

(2008) 07 AHC CK 0178

In the Allahabad High Court

Case No : Writ Petition Nos. 8324,8325 and 8548(MB) of 2007

Modi Sugar Mills And Another

APPELLANT

Vs

State of U.P.And Others

RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Sugarcane (Control) Order, 1966 — Clause 2(g), Clause 3(1)

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 16

Citation : (2008) 07 AHC CK 0178

Hon'ble Judges : Pradeep Kant, J and S.N.Shukla, J

Final Decision : Dismissed

Judgement

Pradeep Kant, J.—These are three writ petitions, which raise the common questions of facts and law and, therefore, they are being decided by a common order.

Writ Petition No. 8324 (MB) of 2008 has been filed by Modi Sugar Mills Ltd. and one Vishnu Dutt Sharma, a share holder of the company; Writ Petition No. 8325 (MB) of 2008 has been filed by S.B.E.C. Sugar Mills and S.S. Agarwal, a share holder of the company and Writ Petition No. 8548 (MB) of 2008 has been filed by 34 petitioners, out of which petitioners No. 1, 2 and 3 are the association of private sugar sector factories in the State of Uttar Pradesh and petitioners No. 4 to 33 are individual sugar companies, which are members of the petitioner No. 1 association. Petitioner No. 34, Vimal Jain is a citizen of India and a share holder of petitioner No. 4.

2. Applications for impleadment have been moved by the Cooperative Cane Development Union Ltd., Vikramjot, District Basti, through its Chairman S'mt. Manju Singh, Sahkari Ganna Vikas Samiti Limited, BhiraKhiri, through its Chairman Shri Achal Kumar Misra, having its office at BhiraKhiri, Lakhimpur, U.P., Sahkari Ganna Vikas Samiti Limited, NawabganjBareilly, through its Chairman, Sri Arvind Kumar Gangwar, S/o Shri Kalyan Rai Gangwar, having its office at

Nawabganj, Bareilly, U.P., Sh. Pritam Singh s/o Sh. Ram Singh, Village & P.O. Gunarsa Deoband, District Saharanpur (Uttar Pradesh), Sahkari Ganna Vikas Samiti Limited, PaliyakalaKhiri, through its Chairman Shri Sukhdev Singh, having its office at Paliyakala, Khiri, Lakhimpur, U.P., Kisan Mazdoor Sangathan through its Convener, Shri VM. Singh, W127, Greater Kailash, New Delhi, and the Baghpat Cooperative Sugar Mills Ltd., Baghpat, Uttar Pradesh alongwith Krishna Pal, Controller (Members) of its Committee of Management. We refer all the persons/parties, who were impleaded or not impleaded, as intervenors in the present order.

3. The petitioners are engaged in the business of production of sugar by vacuum pan process and its sale. The raw material used for the production of sugar is sugarcane, which is purchased through Cane Growers' Cooperative Societies and cane growers, in pursuance of the reservation orders passed by the Cane Commissioner, U.P., in exercise of his powers under Section 15 of the U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953, (hereinafter referred to as the "Act of 1953").

4. In the case of U.P. Cooperative Cane Unions Federation v. West U.P. Sugar Mills Association and others, (2004) 4 SCC 430, the Constitution Bench of the apex Court has upheld the power and authority of the State Government, to fix the State Advised Price (SAP) for the purchase of sugarcane by the sugar factories in its regulatory power under Section 16 of the Act of 1953.

5. The question which has been strenuously urged from both the sides is regarding the quantum of price or so to say, the fixation of SAP for the purchase of sugarcane by the sugar mills from the cane growers for the crushing season 200708. It is mainly the price which is in dispute and while challenging the fixation of the price, recourse has been taken to various pleas including the following pleas :

(i) The cane price has been fixed unilaterally, without affording any opportunity to the sugar industry, which is wholly arbitrary and unjustifiable;

(ii) Section 16 of the Act of 1953 confers unguided and unbridled powers on the State Government to fix the price of sugarcane and as such ultra vires and unconstitutional;

(iii) The State Government did not adopt any criteria muchless any reasonable and uniform criteria while determining the SAP;

(iv) No exercise was done by the State Government for finding out the actual cost of sugarcane and the SAP could have been fixed only after taking into account the relevant factors and making the necessary considerations so as to keep a balance between the conflicting interests of the sugar mills as well as the sugarcane growers;

(v) The price of sugar in the market which forms a very relevant and inseparable component for arriving to a price for purchase of sugarcane, was totally ignored

and the price so fixed is bound to cause heavy financial loss to the sugar industry;

(vi) Huge loss occasioned to the sugar industry in previous season with the same conditions for this season was not considered;

(vii) The Act does not permit at all the fixation of SAP by the State Government deliberately and knowingly so that the industry suffers losses, as such the price fixation is clear infringement of fundamental right of carrying out business under Article 19(1)(g) of the Constitution and such excessive determination of SAP is an unreasonable restriction imposed by an executive fiat, which is not permissible; and

(vii) Despite the relevant considerations on the basis of which SAP is to be fixed, even as per the own case of the State Government, though having been spelt out in the counter affidavit, the same were not taken into account nor were considered while fixing the price.

The State of Uttar Pradesh has fixed the State Advised Cane Price for the crushing season 200708 as under:

For early maturing varieties Rs. 130.00 per quintal

For normal varieties Rs. 125.00 per quintal

For rejected varieties Rs. 122.50 per quintal

In regard to the petitioners' plea that State has no authority to fix any price of sugar cane under the Act, the petitioners themselves have candidly submitted that this issue is no more open for being decided by the High Court in view of the judgment of the apex Court in the case of U.P. Cooperative Cane Unions Federation v. West U.P. Sugar Mills Association and others, (2004) 4 SCC 430.

We are also of the view that the apex Court having adjudicated upon the said controversy and having held that Section 16 of the Act of 1953 confers power upon the State Government to fix the SAP for the purchase of sugarcane by the sugar mills, the aforesaid plea cannot be entertained.

Alternatively, challenge to the vires of Act of 1953 has been, made on the ground that it vests with the State Government the power to fix the SAP for sugarcane, but without prescribing any guidelines or laying down any criteria and providing any adjudicating machinery for making such a determination; submission is that in the absence of any guidelines and also in the absence of any relevant factors being carved out for being taken into consideration at the time of determination of SAP, the conferment of such powers leads to arbitrary fixation of price and which has actually happened in the instant case where the sugar industry is bound to suffer huge losses because of the unreasonably high price fixed by the State Government.

Assailing the price fixation, it has thus, been contended that Section 16 itself be

declared ultra vires and hit by Article 14 of the Constitution.

In support of the plea that delegation of legislative power cannot be excessive or uncanalised and such excessive delegation without any guidelines would be illegal, reliance has been placed upon" the case of Kishan Prakash Sharma and others v. Union of India and others, (2001) 5 SCC 212, wherein Their Lordships of the Supreme Court observed that The legislature cannot delegate uncanalised and uncontrolled power. The legislature must set the limits of the power delegated by declaring the policy of the law and by laying down standards for guidance of those on whom the power to execute the law is conferred. Thus the delegation is valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the legislature. The legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy. When the Constitution entrusts the duty of law making to Parliament and the legislatures of States, it impliedly prohibits them to throw away that responsibility on the shoulders of some other authority."

In the case of B. R. Enterprises v. State of U. P. and others, (1999) 9 SCC 700, the apex Court while dealing with the State's power to prohibit the sale of tickets of a lottery organized, conducted or promoted by every other State, had an occasion to advert on the challenge to Section 5 of the Lotteries (Regulation) Act, 1998 on the ground that the same is discriminatory and also on the ground of delegation of essential legislative power by Parliament to the States without any policy and guidelines.

In Para 81 of the report, the Court held as under:

, "81. The legal principle which emerges, as submitted, is that delegation of essential legislative power of the principal to the delegate would amount to abdication of its legislative power and if it is bereft of any guidelines then it is unsustainable in the eye of law. The authorities cited by various learned Counsel and the law on the subject, cannot be doubted. But this principle is to be tested by scanning the impugned legislation which may differ one from the other in its nature, setting up or other circumstances which may have bearing to conclude.

The following passage in Seervai's Constitutional Law of India (3rd Edn.), p. 119 found approval in Delhi Transport Corpn. v. D. T. C. Mazdoor Congress. The Court held (SCC p. 711, paras 217218)

"217. Seervai in his book Constitutional Law of India (3rd Edn.) has stated at p.119 that"... the Courts are guided by the following rules in discharging their solemn duty to declare laws passed by a legislature unconstitutional:

(1) There is a presumption in favour of constitutionality and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to

doubt the constitutionality of a law is to resolve it in favour of its validity".

