) of the Act of 1953 assailing the assignment of Cane Purchase Centres Gularia, Ata Hussain, Pipariya Kanak, Mundiya Navibaksh, Damkhoda-B, Nadel, Arsiya Bojh, Budha Bahadurpur-I and Budha Bahadurpur-II in favour of the petitioner. In the said proceeding the petitioner had filed detailed objection and supplementary objection. In the present crushing season 2016-17 the Cane Commissioner vide his order dated 12.11.2016 under Section 12 (2) of the Act of 1953 had estimated the requirement of the petitioner at 174.30 lakh quintal and the six respondent at 115.68 lakh quintal and had allotted 211.93 lakh quintal sugarcane to the petitioner against its estimated requirement of 174.30 lakh quintal. On 30.12.2016 the Appellate Authority had also allotted 13.40 lakhs quintals of sugarcane to the sixth respondent. By the impugned order dated 6.1.2017 the Appellate Authority has partly allowed the appeal in question and curtailed three Cane Purchase Centres namely Gularia Atahussain, Piparia Kanak and Mudia Navibux from the allotment/assignment of the petitioner sugar mill and reserved/assigned in favour of six respondent.

9. Initially the matter was taken up on 10.2.2017. On the said date Shri S.D. Singh, Senior Advocate assisted by Shri Nishant Mehrotra appearing for the petitioner submitted that in the present crushing season 2016-17, the Cane Commissioner vide order dated 30.9.2016 under Section 12 (2) of Act of 1953 has estimated the requirement of the petitioner at 174.30 lakh quintals and the sixth respondent at 115.68 lakh quintals. On 12.11.2016 the Cane Commissioner had allotted 211.93 lakhs quintals sugarcane to the petitioner but the concerned Cane Cooperative Society has offered to supply only 142.59 lakhs quintals of sugarcane to the petitioner and therefore, the petitioner is in shortage of 31.71 lakhs quintals of sugarcane (estimated requirement of 174.30 lakhs quintals). While passing the impugned order dated 6.1.2017 the Appellate Authority has wrongly interpreted the order of this Court dated 1.4.2010 passed in Misc. Single No.581 of 2010 (Simbholi Sugars Ltd through its Signatory v. State of UP through Principal Secretary, Department of Sugarcane Development) in which it was held that the reduction of cane purchase area or transfer of reserved/assigned area of sugar mill to other sugar mill on account of non-payment of cane price to the Cane Grower Cooperative Societies is justified and lawful.

10. Shri S.D. Singh further submitted that the six respondent has not filed any evidence of development of cane areas and while passing the impugned order the Appellate Authority has wrongly considered the development factor stated to be done by the six respondent. The Appellate Authority has not considered the

fact that while passing the reservation order the Cane Commissioner has considered the cane price payment position of the factory. At the time of passing reservation order the Cane Commissioner has to consider the cane price payment position of the previous crushing season i.e. 2014-15. Admittedly the sixth respondent has not paid the entire amount and Rs. 81.28 crores is still pending. The sixth respondent was defaulter in payment of cane price to the farmers for the crushing season 2015-16. Consequently, the Cane Commissioner has curtailed the cane purchase centre of the sixth respondent. The Appellate Authority has wrongly considered the fact that the sixth respondent was making payment of cane price for the present crushing season. After curtailment of cane purchase centre in question the petitioner sugar mill is suffering huge shortage of cane.

11. Shri S.D. Singh next urged that it is settled law that a thing should be done in the manner provided in the Act and Statutes and not otherwise. The finding recorded by the Appellate Authority is *per se* bad and the Appellate Authority has passed such an order on extraneous considerations and also in arbitrary manner. The Appellate Authority failed to consider the fact that while passing the reservation order the Cane Commissioner had rightly appreciated and considered the payment position of the cane price of the previous crushing season i.e. 2014-15 and admittedly the sixth respondent had not cleared the outstanding amount of Rs. 81.28 crores and the same has not yet been paid to the farmers. In this backdrop, the Cane Commissioner while passing the reservation order had proceeded to curtail the cane purchase centre of the sixth respondent only on the basis that at the time of passing the reservation order the six respondent was defaulter in payment of cane price dues to the farmers for crushing season 2015-16 but while passing the impugned order the Appellate Authority had wrongly proceeded to mention that the payment position of the cane price of present crushing season of sixth respondent is good.