(2) A statute cannot be declared unconstitutional merely because in the opinion of the Court it violates one or more of the principles of liberty, of the spirit of the Constitution, unless such principles and that spirit are found in the terms of the Constitution."

In Registrar of Coop. Societies v. K. Kunjabmu, this Court held : (SCC Headnote)

"The power to legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So the theory has been evolved that the legislature cannot delegate its essential legislative function. Legislate it must, by laying down policy and principle and delegate it may to fill in detail and carry out policy. The legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute such as the preamble, the scheme or even the very subjectmatter of the statute. If guidance there is, wherever it may be found, the delegation is valid. A good deal of latitude has been held to be permissible in the case of taxing statutes and on the same principle generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the Directive Principles of State Policy."

This case holds that guidelines can be gathered from the subjectmatter of the Act."

It has been submitted that the Supreme Court in U.P. Cooperative Cane Unions Federations case, did not deal with the issue of vires of Section 16, therefore, the said judgment can neither be read for the said purpose nor it decides the aforesaid plea.

Reference has been made to the case of Arnit Das v. State of Bihar, (2000) 5 SCC 488, saying that a decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined".

Reference has also been made to the case of state of U.P. v. Synthetics and Chemicals Ltd., 1991(4) SCC 139.

In ICICI Bank and another v. Municipal Corpn. of Greater Bombay and others, (2005) 6 SCC 404, the Supreme Court, on the precedents and the binding nature of the judgment pronounced by the apex Court, made the following observations:

"The ratio and effect of the judgment is required to be ascertained with reference to the question of law as decided by the Court. The ratio of the judgment or the principle upon which the question before the Court is decided is alone binding as

a precedent. The decision of the Supreme Court upon a question of law is considered to be a binding precedent, and this must be ascertained and determined by analysing all the material facts and issues involved in the case."

Reference has been made to the case of *Madhav Rao Scindia v. Union of India*, 1971 (1) SCC 85, wherein the Supreme Court has held that "it is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment".

In Para 12, it has been observed that "for the case to be a binding precedent, fundamental requirement would be, that the law pronounced should result from the issues raised before the Court between the parties and argued on both sides".

The ratio of the judgment, alone is a binding precedent. It has to be ascertained by analysing all the material facts and the issues involved in the case and argued on both sides.

In the case of *In re Art. 143, Constitution of India and Delhi Laws Act (1912) etc.* AIR (38) 1951 SC 332, popularly known as *Delhi Laws Amendment case*, it has been held that "(1) The legislature must normally discharge its primary legislative function itself and not through others; (2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and it may utilize any outside agency to any extent it finds necessary for doing things which it is unable to do itself or finds it inconvenient to do. In other words, it can do anything which is ancillary to be and necessary for full and effective exercise of its power of legislation. (3) It cannot abdicate its legislative function and, therefore, while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel legislature. (4) The doctrine of separation of powers and the judicial interpretation, it has received in America ever since the American Constitution was framed enables the American Courts to check undue and successive delegation but the Courts of this country are not committed to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of legislature to delegate these being its good sense and the principle that it should not cross the lines beyond which delegation amounts to "abdication and selfeffacement"." (Fazal Ali, J.) Mukherjea, J. observed that The Legislature cannot part with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. A surrender of this essential function would amount to abdication of legislative powers in the eye of law. The policy may be particularized in as few or as many words as the legislature thinks proper and it is enough if an intelligent guidance is given to the subordinate authority. The Court can interfere if no policy is discernible at all or the delegation is of such an indefinite character as to amount to abdication, but as

the discretion vests with the legislature in determining whether there is necessity for delegation or not, the exercise of such discretion is not to be disturbed by the Court except in clear cases of abuse. These are the fundamental principles and in respect to the powers of the legislature the constitutional position in India approximates more to the American than to the English pattern."

Referring to the minority opinion their Lordships Venkatarama Reddi and Srikrishna, JJ., in *U.P. Cooperative Cane Unions Federations* case it has been argued that since the majority view has not dealt with the issue of validity of Section 16 and has not at all considered that the aforesaid provision, would render itself invalid for conferring unguided, uncanalized and undefined powers of the State Government to fix SAP, that too without providing any adjudicatory machinery, the view expressed in the minority opinion in this regard is binding. Arguing that provisions of Article 145(5) of the Constitution of India provide that judgment can be given by the majority and the minority and thus, the minority opinion, on a question not decided by the majority, is law declared by the Supreme Court, reference has been made to the case of *Dr. Indramani Pyarelal Gupta v. W.R. Nathu*, 1963(1) SCR 721. The said case related to the validity of a bye law made by the Forward Market Commission in respect of hedge contracts, under the Forward Markets Regulation Act, 1952. A Constitution Bench of five Judges heard the matter. The case was decided with a ratio of 4 : 1. One of the question raised before the Court was the validity of the retrospective operation of the byelaw in respect of subsisting contracts. The majority opinion at page 752 held that "it would not be necessary to discuss the larger question as to whether and the circumstances in which subordinate legislation with retrospective effect could be validly made".

The aforesaid judgement came to be considered in *Income Tax Officer Allepy v. M.C. Ponnoose and others* "etc., (1969) 2 SCC 351. In Para 5, the minority opinion of Subba Rao, in *Indramani* (supra) has been referred to. It has been observed that the persons or authority exercising subordinate legislative functions cannot make a rule, regulation or byelaw which can operate with retrospective effect. It has also been observed that the majority has not expressed any different opinion on the point. In Para 6 it has been clearly held that the relevant notification did not have any retrospective effect.

The judgment was followed in *Bakul Cashew Co. v. Sales Tax Officer*, 1986 (2) SCC 365. In Para 8, reference is made to the minority opinion in *Income Tax Officer Allepy* to the effect that there could be no retrospective operation of a subordinate or delegated legislation. In Para 9, it has been held that on the date on which the notification was issued, the Government did not have any retrospective power.

In *C.I. T. v. Bazpur Cooperative Sugar Factory*, 1988 (3) SCC, the minority opinion of Subba Rao, J. mentioned above, has been relied upon. It has further been observed that minority opinion has been followed in *Hukumchand v. Union of India*, 1972 (2) SCC 601. Thus, minority judgment on a question not decided

by the majority is binding.

Reliance has also been placed on the case of Mahendra Bhawanji Thakar v. S.P. Pandand another, AIR 1964 Bom 170, wherein the Bombay High Court held that "the law declared" referred to in Article 141 is the law to be gathered from any judgment in a case decided by the Supreme Court, whether it is the judgment of a Judge forming the majority or of a Judge in a minority and dissenting.

Following cases have also been cited for the aforesaid proposition: Union of India v. ShriH.S. Dhillon, (1971)2 SCC 779; V. Padmanabha\|. Dy. Tehsildar, AIR 1963 Ker 155; Commissioner of Wealth Tax v. Dr. Karan Singh, 1993 Supp (4) SCC 500; and Prem Prakash Gupta v. Union of India, AIR 1977 All 1482.

Great emphasis has been placed upon the minority view expressed by Srikrishna, in the case of UP. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association, (2004) 5 SCC 430, in which it has been held that if at all the power to fix cane price existed in the U.P. Act, the absence of guidelines in the Act may render the constitutionality of such power open to challenge as arbitrary and hit by Article 14 of the Constitution.

Observations made in Paras 130 and 131 of the report are being quoted below:

"130.....There are also no guidelines indicated in the 1953 Act as to the basis on which the so-called fair price, remunerative price of Stateadvised price is to be arrived at. To fix the Stateadvised price much above the Centrally fixed minimum price, and that too by an executive fiat, may render the constitutionality of such power open to challenge as arbitrary and hit by Article 14 of the Constitution.

131.....I see no adjudicator/machinery, nor guidelines, under the U.P. Sugarcane Act of 1953 for doing it. Except the bald reference to "regulation of sale and purchase of cane", there is nothing else therein to indicate the mode, conditions under which, or the guidelines subject to which such an exercise of fixing the fair price can be exercised, and that too by a mere executive fiat."

In the backdrop of the aforesaid legal position, it has been reiterated that the majority opinion does not deal with the validity of Section 16 at all nor considers the effect of absence of guidelines therein, whereas the minority opinion holds otherwise. Further submission is that the controversy in the aforesaid case was only confined with the competence of the State Government to fix the SAP for purchase of sugarcane, wherein the submission of the State Government was that under the Central Act only the minimum price is fixed and that it is open for the State Government to fix a higher price in exercise of its regulatory powers. The majority opinion says that the regulatory power possessed by the State Government shall include the power to fix the price of sugarcane. On the question of repugnancy, it has been observed that it could arise only if the price fixed by the State Government is lower than the price fixed by the Central Government and that the State Government has incidental power to fix the price

of sugarcane which will also be a statutory price. The majority judgement also found that there was no question of repugnancy, while considering Article 254 of the Constitution. Venkatarama Reddy, J., who also expressed a contrary view, as against the majority opinion, observed that there is no statutory basis for SAP. He further observed that there is a lack of criteria and guidelines under the Act and Rules regarding fixation "of price and that the SAP has no statutory basis and legal force. He concurred with the opinion of Srikrishna, J. that the regulatory power under Section 15 does not extend to price fixation. However, he did not find it necessary to decide the constitutional question about Article 254.