12. It is sought to be contended that the order passed by the Cane Commissioner has been reversed by the Appellate Authority in pursuance of the provisions contained under sub-section (4) of Section 15 of the Act of 1953. Vague and evasive statement of fact has been mentioned that as cane purchase centres have been reduced, there is shortage of sugarcane, but at no point of time appellate authority has adverted to as to whether required yield is there or not, and thus no objective consideration is there and straightaway conclusions have been drawn by contending that as less cane purchase centres have been awarded as such there is shortage of sugarcane. In support of his submission, learned counsel for the petitioner has also placed reliance on the judgments in *U.P. State Sugar Corporation Ltd. Rampur v. State of UP and ors* (1995) 1 UPLBEC 617, *Simbholi Sugars Limited v. State of UP and ors* 2010 (3) ADJ 628 (LB) and *Triveni Engineering and Industries Limited v. State of U.P. and ors* 2015 (3) ADJ 619.

13. The matter is taken up today. Shri Navin Sinha, Senior Advocate assisted by

Shri Rohan Gupta, appearing for the sixth respondent submits that the sixth respondent sugar mill was established in the year 1933. In exercise of powers under Section 12 of the Act of 1953 the Cane Commissioner has determined the estimated quantity of sugarcane of sixth respondent required for the crushing season 2016-17 at 115.68 lakh quintals. However, the Cane Commissioner vide his order dated 12.11.2016 assigned only 71.35 lakh quintal of sugarcane to the sixth respondent. The area of cane purchase centres was significantly curtailed and the sixth respondent preferred various appeals/writ petitions. By the order dated 21.11.2016 the Cane Commissioner has re-assigned five purchase centres namely Chaka Chodera, Bahapur, Pachpeda, Chureli and Kaneheti having a total sugarcane of 9.86 lakh quintal from Oswal Overseas Limited, Nawabganj, Bareilly and also assigned a part of cane purchase centre Dhamkhoda-B to the sixth respondent. The sixth respondent had filed a Writ Petition No.29055 of 2016, which was disposed of on 8.1.2016 directing that if an appeal is filed, the Appellate Authority may consider and decide the same preferably within fifteen days. Thereafter the Appellate Authority vide order dated 30.12.2016 gave back five centres out of 12 centres allotted to DSM Meerganj by the third respondent in favour of the sixth respondent. Total sugarcane in this centre was 13.04 lakh quintal. However, the sixth respondent managed to start lifting the sugarcane w.e.f. 2.1.2017 on the basis of order of second respondent dated 30.12.2016 while 50% of crushing season was already over and half the cane had already been consumed by DSM, Meerganj. After the order dated 30.12.2016 the total allotment to the sixth respondent increased to 6.52 lakh quintal (approx.) and total cane allotted thus increased to 87.73 lakh quintal against the estimated requirement of 115.68 lakh quintal and still the drawl of sixth respondent remained 131.85%.

14. Shri Navin Sinha further submits that on 06.1.2017 the Appellate Authority passed two orders in the appeal filed by the sixth respondent and gave back one centre namely Kanman out of two allotted to Dwarikesh, Faridpur and three centres out of eight allotted to the petitioner. The petitioner has been allotted 211.93 lakhs quintals of sugarcane against its estimated requirement of 174.30 lakh quintals. The present dispute relates to three main centres reserved/assigned to the sixth respondent and these cane purchase centres were allotted to the sixth respondent in the previous years and fall within 20 kilometer radius of the sugar mill of the sixth respondent. These cane purchase centres have been developed by the sixth respondent. The total quantity of sugarcane in these centres is 3.28 lakh quintal and 50% of the same has already been consumed by the petitioner and as such the dispute relates to merely 1.64 lakh quintals of remaining cane. The total cane allotted to the sixth respondent is only 90.18 lakh quintal which is quite below the estimated requirement of 115.68 lakh quintal of the cane as determined by the Cane Commissioner under Section 12 of the Act of 1953. He submits that the total estimated requirement of the petitioner has been determined at 174.30 lakh quintal while the total allotment made in its favour vide order dated 12.11.2016 is to the tune of 211.93 lakh quintal. The

drawl percentage is 82.24% and even after the order dated 6.1.2017 the drawl percentage of the petitioner will be 82.29%.