Urging that the plea of constitutionality of the provision, namely, Section 16, can be seen in the present proceedings, the petitioners submitted that the judgment in the case of U.P. Cooperative Cane Unions Federations cannot operate as *resjudicata*, as fixation of different cane price in each crushing season, would mean the period beginning on the 1st October in any year and ending on 15th July next following. Section 16 read with Section 2(i) thus, gives a separate cause of action for each crushing season depending on the then existing facts.

In the case of *Nand Kishore v. stste of Punjab*, 1995(6) SCC 614, the apex Court held that "raising the constitutionality of a provision of law, as it appears to us, stands on a different footing than raising a matter on a bare question of law.....When a person enters a Court for relief and does not challenge the constitutionality of law governing the matters directly and substantially in issue it only means and implies that he goes by the presumption of constitutionality. He cannot on this stance be deemed to have raised the question of constitutionality and the question of constitutionality to have been decided against him and such matter to have been directly and substantially in issue.....It cannot also be taken as a rule that constitutionality of the law involved is a matter directly and substantially in issue, and if not raised renders a mute decision in favour of its constitutionality barring the plea being raised in a subsequent suit. If there be read such a rule in all civil litigation, it would, to our mind, be against public policy vexing and burdening the Courts to go into the constitutionality of provisions of law in every case".

In response, the State as well as the Intervenors have urged that the Supreme Court, while considering the ambit and scope of Section 16 of the Act, was fully conscious about the legality and validity of the same and, as such, it is not open for the petitioners to raise an issue, which does not arise in the instant case nor it is open for the High Court to venture into the field where the matter already stands concluded by the judgment of the apex Court.

It has also been stressed by the respondents that in case the said plea of aforesaid provision being *ultra vires* the Act or violative of constitutional provision of Article 14 was to be raised, it ought to have been raised in the aforesaid petition before the Supreme Court and if it has not been raised, it cannot be seen by the High Court nor any finding can be recorded by the High Court so as to annul the effect of the judgment of the apex Court, which has categorically

upheld the powers and authority of the State to fix the SAP for sugarcane. In other words, in case any contrary view is taken, that would mean judicial impropriety.

11. Lastly, it has been submitted that if the aforesaid plea was taken before the Supreme Court but no finding has been recorded by the majority judgment, accepting the said plea, it means it stands rejected and if the plea was not raised, it cannot be raised in view of principles of Order II Rule 2 C.P.C.

In the case of U.P. Cooperative Cane Unions Federations, the ambit, scope and import of Section 16 of the Act was under consideration. The question involved, revolved around the fact, as to whether the State Government has the power to fix SAP for sugarcane or it was only the Central Government, which could fix the minimum price or so to say, whether the fixation of SAP was covered by doctrine of occupied field of Central Legislation or was it open to the State to fix the price different than the price fixed by the Central Government, and whether there was any repugnancy in view of Article 254 of the Constitution.

The controversy arose because of the two conflicting judgments delivered by the Allahabad High Court, one by its Bench at Allahabad and the other by the Lucknow Bench, relating to SAP fixed for the crushing season 1996/97. The Lucknow Bench took the view that the State Government was competent to fix the SAP, whereas at Allahabad, a contrary view was taken.

A close scrutiny of the judgment passed by the Supreme Court in the aforesaid case, reveals that though the majority view did not address itself specifically on the question of vires of provision of Section 16, but it did take into consideration the effect, scope and impact of Section 16 under the Act. Defining and interpreting Section 16, which is a provision of regulation of purchase and supply of sugarcane in the reserved and assigned area, under which the State Government is vested with power to regulate the distribution, sale or purchase of sugarcane in any reserved or assigned area and purchase of cane in any area other than a reserved or assigned area by issuing an order to that effect, it has been held that power to regulate includes the power to fix the SAP. The Court also held that there was no repugnancy.

Subclause (2) says that without prejudice to the generality of the foregoing powers such order may provide for the quantity of cane to be supplied by each Canegrower or Canegrowers' Cooperative Society in such area to the factory for which the area has so been reserved or assigned; and 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 as In response, the State as well as the Intervenors have urged that the Supreme Court, while considering the ambit and scope of Section 16 of the Act, was fully conscious about the legality and validity of the same and, as such, it is not open for the petitioners to raise an issue, which does not arise in the instant case nor it is open for the High Court to venture into the field where the matter already stands concluded by the

judgment of the apex Court.

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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 and the circumstance in which the cane grown by a canegrower shall not be purchased except through a Canegrowers" Cooperative Society.

Apparently, the validity of the aforesaid provision was such an issue that had it been found that the provision itself is invalid, the question of upholding of the power of fixation of price under such a provision, would not have arisen. There is ample presumption that all the pleas which could be raised before the Supreme Court in respect of a particular provision or issue involved, would have been raised and considered as the Supreme Court is conscious of all the relevant factors and considerations, which need be taken into consideration while interpreting the provision of the Act.

We also take notice of the fact that the aforesaid plea of Section 16 being ultra vires and unconstitutional on the same ground of conferring arbitrary, unguided and uncanalized powers, was considered by the Allahabad High Court in the case of West U.P. Sugar Mills Association and others v. state of U.P. and others, (2005) 1 SAC 521, wherein the Division Bench observed as under and declined to address itself on the said issue :

"We are afraid; we cannot do so. The grounds now raised might not have been specifically dealt with by the majority judgment in the SAP case, nonetheless this does not mean that we can go into validity of Section 16 of the 1953 Act or the decision is not binding on us. It is not open to us to consider the vires of Section 16 or to consider that it does not empower the State Government to issue SAP; this is mandate of Article 141 of the Constitution."

The validity of the said Section has, however, been upheld in the case of M/s Uttam Sugar Mills Ltd. and others v. state of Uttarakhand and others, (Writ Petition No. 204 (MB) of 2008) alongwith another connected matter, decided on 31.3.08, by making the following observations:

"In view of the foregoing discussions, we do not find any infirmity in the impugned notifications issued by the State Government fixing the S.A.P. of sugarcane for the crushing seasons 200607 and 200708 on 28.12.2006 and 23.1.2008 respectively. We also uphold the validity of Section 16 of the U.P. Act, 1953." % From the judgment of the Constitution Bench in the case of U.P. Cooperative Cane Unions Federations, it is apparent that though the majority view does not specifically appear to have adverted on the question of validity of Section 16 in the light of the aforesaid argument of being arbitrary and having conferred unguided and unbridled powers upon the State Government, that too without providing any adjudicatory machinery, but it does take into account its relevance, importance, purpose and object, its impact, implication and the reasons for such an enactment. The Court while interpreting and defining Section 16 has taken into account all the relevant considerations for holding that SAP is a price different and higher than the price as determined by the Central

Government, which is known as Statutory Minimum Price (SMP).

It may be taken note of, that even in the minority view expressed by Reddi and Srikrishna, JJ. in the case of U.P. Cooperative Cane Unions Federations, their Lordships have not declared the provision of Section 16 as ultra vires the Constitution or hit by Article 14 but only observed that no machinery under the U.P. Sugarcane Act of 1953 or under the delegated legislation made thereunder has been provided for adjudicating the rival claims and to fix the SAP over and above the Centrally fixed minimum price, and that too by an executive fiat, which may render the constitutionality of such power open to challenge as arbitrary and hit by Article 14 of the Constitution. Again in Para 131 it has been reiterated that there is no adjudicatory machinery, nor guidelines, under the U.P. Sugarcane Act of 1953 for doing it. After making these observations, their Lordships found themselves unable to agree with the arguments advanced otherwise and with the majority view.

These observations, in no way, mean that the provision in question has been declared ultra vires, even in the minority judgment.

That being the position, we do not find it necessary to embark upon the question of validity of Section 16 any further nor it can be lost sight of, that even minority opinion, despite making observation, did not hold it ultra vires.

Further, the plea is not open to be adjudicated in the High Court, even if at all it is permissible to be raised nor the judicial propriety demands that such a plea be considered in view of the law laid down by the apex Court, upholding the power of the State Government to fix the SAP under Section 16 of the Act. (We, therefore, do not find any substance in the aforesaid plea, which is hereby rejected.

We now proceed to consider as to how the SAP is to be fixed and how it has been determined for the instant season.