15. With regard to the sugarcane dues of the previous crushing season, it is sought to be contended that at the time of allotment of cane purchase centres in question by the Cane Commissioner on 20.11.2016, many other sugar mills were also in default of the payment of arrears of previous crushing season and they were either allotted more quantity of sugarcane and their areas were not curtailed. The arrears of cane dues of the sixth respondent for crushing season 2015-16 cannot be made the sole determinative factor in the assignment of cane purchase centres. Each and every guided factor under Rule 22 of Rules of 1954 is equally important in the matter of reservation and assignment of area. The entire dues for the current crushing season 2016-17 are being duly and timely paid by the sixth respondent. Against the total dues of Rs. 11583.72 lakhs, Rs. 9730.20 lakhs have been paid for the present crushing season 2016 - 17 and the position of cane price payment as on 17.1.2017 for the current season 2016-17 has been brought on record as Annexure CA - 4. So far as the dues for the previous crushing season 2015-16 are concerned, it is submitted that the sixth respondent is making all efforts to clear its debts of the previous crushing season and the sixth respondent is required sufficient sugarcane for its survival/revival and for clearing its past dues.

16. It is submitted that the Cane Commissioner has to strike the balance between the sugar mills for which he can give weightage to one factor over other keeping in view the prevailing circumstances in the interest of sugar factory as well as sugarcane growers but it does not mean that he is permitted to overlook the other factor, rather it can be said that he has to look into the matter of one Sugar Mill in comparison to other Sugar Mill considering all the guided factors and apply the same in the prevailing circumstances. Accordingly, the Appellate Authority considered the distance of the disputed Cane Centres from the petitioner and the sixth respondent. The distance of the cane purchase centres in question is much closer to the mill of sixth respondent in comparison to the petitioner sugar mill and the Appellate Authority has rightly considered the same while allotting the cane centres in dispute to the sixth respondent. The Appellate Authority has also considered the fact that the cane centres in question were reserved centres of the sixth respondent and the same was continuously allotted to the sixth respondent in the previous years.

17. The sixth respondent had paid the entire dues towards sugarcane price and commission for all years except the last crushing season for the reasons beyond its control. The sixth respondent was constraint to approach the Board of Industrial and Financial Reconstruction (BIFR) in the year 2015. The reference was registered as 121/2015. The sixth respondent is before the BIFR and is undergoing re-structuring. However, the sixth respondent was restraint by the BIFR from alienating or transferring or otherwise creating any third party right/ interest in respect of their immovable assets without permission of the BIFR.

Against the order dated 6.6.2016 the sixth respondent had preferred an appeal before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). On 13.10.2016 the AAIFR set aside the order dated 6.6.2016 and permitted the sixth respondent from selling its assets. In terms of the said order, the sixth respondent had clearly mentioned the assets to be sold and suggested a scheme relating to the entire sale proceeds from the sale of its assets which were to be deposited for payment of arrears of cane dues for crushing season 2015-16. The AAIFR directed that the entire sale proceeds from the sale of assets would be deposited in a joint account to be operated by the nominee of the District Cane Officer and the nominee of the sixth respondent. The sale proceeds would be used solely for payment of the dues of the cane-growers. The sixth respondent already entered into an agreement to sell the part of the property area 4.9 hec. for a sum of Rs. 14 crores but due to the demonetization the sale of the property has been delayed. However, in pursuance of the agreement in question an amount of Rs. 1,97,87,068/- has been deposited in the joint account and the same would be utilized solely for the payment of arrears of cane dues for the crushing season 2015-16. Besides this, other properties are also being sold for clearing the sugarcane dues and the sixth respondent would be in a position to clear its dues for the previous years, in case it is allotted sufficient quantities of sugarcane and is able to manufacture sugar without shortage of sugarcane in this season.

18. It is submitted that the sixth respondent is also expected to receive Rs. 40 crores from the sale of power/electricity to UPPCL from its Co. Gen Plant and the same would be used solely for repayment of cane dues for the previous crushing season. It has already raised bills for the months of November & December, 2016 and January, 2017 for Rs. 25.80 crores and the said amount would be paid to the Cane Societies towards the arrears of cane dues for the crushing season 2015-16. The sixth respondent will also raise its bills for the months of February and March, 2017 and it is expected to receive an amount of Rs. 14 crores, which would be utilized for payment of cane dues of previous crushing season. It has also some left over stock of sugar from crushing season 2015-16 and expects to receive Rs. 25 crores from the sale. It has already sold a substantial portion of sugar stock from the season 2015-16 amounting to Rs. 20.89 crores which has been deposited in a nationalized bank in pursuance of the orders dated 27.10.2016 passed in Writ Petition No.52313 of 2016. The sixth respondent is also in process of restructuring its share capital and is expected to further raise a sum of Rs. 20 crores and the same would be utilized for the payment of arrears of cane dues. The sixth respondent is making timely payment for the cane purchased for the present crushing season and there are no dues in relation thereto. In the resolution dated 31.8.2016 it was clearly mentioned that in case the sixth respondent was unable to clear the cane dues for the crushing season 2015-16 the Cooperative Society concerned may initiate proceedings to assign the cane centres elsewhere. No such proceedings were initiated and the Cane Society issued Form-C in its favour agreeing to sell 66.75 lakh quintals in its

favour.

19. It is submitted that with regard to the last year crushing of sugarcane, the Appellate Authority has considered that out of the allotted sugarcane of 106.92 lakh quintal merely 44.47 lakh quintal had been crushed by the sixth respondent, which was 42% of the total sugarcane allotted to it. The petitioner was allotted 274.49 lakh quintal sugarcane and it crushed merely 109.42 lakh quintal sugarcane which was 40% of the total cane allotted to it. The total sugarcane crushed in the previous year was much less than the sugarcane crushed in the current season inasmuch as since the crushing season had started on 29th November, 2015 for crushing season 2015-16 while the current crushing season 2016-17 commenced on 11th November, 2016. It is submitted that the Cane Growers' Co-operative Society of the area had also passed a resolution on Prescribed Form - 4 in favour of sixth respondent on 31.8.2016 wherein it was clearly resolved to assign 45 reserved cane centres including the cane purchase centres in question to the sixth respondent.

20. It is further sought to be contended that the Cooperative Society had issued the letter dated 18.11.2016 stating that 9 out of 14 Directors had sent a letter to the Cane Commissioner wherein they sought that the reserved centres of the Society, which had been assigned to other sugar mills, may be returned to the sixth respondent. The sixth respondent has taken all possible steps and made serious endeavours for clearing the dues of the previous crushing season and it has been making all the payments for the current crushing season 2016-17 within time. He has placed reliance on the chart, which is appended as Annexure CA - 4 to the affidavit at page 58, wherein this much is clearly reflected that against the total dues of Rs. 11583.72 lacs, Rs. 9730.20 lakhs have been paid for the present crushing season 2016-17 as on 17.1.2017. So far as dues for the previous crushing season 2015-16 is concerned, he has made a statement at the bar that a very sincere effort has been made by the sixth respondent to ensure that complete outstanding amount is to be paid to the farmers upto end of the crushing season i.e. April, 2017. In support of his submission, he has also placed reliance on the judgements in Triveni Engineering and Industries Limited v. State of UP and ors 2000 (2) AWC 1014; Civil Misc. Writ Petition No.72469 of 2005 (M/s Tikaula sugar Mills Ltd. v. State of UP and ors.) decided on 18.1.2006, Ramesh Chandra and ors v. Shyamji Mishra and ors decided on 1st July, 2014 reported in 2014 LawSuit (All) 2262 and a judgement of Uttarakhand High Court in Writ Petition (M/S) Nos.188 and 199 of 2010 (L.H. Sugar Factory Ltd. v. State of Uttarakhand and ors) decided on 26.2.2010. Shri Navin Sinha makes a statement at bar that in case the Court dismisses the Writ C No.1680 of 2017 filed by L.H. Sugar Factories Limited, he will not press the connected Writ No.4072 of 2017 filed by the sixth respondent i.e. Kesar Enterprises Ltd.

21. Shri Ravindra Singh, learned counsel appearing for the Cooperative Cane Development Society Limited, Baheri, District Bareilly submits that despite the assurance given to the Society and the cane growers, M/s Kesar Enterprises Ltd.