In Paras 31,10 and 36 of the counter affidavit, the following criteria has been reproduced for emphasising that these were the considerations/relevant factors, which are taken into account while fixing the SAP :

"31.....The following factors are the relevant factors for determination of SAP.

(viii) The cost of cultivation of sugarcane.

(ix) The cost of transport of sugarcane by cane growers from the field to ? purchase center or to mill gate as the case may be.

(x) A reasonable return on the aforesaid amount of his produce to cane growers.

(xi) Availability of the cane area, demand of sugarcane by industries, profitability of the industries by selling sugar, and other byproducts etc.

(xii) The price of sugarcane paid by sugar factories in the preceding year,

(xiii) The factors necessary to avoid diversion of sugarcane from sugar industries to other consumers like Kolhu and Khandsari Units.

(xiv) The SAP announced by the State Government is most reasonable and justified, it is less than the SAP announced by the Punjab/Haryana and Uttaranchal, the neighbouring States.

10. That in the year 200708, the cost of cultivation/production of the & sugarcane, which is based on the average of yield of Seorahi, Shahjahanpur and Muzaffarnagar Cane Research Farms has been increased up to Rs. 114.09; however, as per announcement of the State Government dated 31.10.2007, for the year 200708, the SAP rates are same to the previous year 200607 i.e., Rs. 122.50 for rejected variety, Rs. 125/ for the general variety and Rs. 130/ for early variety. It is significant to submit that the State h Government announced the State Advised Price (SAP) on 31.10.2007 for the year 200708 after due consideration of several factors, including the cost of cultivation/production of the sugarcane etc.

36. That without prejudice to the contention raised in the preliminary objection, it is submitted that the SAP is just and fair. The State Government while fixing the SAP, has also considered the level of SMP, free market sugar price, profit of margin for the cane growers, recovery of sugar, cost of sugarcane production, report of U.P.C.S.R. like previous years, the capacity of sugar factories for making cane price payment etc. For kind perusal of this Hon''ble Court, a copy of the report of U.P.C.S.R. for the year 200607 as was sent to the CACP, as well as for the previous years reports are being filed herewith and collectively marked as Annexure CA8 to this counter affidavit. It is submitted that the National Economic Growth is increasing by 8/9% and as such the State Government for ensuring the remunerative cane price to the poor cane growers have taken a decision for increase Rs. 10 per quintal only with regard to the year 200506. The increase in SAP is almost similar as was done in the year 200506 and as such there is no unreasonableness in increasing Rs. 10 per quintal in the SAP."

The aforesaid Para 36 of the counter affidavit speaks about the SAP fixed for the year 200607 and not with respect to the crushing season 200708.

In later part of Para 31 itself and Para 32 following has been stated :

"It is significant to submit that the announcement of the State Advised Price (SAP) is a Cabinet Decision taking into consideration of various factors, increasing of the national economic growth, cost of production of sugarcane, increase in the rates of seeds, fertilizers, labour charges, irrigation etc. including the profit earned by the sugar factory from the producers from byw products, power projects etc."

"It is submitted that the power to regulate the price also includes the power to increase so as to make it fair. It is submitted that where the power to fix the price is conferred in the Statute, the authority is guided by all relevant and

economic factors which contribute to the determination of such price."

6. The State in its counter affidavit though has stated that the fixation of SAP is a Cabinet decision, taking into account various factors, including increasing of national economic growth, cost of production of sugarcane, increase in the cost of seeds, fertilizers, labour charges, irrigation etc., including the profit earned by sugar factories from the produces from byproducts, power projects etc. and the authority is guided by all relevant economic factors, while determining such price and for that matter, it is also stated that in the year 200708, the cost of cultivation/production of sugarcane has increased upto Rs. 114.09 per quintal but the rates of SAP have not been increased and that the SAP for the crushing season 200708 was announced after due consideration of several factors, including cost of cultivation, production of sugarcane etc. but the record produced by the learned Additional Advocate General, i.e. deliberation made for fixation of SAP as evident by cabinet note, the contents of which were made known to all the parties, including Sri V.M. Singh, revealed that the State Government mainly considered the factum of loss incurred by the sugar industry in the crushing season 200607 and that because of record production of sugar, there has been fall in the market price, both in the national and international market i.e. in August, 2006, the average market price of sugar of cooperative mills was Rs. 1720/ per quintal, which stood reduced to Rs. 1258/ per quintal in the month of September, 2007, whereas in September, the price of levy sugar was Rs. 1318/ per quintal and that downfall in the market price of sugar in the year 200708 is also expected.

7. The Cabinet note, relied upon and produced by Sri J.N. Mathur, learned

Additional Advocate General himself, speaks about the material taken into consideration, says that in the year 200607 record production of sugarcane has taken place resulting into crushing of 893 lakh metric tonnes sugarcane as against the total crushed cane of 608 lakh metric tonnes in the crushing season 200506. The recovery for crushing season 200607 was approximately 9.50% and the conversion cost was Rs. 325/ per quintal, whereas cost of sugarcane was Rs. 1375/ per quintal. Because of surplus/excessive stock of sugar in the crushing season 200607, fall in the sale price of sugarcane has taken place in national and international market. In August, 2006, Cooperative Sugar Mills got an average selling price of sugar at the rate of Rs. 1720/ per quintal, which stood reduced in September, 2007 to Rs. 1258/per quintal, whereas the price of levy sugar was Rs. 1318/ per quintal. It was expected that there would be further downfall in the sugar price in the crushing season 200708 and that the sugar mills were not in profitable condition in the crushing season 200607 nor there is any possibility of profits in the crushing season 200708. The note ended by saying that looking to the aforesaid facts, there was no justification for increasing the SAP as against the one determined for the crushing season 200607 for the crushing season 200708. Therefore, on the basis of the said material, the same SAP was announced for the present crushing season on 31.10.07.

8. On consideration of the aforesaid circumstances the SAP as was fixed for the crushing season 200607, was made effective for the season 200708 also, despite mentioning therein that the cane grower expect a reasonable price of their produce, keeping in mind the increase in cost of cultivation/growing to the sugarcane.

9. A comparative reading of the averments in the counter affidavit filed by the State regarding the manner and the conditions and factors, which the State says, have been taken into consideration, the details of which we have given in the quoted paragraphs of the counter affidavit, shows that it is not worded in exactly the same manner, as it reflects from the material shown by the learned Additional Advocate General.

10. The State Government's consideration speaks of huge loss suffered by the industry in the previous crushing season because of record production of sugar resulting into low market price both in national and international market and the probable loss which the industry was likely to suffer in the ensuing crushing season i.e. the present crushing season, with no possibility of profits in this season, persuaded the State Government not to enhance the SAP i.e. to fix the same SAP for the present crushing season despite the increased cost of cultivation/growing of sugarcane whereas in the counter affidavit not only specific averments have been made regarding consideration of various factors as enumerated in the quoted paragraphs of the counter affidavit, but a defence has also been taken that the sugar industry has earned huge profits from the year 2003 onwards. In fact, in the counter affidavit, the State is silent about any loss which has been occasioned to the sugar industry in the previous season or in other words in the counter affidavit, the material which was actually relied upon and considered by the State Government while fixing the SAP for the crushing season 200708 has not been specifically brought on record.

11. We fail to appreciate that when the State Government had considered the loss said to have occurred to the sugar industry in the previous crushing season and for that matter, despite the increase in the cost of cultivation of sugarcane, it decided not to enhance the SAP, there could not have been any possible reluctance on the part of the State Government to bring this fact on record.

12. Since the material, on the basis of which the Cabinet decision was taken to fix the SAP has been brought to the notice of the Court and all the parties by the learned Additional Advocate General, we cannot overlook the same, even if a specific mention of the same has not been made in the counter affidavit, more so, a when the State in the counter affidavit speaks about the industry being in profits since 2003 but does not consciously say that it earned any profits during the previous crushing season. The factum of industry having suffered losses in the previous crushing season being thus, culled out not only from the material produced by the learned Additional Advocate General but can also be inferred from the averments made in the counter affidavit.

13. On the question of losses having been incurred by the sugar industry in the previous crushing season and the low market price of sugar, which are said to be the sole guiding factor for maintaining the SAP for the crushing season 200708 also, a dispute has been raised by the respondents i.e. Cane Growers" Cooperative Societies and the cane growers, who are the intervenors, saying that the said assumption is factually incorrect for which both the parties have relied upon the affidavits filed by them, wherein the relevant audited results of the sugar mills, as received from the BSE (Bombay Stock Exchange) website, has been filed by Sri V.M. Singh; submission is that the very basis of fixation of the SAP at the given rates being nonexistent, as the industry has earned huge profits, even in the previous crushing season, the present price is still low and should have been fixed at a higher rate, and in any case, the SAP determined, be maintained.