(Sugar Unit), Baheri, Bareilly has not made payment of the cane price about Rs. 90 crores pertaining to crushing season 2015-16 to the cane growers and statutory interest on the delayed payment of the cane price till date. The said sugar factory is a chronic defaulter in making payment of cane price to the farmers since last four-five years and since the year 2012-13 every year recovery certificate has been issued and the first information reports have been registered against the sixth respondent for non-payment of cane dues. The Kesar Sugar Mill cannot be permitted to purchase the sugarcane without payment or subject to deferred payment as per proposed rehabilitation scheme or on the basis of that they will make payment from sale of their alleged property. The impugned order is contrary to the provisions of Sections 15, 16 of the Act of 1953 and Rule 22 of Rules 1954 which are meant for declaration of reserved area and assigned areas for the sugar factories. There is no justification for the assignment of aforesaid cane centres in favour of the aforesaid sugar factory. In view of the aforesaid fundamental defects the impugned order is liable to be set aside otherwise the petitioner society and registered cane grower's members of petitioner society will irreparable loss and injury.

22. Ms. Alpana Dwivedi, learned counsel appearing for the fifth respondent i.e. Cooperative Cane Development Society Limited Bhudiya Amaria, District Bareilly submits that an order was passed on 12.11.2016 determining the cane areas for crushing season 2016-17. Against the said order, the sixth respondent had moved a representation on 16.11.2016 alleging that due to allotment of cane purchase centres in question to other sugar mills, it will be in less quantity and its sugar mill cannot function smoothly. The sixth respondent further contended that there are 22 cane purchase centres which have been transferred to other sugar mills and it was difficult to run the sugar mills. The Cane Commissioner exercising his powers under Section 15 of Act of 1953 read with Rule 22 of Rules of 1954 had cancelled the reserved purchase centres Churaili, Pachpera, Kanehati, Vahapur allotted to the sixth respondent. It has been submitted that the Cane Commissioner had rightly decided the representation of the petitioner. The sugar mill, which can pay the price of sugarcane to the farmers timely, shall be extended the benefits and only on the apprehension, the allotment of cane purchase centre cannot be decided. Moreover, the matter of six respondent is pending consideration before the BIFR and the sixth respondent was restrained by the BIFR from alienating or transferring or otherwise creating any third party right/interest in respect of their immovable assets without permission of the BIFR. The sixth respondent cannot pay the price of sugarcane in time and the welfare of the farmers will be jeopardized.

23. I have considered the rival submissions made by the learned counsel for the parties and have perused the record.

24. Before considering the contentions raised by the rival parties, it will be convenient to peruse certain provisions of the Act of 1953 and Rules of 1954. Under sub-section (1) of Section 15 of the Act of 1953, the Cane Commissioner

may, after consulting the Factory and Cane Growers Cooperative Society in the manner to be prescribed, reserve and assign any area for the purposes of supply of cane to a factory in accordance with the provisions of Section 16 and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned. Section 16 confers powers upon the State Government to regulate the sale or purchase of cane in any reserved or assigned area. It also confers power to regulate the manner in which cane grown in the reserved area or the assigned area shall be purchased by the factory for which the area has been so reserved or assigned. Section 17 provides that the occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him and upon the delivery of cane he shall be liable to pay immediately the price thereof. Section 5 of the Act of 1953 lays down the manner in which Development Council will be constituted and Section 6 lays down the functions thereof basically for improving the quality and yield of sugarcane. In exercise of powers conferred by Section 28 of the Act of 1953, the State Government has framed the Rules of 1954. Rule 2 (f) defines "Purchase Centre" and it means any place at which cane is purchased, supplied, delivered, weighed, or paid for and includes such portion of the premises of a factory as is used for any of these purpose. Rule 22 of the Rules of 1954 reads as follows :

"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, under Section 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" Co - operative Society of the area ;
- (h) efforts made by the factory in developing the reserved or assigned area."

25. Chapter IX of the Rules gives in detail the procedure for payment of price of cane supplied to a sugar factory. A perusal of the Section 15 of the Act of 1953 would show that the order assigning or reserving any area has to be made after consulting the Factory and Cane-growers" Co-operative Society. The ownership of the cane vests with the producer and normally he is entitled to sell the same to any one he likes. Naturally, he would like to sell the sugarcane to the person who offers him the best price without any delay. The Act of 1953, however, imposes a restriction upon him and by virtue of an order issued under sub-section (1) of Section 15, the cane - grower is compelled to sell his sugarcane to

the factory to whom his area has been assigned or reserved. The Legislature has enacted Section 17 which makes provision for immediate payment of price to the seller of sugarcane. Therefore, the promptness with which the price is paid is a very important factor which has to be kept in mind at the time of passing of an order assigning or reserving any area in favour of a sugar factory. The Cane-growers" Co - operative Society is expected to watch the interest of the producers and it is for this reason that it is obligatory upon the Cane Commissioner to consult the Society before passing any order of assignment or reservation.