14. On the other hand, the petitioners have forcefully and vehemently urged and have also made specific averment in the writ petition, that because of the high SAP fixed by the State Government, the sugar industry has suffered enormous losses even in the previous crushing season and that because of bumper yield of sugarcane and record production of sugar, the market price of the sugar lowered to such an extent that it not only effected the payability of the sugar mills but also opened the risk of the sugar mills being closed down. The petitioners reiterated that the heavy losses faced by the sugar industry and the lowering trend of market price, were not considered and, therefore, such an arbitrary and high SAP has been fixed.

15. For manufacture of sugar, the sugarcane is the main raw material, from which crystal sugar is made by adopting vacuum pan process by the sugar mills. The sugar so produced is a marketable commodity, attracting business interests, making it obvious that the price fixation, both by the Central Government as minimum price and by the State Government as SAP has to be done keeping in mind the business interests of the sugar mills as well as of the cane growers.

16. The scheme of the Act of 1953 along with Rules of 1954, read with Order, 1954 and Order, 1966 gives a complete code for estimating the quantity of sugarcane required by the sugar factories by passing reservation orders under Section 15 and for maintaining constant and smooth supplies of sugarcane to the sugar factories under Section 16 of the Act.

17. The scheme aforesaid of the relevant provisions has been considered in detail in the judgment of U.P. Cooperative Cane Unions Federations.

18. The Constitution Bench judgment with a majority of 3 :2, upheld the power and authority of the State Government to fix the SAP after precisely observing that the Act of 1953 has been enacted to regulate the supplies and purchase of sugarcane required by the sugar factories and that the word "regulate" would also include the right to fix the price. It also declared that the SAP fixed by the State Government is to be higher than the minimum price fixed by the Central

Government but it does not say about the manner in which the SAP is to be fixed by the State Government under the scheme of the aforesaid provision.

19. It is thus, clear that authority to fix the SAP is not in doubt but the manner and the procedure which is to be adopted in doing so, is open for consideration.

20. In the year 1955, Parliament enacted the Essential Commodities Act, 1955. Section 3 of this Act empowers the Central Government to make orders for regulating the production, supply, distribution, etc. of essential commodities including controlling their price. Both sugar and sugarcane are essential commodities under this Act. In exercise of the powers conferred under the Essential Commodities Act, the Central Government promulgated Sugarcane (Control) Order, 1966 which extends to whole of India. The object of this Order is to promote the sugar industry and to eliminate unnecessary impediments in the production of sugar Clause 2(g) of the Sugarcane (Control) Order, 1966 defines "price" which means the price or the minimum price fixed by the Central Government from time to time for sugarcane. Clause 3 of the Sugarcane (Control) Order, 1966 empowers the Central Government to fix the statutory price of sugarcane, payable by the producers of sugar.

21. The provision of Clause 3 (1) of the Control Order, 1966 makes it apparent that the power of the Central Government is regulated by the five factors which are mentioned in the said clause and it is also open to the Central Government to consult appropriate authorities, bodies or associations as it may deem fit, while fixing the minimum price.

22. Prior to the year 1996/97, the SAP as announced by the State Government was required to be paid by the sugar factories to the cane growers and was being paid failing which they were proceeded against, for the nonpayment of the State Advised Cane price. The State Advised Price was higher than the SMP fixed by the Central Government under Clause 3 of the Order of 1966 and the additional cane price was also payable under Clause 5A of the said Order. In the year 1996, the private sector sugar industry in the State feeling inconvenience in making the payment of SAP, questioned the authority of the State Government by filing writ petitions, as already stated in the earlier part of the judgment, which matter has been considered by their Lordships in the Constitution Bench Judgment.

23. The Central Government while fixing the minimum price, used to take into account the views of the two apex bodies of sugar factories in the country viz. Indian Sugar Mills Association (ISMA) and National Federation of Cooperative Sugar Factories Ltd. (NFCSF).

24. The petitioners contend that arbitrary fixation of the SAP is open to challenge and since the State Government has utterly failed to establish before the Court that it had taken into consideration relevant factors, while fixing the said price, the determination of price so made, is per se illegal and cannot be upheld.

25. To summarize the argument of the petitioners, apart from making challenge

to Section 16 of the Act, they argued that the SAP has been fixed at a very high rate, without taking into account the heavy loss occasioned to the sugar industry because of arbitrary and high fixation of the SAP in the previous season and for that reason, the State Government also did not consider the paying capacity of the sugar mills nor considered the profitability and the margin of profit to the sugar mills. The fixation of higher price for purchase of sugarcane has also been challenged on the ground that it interferes and intermeddles with their right to business under Article 19(1)(g) of the Constitution. In nutshell, the argument of the petitioners is that if the State Government had taken into consideration the loss occasioned to the sugar industry in the previous crushing season because of record production of sugar, resulting into low market price in the national and international market and the cost of cultivation of sugarcane had rightly been determined or so to say, the same cost as determined by the CACP had been accepted, such a high SAP would not have been fixed by the State Government for the crushing season 200708.

26. Elaborating the aforesaid plea, it has been emphasized (i) that the price of sugar in the market was much low than the SAP even on the date when it was announced and on subsequent dates also, it never reached to a price which can be said to be a reasonable price over and above the price of sugarcane, namely, SAP; (ii) that no scientific exercise was undertaken by the State Government in the last crushing season 200607 while fixing the price at Rs. 125130 per quintal, which fact finds support from the judgment of the Allahabad High Court in Writ Petition No. 33288 of 2007, Basti Sugar Mills v. State of U.P. The same price of Rs. 125/ has been mechanically repeated for the season 200708 without making any exercise and without considering any relevant factors whatsoever, including the one that the sugar prices had declined by about Rs. 500/ per quintal and that the paying capacity of the sugar factories had gone down below Rs. 76/per quintal; (iii) that the cane price for the season 200607 was fixed on 26th December, 2006 at a time when sugar prices were ruling around Rs. 1750/ per quintal, whereas cane price for the season 200708 has been fixed when prices have already declined to Rs. 1300/ per quintal; (iv) The cost of production of sugarcane as determined by Commission for Agricultural Costs and Prices (CACP) has been ignored and the cost of sugarcane determined by the U.P. Council of Sugarcane Research, Shahjahanpur has been taken into account, whereas this institute is a research institute, which does not have the practical experience of the actual cultivation of sugarcane in the fields and it has determined the cost of sugarcane on the basis of ideal conditions; and (v) that the factors enumerated in Clause (3) of Sugarcane Control Order, 1966 were not at all taken into account.

27. Argument is that even assuming, though without admitting, that regulatory power includes the power to fix the price of sugarcane, the exercise of such power is to be done in a fair, just and equitable manner and the SAP cannot be fixed on the basis of any arbitrary or capricious decision. Further submission is that the discretion to fix the sugarcane price is coupled with the duty to ensure, inter alia, that the manufacturers of sugar are not visited with arbitrary price of

sugarcane. The discretion was coupled with a duty which has not been discharged. Reference has been made to the case of National Insurance Co. Ltd. v. Kesav, (2004) 2 SCC 370.

28. For strengthening the aforesaid plea that the market prices were excessively low on the date of fixation of SAP and also on the subsequent dates, the attention of the Court has been drawn to the average sugarcane price (FUTURE) as reported for the year 200708 by the National Commodities and Derivative Exchange (NCDEX), which were likely to be below Rs. 1200/.

29. The private respondents refuting the plea of the petitioners that the price fixation has been done arbitrarily or without any basis, submitted that the State Government and the sugar mills are in collusion with each other and that the State has fixed a very low price on the presumption that the sugar industry has suffered huge losses in previous crushing season, whereas the fact of the matter is that except statements made on behalf of the political leaders, there was nothing on record to indicate that the sugar industry has suffered actual loss, or that the market price of sugar had gone so low, as urged by the petitioners at any point of time during the entire crushing season.

30. Their submission is that, in fact, the sugar industry has been given a boost and expansion has been done by existing sugar industries by installing new sugar factories and also by expanding their crushing capacity, for which purpose they had taken loans from various financial institutions including banks and had paid large amount of interest, coupled with the repayment of installments, made capital investments and claimed depreciation for tax rebates and, therefore, if any net loss has occasioned, that cannot be attributed to the alleged higher price of sugarcane as determined by the State Government.

31. It is also submitted that the petitioners have deliberately brought on record only the FUTURE price as indicated in the report of the NCDEX and have knowingly and deliberately not apprised the Court about SPOT price. Submission is that the same very NCDEX report on SPOT price, nowhere shows that right from the date of announcement of SAP, at any point of time, the market price of sugar has actually gone below Rs. 1400/ per quintal.

32. Further submission is that the cane price and SAP are not fixed by only taking the price of sugar into consideration. Sugar contributes 60% of the cane price, the byproducts such as Molasses (potable and industrial alcohol, spirits, Ethanol etc.), Bagasse (Cogeneration, Paper etc.), Press Mud (Manure) etc., account for about 40% of the revenue. Presently, certain mills are even selling Carbon Credit which gives a higher return than any other byproduct.

33. Their case is that since the sugar only accounts for 60% of the price of cane, even if sugar price reduces to Rs. 1200/, the mills can still pay the farmers about Rs. 130 per quintal towards the cost of sugarcane. Example has been given that in the year 200304, when the sugar price was about Rs. 850 per quintal, the mills still paid the farmers Rs. 95 per quintal as SAP and that the cane price is

fixed, also keeping in view the return to the farmers from alternate crops as provided in Clause 3(d) of the Sugarcane (Control) Order, 1966. Either the farmer grows cane which takes one year or he grows wheat and rice during the same period. Due to increase in cost of production while the price/MSP of wheat for the current season has been increased by 33% from Rs. 750 to Rs. 1000 per quintal and the price/MSP of paddy has been increased by over 2025% from Rs. 645 to Rs. 775 per quintal, the price of cane fixed by the CACP is unreasonable and unrealistic, particularly when in the State of Uttar Pradesh, cost of production has increased further on account of labour wages being doubled by the State this year from Rs. 49 per day to Rs. 100 per day.

34. On the factual aspect of the matter regarding the price of sugar in the year 2007 and 2008, the parties are at variance and both of them have relied upon the NCDEX for delivery at Muzaffarnagar at the close of each month. According to the petitioners, relying upon FUTURE price, the trend of sugar price substantially started decreasing on 20.2.07 on which date it was Rs. 1641 per quintal and thereafter it decreased to Rs. 1249 per quintal on 20.12.07. The above prices include an incidence of about Rs. 130 per quintal for excise duty and transport cost etc.

35. In response, the private respondents have brought on record the SPOT price from the report of the NCDEX showing that right from 1.10.07 till 31.12.07 the aforesaid price had never gone below Rs. 1400 per quintal.

36. Sri V.M. Singh has further stated on oath that average sugar price for the first quarter of 2007-08 ending 31.12.2007 was Rs. 1463.40 per quintal and that the average sugar price for the quarter ending 31.3.2008 was Rs. 1560.55 per quintal and the average sugar price for the month of March was Rs. 1627 per quintal.

37. In response, the petitioners have submitted that the aforesaid SPOT sugar price has been quoted from the figures available in the NCDEX, location : Muzaffarnagar, U.P., which includes approximately Rs. 165.55 per quintal towards excise duty, transport cost, entry tax, mandi tax and other charges etc. and, therefore, after deducting the aforesaid amount from the settlement price of NCDEX to arrive at exfactory price, the SPOT price as per NCDEX for quarter ending 31.12.2007 will work out to Rs. 1298.00 per quintal and for quarter ending 31.3.08, it will work out to Rs. 1395.00 per quintal. The average price for the month of March will work out to Rs. 1451.15 per quintal (considering the charges of Rs. 175.85 w.e.f. March 2008). The taxes mentioned do not go to the profits of the sugar factories. In the Contract not?, it is described as under:

"Members and market participants trading on the Exchange in the commodity contracts shall be deemed to be aware of applicable laws and amendments thereof from time to time, including provisions and rates relating to the sales tax, value added tax, APMC tax, Mandi tax, Octroi, excise duty, stamp duty etc., applicable on the underlying commodity of any contract offered for trading."

38. According to the petitioners, the average exfactory price for the current season i.e. November 2007 to March, 2008 comes to only Rs. 1360/ per quintal against the average exfactory price 200506.

39. Sri V.M. Singh, in response, again submitted that FUTURE prices of NCDEX is the basis of the writ petitions, which are about Rs. 200 less than the SPOT prices and the petitioners have tried to mislead the Court by relying upon the FUTURE prices and not bringing to the notice of the Court the SPOT prices. he further drew the attention of the Court to the fact that the contract not? filed by the petitioners in which in the footnote, there is a reference of payment of taxes including excise tax, sales tax and other charges, also relates to the Future Contract as is mentioned in first page of the contract, which shows that the Future Contract is inclusive of all taxes but the petitioners have not brought anything on record to support their contention that the SPOT prices of sugar include Rs. 165175 per quintal of taxes and other charges.

40. In fact, the Balrampur Sugar Mili has filed the NCDEX SPOT prices from April 1 onwards as an Annexure in its counteraffidavit, wherein a not? for deduction of Rs. 165 per quintal has been mentioned. According to Sri V.M. Singh, this not? is not part of the original record from the NCDEX website and has been imposed/ overwritten to prove its contention. he has also filed a copy of the NCDEX SPOT price index from April 1 to April 7 as Annexure RA1 to his affidavit. In support of the aforeaid assertion, he further brought to the notice of the Court that the deduction of excise duty and other taxes only amounts to Rs. 88 per quintal and the argument of the petitioners' Counsel that the difference in these invoices and the SPOT prices is about Rs. 165 per quintal does not indicate the correct position.

41. Further it has been argued that the losses in the writ petition have been shown on the basis of the third quarter ending 30th June, 2007, whereas the correct information has not been given. The petitioners have withheld the result of first quarter ending 31 st December 2006 and has shown the first quarter to be ending on 31 st March, 2007 and has gone to add the first quarter of the season 200708 as the last quarter of the season 200607. The petitioners themselves have admitted that all the mills made profits in the first quarter ending 31 st December 2006 and as per the petitioners, the rates of sugar were above Rs. 1600 per quintal.

42. On the question of profits, various extracts of results of audited figures have been filed by Sri V.M. Singh, showing operating profits to various sugar factories, in response of which, the petitioners contended that the sugar mili has three units, one for sugar production, one unit for distillery and the third for cogeneration and each one is independent of the other and they are mentioned in separate segments as per the accounting system.

43. Submission of Sri V.M. Singh is that this contention is incorrect. The sugarcane is the only raw material for all the processing units and various units

are set up only to realize the optimum profits from sugarcane. The three unit theory has been set up for the first time. It is further submitted that when administrative charges were levied on molasses, most of the sugar mills filed writ petitions challenging the administrative charges on the ground that the distillery was not a different unit and that the distillery and sugar mill was one unit and there was no sale and purchase of molasses. Argument, therefore, is that the realization from byproducts in the name of distilleries and cogeneration plants cannot be kept away and the return from the same has to be and is correctly mentioned in the balance sheet which shows the profit for the sugar mills.

44. We have been taken through the records of the sugar mills and the NCDEX reports by both the parties to rely upon their respective claims i.e. for the petitioners the sugar industry was in huge losses because of the hike in price of sugarcane and for the respondents to show that SPOT prices never went below on an average, Rs. 1463/ per quintal and that the sugar industry earned huge profits and bifurcation of profits was not real or just claim of the petitioners. 5

45. In the alternative, it has also been argued by the respondents that in case sugar industry was suffering huge losses, there was no occasion for the industry to expand their sugar units or sugar factories or to install fresh or new sugar mills by taking heavy loans from the financial institutions or banks. Submission is that in case for the refund of the loan or interest thereof, the profits have been utilized, it cannot be said that sugar factories actually suffered loss because of the price of sugarcane fixed by the State Government from time to time. The theory of operating profits shown in the audited results and net profit or loss, as the case may be, shown therein, is also being assailed by the respondents on the ground that it is only the accounting procedure wherein the payment made towards the loan advance, other expenditure, tax and depreciation etc. is also accounted for but that itself would not mean that the sugar industry suffered losses for the reason aforesaid.

46. The State Government also pleaded that the industry has earned huge profits from the year 2003 onwards. In Para 14 of the counter affidavit, the State has stated as under:

"That from the year 2003 onwards the Sugar Mills have made large profits. Further from 2003 till date the total production of sugar in the State has increased by 46% to the current production at 85.4 lakh tonnes. Naturally this has led to a greater supply of sugar in the market and resultant lowering of sugar prices. The farmers had nothing to do with this development."

47. For strengthening the aforesaid plea that the sugar factory earned huge profits, it has been specifically denied by the State that due to payability/year wise increase in the SAP, several sugar factories have been closed, saying it to be a misstatement of fact. The correct facts as per the State Government are that during crushing seasons 2002-03, 2003-04, 2004-05, 2005-06 SAP was increased considering various facts and during this period the petitioners or any other

private sugar mills have not challenged the SAP on the ground of increase in the price of SAP, rather during the crushing season 200203,200304 they have challenged the SAP on the grounds of retrospectivity, the same being not notified etc. Even prior to that they have never challenged the same on the ground of increase in SAP, rather it was challenged on the ground of alleged noncompetence of the State Government for fixing the SAP.