26. Rule 12 of the Rules of 1954 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, quantity of cane to be crushed in the factory, views of the Cane-growers" Co-operative 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 case, an area may be at a short distance from one factory than another but on account of better facility of transport, it may be more convenient for the canegrowers 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 whereof the quality of sugarcane has improved, naturally it would like the said cane to be supplied to its factory. The provisions of the Act of 1953 and Rules of 1954 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. For example, an area may be right at 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 subserve the interest of the sugar factory and the cane growers.

27. Under the Act of 1953 and the Rules framed thereunder, it is obligatory for the authorities to pass order balancing the interest of the sugar factories as well as cane growers. Underlining idea of the Act is to ensure maintenance of reasonable supply of sugarcane required by the sugar factories from the producers of sugarcane and in turn to ensure a fair return to the cane-growers. The competitive interest of the sugarcane growers and sugar manufacturers have to be protected at the same time. The main purpose of the Act of 1953 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 exercise undertaken by the authorities should not be guided for extending benefit to one of the parties, it should be fair exercise and on account of the exercise so undertaken none of the parties should be unduly benefited, rather a fair effort ought to be made so that interest of each one of the parties is protected.

28. In M/s Tikaula Sugar Mills Ltd. (supra) this Court has observed that under Rule 22 of 1954 Rules various factors are provided for, which are guiding factor to be taken into account while reserving an area, while assigning an area or determining the quantity of cane to be purchased from an area by factory, and while undertaking this exercise, cumulative effect of each and every factor is to be adverted to. The relevant part of the judgement is reproduced herein under:-

"The averments mentioned above would go to show that there is no specific denial of the precise statement made. Vague and evasive statement of fact has been mentioned that as cane purchase centres have been reduced, there is shortage of sugarcane, but at no point of time appellate authority has adverted to as to whether required yield is there or not, and thus no objective consideration is there and straightaway conclusions have been drawn by contending that as less cane purchase centres have been awarded as such there is shortage of sugarcane. The facts and figures supplied by the parties ought to have been adhered to, which has not at all been done in the present case. Thus, there is complete non - application of mind on the part of the appellate authority. Under rule 22 of 1954 Rules various factors are provided for, which are guiding factor to be taken into account while reserving an area, while assigning an area or determining the quantity of cane to be purchased from an area by factory, and while undertaking this exercise, cumulative effect of each and every factor is to be adverted to. One of the factors provided for is the quantity of cane to be crushed in the factory and thus it is basic duty of the Cane Commissioner to ensure that quantity of cane which is to be crushed in the factory, the same is supplied to the said sugar factory and no one is unduly benefited by its order, as competitive interest of the parties is also to be protected. It is no doubt true that in the present case factor of distance is in favour of respondent, view of cane growers is also there, but there were other factors too, which ought to have been taken note of and cumulative effect of the same ought to have been adverted to, which has not at all been done in the present case. The order passed by the

appellate authority also becomes relevant qua the last crushing season and the same cannot be ignored unless and until reasons are given for taking a different view than the one taken in the last crushing season. In the present case order has been referred to but nothing has been commented on the same. Consequently decision making process is faulty, and order passed is unsustainable.

In these circumstances, as on all these relevant aspects of the matter, no objective consideration has been done, as such matter is remitted back to the State Government to be decided afresh within a period of six weeks from the date of receipt of a certified copy of this order.

For the reasons stated above, present writ petition stands allowed and disposed of. Order dated 18.11.2005 is quashed.

No order as to costs."

29. In *Mohd. Yunus v. Mohd. Mustaqim and Ors.* AIR 1984 SC 38 the Court held that this Court has very limited scope under Article 226 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 226 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

30. In *Indian Overseas Bank v. Indian Overseas Bank Staff Canteen Workers' Union* (2000) 4 SCC 245, the Court observed that it is impermissible for the Writ Court to re-appreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere. In *Union of India v. Rajendra Prabhu*, (2001) 4 SCC 472, the Court observed that the High Court, in exercise of its extraordinary powers under Article 226 of the Constitution, cannot re appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