48. The State Government has also brought on record that during the past two or three years in the State of U.P, 23 new sugar mills have been established and 17 already existing sugar mills have enhanced their crushing capacity, 23 sugar mills have started cogeneration from which the sugar factories are getting huge profit and nothing out of that is being given to the cane growers. The base materia? of all the byeproducts including the cogeneration project is the sugarcane produce supplied by the cane growers. Allegedly, these facts have also been kept in mind while fixing the SAP.

49. In our opinion, the very fact that during all these years with the alleged high fixation of SAP, the industry has ventured into establishment of new factories and expansion of their crushing capacities, fortifies the fact that losses, if any, incurred by the sugar industry because of excessive sugar being produced, may not be attributable to the SAP, in any case solely, but there may be other factors also for the said loss. May be that because of free policy for establishment of sugar factories with bumper yield of sugarcane making it available to all the sugar factories, newly established or with expanded crushing capacity, has resulted into record production of sugar resulting in lowering of sugar price in the market or may be that, because of the financial obligations taken from the financial institutions or banks or their mismanagement, the sugar factories were to suffer losses but in either event, the determination of SAP cannot be dependant solely upon the aforesaid loss to the sugar industry or the downfall in the sugar price in the market.

50. It is common knowledge that if the production of a commodity is more than the demand, the prices have to go down but for that matter price of the raw materia? cannot be said to be excessive, unless, of course, the same suffers from any arbitrary fixation of price. It is for the sugar industry, like any other industry, to see and manage its affairs so that it smoothly runs and earns profits. It is also for the sugar industry to see as to how much expansion should be done and whether it is profitable for them to establish new units or to expand their crushing capacity. So long the yield of sugarcane is sufficient to cater the need of the sugar factories, established or expanded in their crushing capacity, the natural outcome would be production of excess sugar, which would ultimately control the market price.

51. We do not intend to enter into the validity of the free policy of establishing sugar mills, which is not in question, but if the sugar mills intend to take advantage or have taken advantage of the delicensing policy, they cannot come forward and say that they were suffering losses because of surplus sugar being

produced. It may be a matter to be considered by the State Government, which \s under an obligation to see that sugar industry does not suffer a setback and for that matter, to lay proper and effective guidelines, so that there is continuous smooth, effective and proper supply of sugarcane to all the sugar mills on reasonable rates, throughout the crushing season, making a balance between the interest of the sugar mills and the cane growers and, of course, not adversely affecting the interest of the consumers also.

52. In our opinion, the profit and loss of the sugar industry cannot be taken to be the sole relevant factor for determining the price of sugarcane, though it may be a relevant circumstance to be taken into account while fixing the sugarcane price. The sugarcane price is to be fixed mainly by taking into account the cost of production of sugarcane plus the cost of other inputs necessary for the purpose of cultivation and growing the sugarcane alongwith reasonable return to the sugarcane growers. The determination of price thus, is mainly dependant upon the latter factors. Of course, the interest of the sugar factories is also to be kept in mind for which the price of the sugar in market is a relevant consideration, but that does not mean that if the cane growers spent a certain amount of money in cultivating and growing the sugarcane and thereafter making it marketable, they can be given a lesser amount towards the price as against the price to which they are entitled, looking to the cost of cultivation and growing of sugarcane. The cost of the raw material i.e. sugarcane for manufacture of the crystal sugar cannot be solely dependant upon the net profits of the sugar industry or losses, if they suffer in their sugar venture. The cultivation and growing of sugarcane crop for the purpose of supplying to the sugar mills, which is the only market available to the cane growers under the restriction imposed by the Act of 1953 and the Rules of 1954 alongwith Sugarcane (Control) Orders of 1954 and 1966, makes little room for the cane growers to sell their crops in open market and that too at a reasonable price.

53. The cane growers are thus, entitled to have reasonable return and actual cost, which they incur in growing the sugarcane. In the course of business, sugar mills may suffer profits or losses, like any other business, but for that matter the price of raw material cannot be lowered nor can sugarcane be underpriced. One who indulges in business of any commodity has to face the natural outcome of profit or loss in business activity. Unless of course, the cane price fixed is absolutely arbitrary and cannot be correlated with the cost of cultivation alongwith other inputs required for such cane growing with reasonable return, there would be no scope for interference in the price so fixed by the State Government, merely because the sugar industry has suffered losses, more so, when it could not be conclusively said that the losses, if at all have occasioned, are only because of the unreasonably high price fixation of the sugarcane by the State Government. There may be many more reasons for the loss to the industry.

54. It is for the sugar industry to see how it meets the challenge of record production of sugar and manages its affairs so that it not only survives but also

earns profits and also for the State Government to come forward with a policy, which rescues the sugar industry from the losses but the cane growers cannot be denied a reasonable and just price for the sugarcane, merely because the sugar industry is in losses or may suffer loss.

55. The payability by the sugar mills, their margin of profit and the market price of the sugar are also nonetheless necessary considerations so as to m?k? a balance among the interest of sugar mills, cane growers and the consumers.

56. The argument of the petitioners is that sugar is controlled commodity as either it is to be supplied as levy sugar or under the release orders issued by the Central Government for free sugar, and it is an open competitive market and, therefore, the price of sugar is controlled by the market itself, which would not permit the sugar factories in Uttar Pradesh to sell the sugar at higher price as against the price prevalent in other parts of the country or may be in cases, where export is mad?, the rates prevalent in the countries abroad, is to be seen in the light of the fact that the price of sugar is to be and is and has always been in accordance with the demand and supply of sugar in the market and that the price normally of the end product is determined by taking into account all the expenses incurred in manufacture of sugar and in its sale, including the price, which is paid for the raw materia?, namely, sugarcane.

57. Article 19(1)(g) does give a fundamental right to carry on a business but it neither provides a guarantee for market nor assurance for profit.

58. The petitioners have also placed reliance upon various reports including that of the High Power Committee of 1998 and the statement given by the Minister for Sugar, Sri Sharad Pawar in support of their plea that sugar industry has suffered huge losses and that the price fixation by the State Government was being done on political considerations and not on any scientific criteria. This report cannot form the basis of adjudication, though they may be relevant for the Central Government or the State Government while considering the fixation of price either the SMP or SAP. Si?ce these reports are not to tilt the balance in favour of either of the parties and the statement of the Minister again being a political statement, is not of much assistance for adjudicating upon the controversy involved in these writ petitions.

59. We have considered the aforesaid pleas of profit and loss to the sugar industry as advanced from both the sides, and though we are of the view that it is not the domain of the Court nor it is required for us to enter into the details of profit and loss of the sugar industry and reasons for such loss, if .any, but we are constraint to observe that expansion of the sugar industry by installing new sugar units, dozens in number and expanding the capacity of a large number of existing sugar units, reflect that had the sugarcane price so fixed been so arbitrary and high for all these years i.e. si?ce the year 200203, as stated in the rejoinder affidavit by the petitioners and had it being the only reason for loss to the sugar industry, no person of ordinary prudence would have

taken a risk of expanding such an industry, which was running in losses or was to run in losses for the reason of arbitrary high fixation of sugarcane price by the State Government.

60. The sugar industry is a cyclic industry, therefore, loss in one or two years will not clinch the issue as the industry is expanded on expected profits to be earned after a given period of time.

61. We also take notice of the fact that the report of the NCDEX relied upon by the petitioners is only the FUTURE price index whereas the respondents have brought on record the SPOT price report, i.e. actual price on a given day at a particular time, which never showed decline on an average below Rs. 1463/ per quintal.

62. The petitioners never pleaded that the FUTURE price, as reported by the NCDEX, should not be taken as the price of sugar for the purpose of determining the sugarcane price or in other words, to exclude the tax from the price so mentioned in the NCDEX report. In fact, the petitioners have relied upon the FUTURE price, as indicated in the report of NCDEX, without even mentioning that the actual FUTURE price would be still low after deduction of taxes.

63. Whether the taxes etc. are inclusive in the SPOT price also, like FUTURE price, and what is the actual amount of taxes, which are to be deducted, are the matters which do not require any consideration from us, as they are simple commercial transactions, obliging the producer of sugar to pay taxes, as may be leviable, and are in force under the rules.

64. It cannot be disputed that the petitioners did not bring on record the report of the SPOT price and relied upon the FUTURE price report, whereas SPOT price was a relevant factor to be brought to the notice of the Court, while approaching under Article 226 of the Constitution. The petitioners ought to have brought before the Court, the SPOT prices of sugar, so as to allow the Court to compare, if at all necessary, the sugarcane price for testing the plea of the petitioners that price of sugarcane was throughout at a higher rate than the price of sugar in the market.