31. In *Triveni Engineering and Industries Limited v. State of UP 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.

32. The Court has gone through the records in question and finds that the Cane Commissioner by his order dated 12.11.2016 assigned Cane Purchase Centre Dumkhoda-II to the petitioner sugar mill after curtailing it from the allotment of sixth respondent. Thereafter the Cane Commissioner had passed an order dated 21.11.2016 and bifurcated the Cane Purchase Centre Damkhoda in two parts namely Damkhoda B-I and Damkhoda B-II and allotted Damkhoda-B - II in favour of the six respondent. Against the aforesaid order the petitioner had filed a Writ Petition No.28654 (M/B) of 2016, which was allowed on 2.12.2016. Thereafter the sixth respondent had preferred an appeal before the State Government. By the impugned order the Appellate Authority has allowed the appeal in question and curtailed three Cane Purchase Centres namely Guleria Atahussain, Piparia Kanak and Mudia Navi Baksh from the allotment/assignment of the petitioner sugar mill and reserved/assigned in favour of six respondent.

33. The Court has also perused the impugned order and finds that the Appellate Authority had considered the requirement and allotment as well as crushing of the sixth respondent and the petitioner and found that 81.22 lakh quintal sugarcane has been allotted to the sixth respondent against its requirement of 115.68 lakh quintals sugarcane, whereas against the requirement of 174.30 lakh quintal sugarcane the petitioner sugar mill has been allotted 211.93 lakh quintal sugarcane. The requirement and allotment of sugarcane of the sixth respondent is very negative. From the available details the Appellate Authority found that on account of non-availability of the sugarcane the sixth respondent sugar mill was closed from time to time. In the previous year the appellant i.e. sixth respondent sugar mill crushed 44.47 lakh quintals sugarcane against the allotment of 106.92 lakh quintal and the said crushing is 42% of the allotment of sugarcane. In the previous year the petitioner had crushed 109.42 lakh quintal sugarcane against the allotment of 274.94 lakh quintals, which is about 40% of the allotment. The Appellate Authority found that the distance of Guldiya Atahussain is 22 Kms from the sixth respondent sugar mill whereas the distance of petitioner sugar mill is 42 KMs. In the same manner the distance of Mudiya Navibux from the sixth respondent is 13 KMs whereas the distance of petitioner sugar mill is 35 KMs. The distance of Pipariya Kanak purchase centre from the sixth respondent is 16 KMs and the distance of petitioner is 42 Kms. In previous years, Cane Purchase Centres Guladiya Atahussain, Pipariya Kanak, Mudiya Navibux and Damkhoda-B were being allotted to the sixth respondent and reservation orders were passed in its favour. The Baheri Society had also passed a resolution in Proforma - 4 for allotment of aforesaid cane purchase centres Gulariya Atahussain, Pipariya Kanak

and Mudiya Navibux in favour of sixth respondent. The Appellate Authority considered the submission of six respondent that the arrears of cane dues of only one year cannot be made the sole determinative factor in the assignment of cane purchase centres. Against the total dues of Rs. 11583.72 lacs, Rs. 9730.20 lakhs have been paid for the present crushing season 2016-17 as on 17.1.2017. So far as dues for the previous crushing season 2015-16 is concerned, the statement has been made at the bar that the complete outstanding amount will be paid to the farmers upto end of the crushing season i.e. April, 2017.

34. Applying the aforesaid principles of law, laid down by this Court, read with Section 15 (4) of the Act of 1953 and Rule 22 of Rules of 1954, the Appellate Authority has passed the impugned order on the ground that the cane centres in question are nearer to sixth respondent Sugar Mills and in previous years these centres were reserved in favour of sixth respondent. The Appellate Authority has also taken into account the crushing capacity, the drawl percentage and number of days of working as well as the arrangements made for payment of arrears of cane dues for the previous year. The Appellate Authority has also taken into account the reserve area made available to the sixth respondent with reference to its crushing capacity and demand in the current year. The sixth respondent sugar mills has made investment in the area which is one of the factors of Rule 22(b) of the Rules of 1954. In the present case, the Appellate Authority has exercised its discretion after taking into account all the relevant statutory factors and has considered and balanced the interests of both the sugar mills as well as the co-operative cane development societies and the farmers.

35. For the aforesaid reasons, the impugned order does not call for any interference by this Court and the Writ C No.1680 of 2017 filed by L.H. Sugar Factories Ltd. is dismissed and the Writ C No.4072 of 2017 filed by Kesar Enterprises Ltd. is dismissed as not pressed. The Writ C No.4993 of 2017 filed by Co-Operative Cane Development Union Ltd. is disposed of.