65. On the issue of arbitrary fixation of price of sugarcane, the petitioners have not only made a comparison of the two reports, one given by the CACP and the other by the U.P. Sugarcane Research, Shahjahanpur, but have also made an effort to impress upon the Court that the U.P. Council of Sugarcane Research, Shahjahanpur was not a competent body to calculate the cost of production of sugarcane, as it is only a research form, where cultivation is done in the ideal conditions, which conditions apparently are not available in the fields and the farms of the farmers, much less small farmers, enjoy or have those facilities, which are available in the laboratory.

66. The CACP has given a report, keeping into consideration, the factors given in Clause 3(1) of the Sugarcane (Control) Order, 1966. Under the aforesaid Control

Order, the Central Government fixes the minimum price of sugarcane payable by producer of sugar, wherein the "price" as defined in Clause 2(g) means the price or the minimum price fixed by the Central Government, from time to time, for sugarcane delivered

(i) to a sugar factory at the gate of the factory or at a sugarcane purchasing centre;

(ii) to a khandsari unit.

67. The "reserved area" under Clause 2(j) means any area where sugarcane is grown and reserved for a factory under subclause (1) (a) of Clause 6 and "year" means the year commencing on the first day of July and ending with the thirtieth day of June in the year next following.

68. The definite price, which a producer of sugar has to pay for sugarcane purchased, is fixed having regard to the factors given in subclause (a) to (e) of Clause 3, which speaks about the cost of production of sugarcane; the return to the grower from alternative crops and the general trend of prices of agricultural commodities; the availability of sugar to the consumer at a fair price; the price at which sugar produced from sugarcane is sold by producers of sugar; and the recovery of sugar from sugarcane.

69. The explanation attached to the said clause says that different prices may be fixed for different areas or different qualities or varieties of sugarcane; subclause (2) prohibits any person to sell or agree to sell sugarcane to a producer of sugar or his agent with a corresponding obligation upon the producer or agent to purchase or agree to purchase sugarcane, at a price lower than that fixed under subclause (1).

70. The Central Government fixes the minimum price for the purpose of purchasing the sugarcane under the levy scheme of the Central Government, It is thus, the minimum price fixed keeping in mind the considerations given therein. The price so fixed is known as Statutory Minimum Price (SMP), whereas SAP is remunerative price, which is to be paid to the sugarcane growers by the sugar mills. It having been held by the Constitution Bench that the SAP is higher and has to be higher than the SMP fixed by the Central Government, there remains no ambiguity that the State has to fix the aforesaid price by taking into consideration such relevant factors, which either could not be taken into consideration by the Central Government or even if they have been taken into consideration by the Central Government, they require a reassessment/reappraisal in view of the local conditions prevailing in the State.

71. The remunerative cane price is also to take into consideration the profits earned by the sugar factories by, byproducts, sales of ethanol, bagasse, molasses, powergeneration etc.

72. The Statutory Minimum Price (SMP) is the price on which the Central Government purchases the levy sugar, which is of a given percentage of entire

sugar produced by the sugar mill. The price so fixed is the minimum price, which does not keep into account any incentive for farmers. In any case, it is not a remunerative price nor a price, which would yield profits to the cane growers. The assessment made for the said purpose, may be through the agency of CACP or on the data supplied by the State Government, provided to it by the U.P. Council of Sugarcane Research, Shahjahanpur, cannot be said to be final for determination of SAP, wherein, unlike the case of SMP, where the purchase price is to be fixed by the Central Government, the interest of the cane growers is also to be protected. The remunerative price can be determined only when the State Government considers the inputs relevant for the purpose which include the actual cost of cultivation of sugarcane and other charges like transportation, wages, labour, land rent, inflation and other relevant market conditions. In case the SAP and SMP were to be the same, there would have been no occasion to confer power upon the State Government to fix a higher price known as SAP as against the minimum price determined by the Central Government. Even if the cost of cultivation of sugarcane is taken to be less while determining the SMP, the cane grower shall not be affected as he is to get remunerative price when he is paid SAP, but if the actual cost of cultivation and growing of sugarcane is not taken into account while determining the SAP, that would certainly work against the interest of the cane growers.

73. In the case of U.P. Cooperative Cane Union Federations, the apex Court has observed as under:

"The Central Government did not fix any maximum price obviously because the conditions in the agricultural sector differ from State to State. Therefore, it having fixed a minimum price expects the State to offer remunerative price to its cultivators."

74. The Court further observed :

"The 1966 Order which itself was made by the Central Government more than a decade after the judgment was rendered in Tika Ramji was amended in 1978 and Clauses 3(3) and 3A thereof contemplate an "agreed price" which in view of the mandate of Clause 3(2) is bound to be higher than the "minimum price" fixed under Clause 3(1). Naturally it is this "agreed price" which is to be mentioned in the agreements for sale and purchase of sugarcane in Forms B and C otherwise the very purpose of entering into agreements would be defeated.

75. In the counter affidavit filed by the State, to which rejoinder affidavit has been filed by the petitioners, it has been stated that the State Government announced the SAP on 31.10.2007 for the year 2007-08, after due consideration of certain factors, including the cost of cultivation/production of sugarcane etc. The State has relied upon the cost of cultivation/production of sugarcane as arrived at by the U.P. Council of Sugarcane Research, Shahjahanpur, which based its findings on the average yield of Seorahi, Shahjahanpur and Muzaffarnagar Cane Research Farms, fixing Rs. 114.09 per quintal. In para 10 of the counter

affidavit, it has been specifically stated that the cost of cultivation/production of the sugarcane, which is based on the average of yield of Seorahi, Shahjahanpur and Muzaffarnagar Cane Research Farms has increased up to Rs. 114.09; however, as per announcement of the State Government dated 31.10.2007, for the year 200708, the SAP rates are same to the previous year 200607 i.e. Rs. 122.50 for rejected variety, Rs. 1251 for the general variety and Rs. 130/ for early variety.

76. It is evident from the material produced by the learned Additional Advocate General, that the State Government has expressed due concern to the losses suffered by the sugar industry in the crushing season 200607 and was apprehensive that downfall in price of sugar will continue in crushing season 200708 also and in the counter affidavit the State has also made an attempt to justify the fixation of the SAP by saying that industry has gained huge profits right from the year 2003 onwards, and the industry has been expanded to a very large dimensions, as mentioned earlier in this order.

77. It is also the case of the respondent State that rate of growth in the industrial sector in the last years has been about 9%, whereas in the agricultural sector, the growth has been merely 2.7%. The State Government by fixing same cane price this year as the last year has not been able to ensure 2.7% growth in the sugarcane producing sector because of the low rate of sugar in the market. The procurement price of wheat has been increased from Rs. 850 to Rs. 1000 per quintal. With these prices, the return to the wheat growing farmers (who also grow paddy in the summer monsoon) comes out to be approximately Rs. 30,000/, per hectare. At Rs. 125/ per quintal, as has been fixed as SAP, the cane farmers will get a comparable return and at any price below this, the cane farmers will not be able to compete with wheat and paddy growing counterparts. A relevant consideration even under Clause 3(1)(b) of Control Order, 1966.

78. Further the case of the respondent State is that during past three crushing seasons though the cost of labour, electricity, fertilizers etc. has been increased but the sugarcane price has not been increased and the cane growers are not interested for the sugarcane crops, as they are not getting the remunerative cane price for which they are entitled under law. Under the prevalent law, the sugarcane areas are being reserved by the State Government and the sugarcane growers are bound to supply their sugarcane to the sugar mill of that reserved area itself.

79. Needless to reiterate that determination of the SAP has to be done on consideration of the relevant factors and that it cannot be an arbitrary fixation, merely on the whims of the State Government or on the asking of the sugar mills' owners. The cane growers have little say in the matter but their interest is to be protected so that they get a remunerative price of their yield. In the absence of any specific factors or considerations/guidelines being given in the Act or the Rules or in the Control Orders, for determination of SAP, the factors which the State Government has mentioned in its counter affidavit, are relevant and

authority is to be guided by all relevant and economic factors which contribute to the determination of such price. A balance has to be maintained protecting the interests of the sugar mills, cane growers and the consumers.

80. The respondents also urged that once the sugar mills have entered into an agreement in Form "C", agreeing for payment of SAP, they are bound by the same and, therefore, neither they can challenge the fixation of SAP nor they can wriggle out from the contract/agreement.

81. The Uttarakhand High Court in the case of M/s Uttam Sugar Mills Ltd. and others v. State of Uttarakhand and others, has held that the agreement executed in between the sugarcane growers and the sugar factories that the cane growers would provide the sugarcane to the sugar factory for the preparation of sugar and in lieu thereof they would be given the price agreed and fixed by the State Government, is a complete transaction and as such, the factory has no right to assail the said agreement; consequently, the SAP cannot be challenged.

82. For the crushing season 2006/07, the SAP was announced on 26.12.06 i.e. much after the start of the crushing, whereas in the present crushing season SAP was announced on 31.10.2007.

83. The sugar mills and their representatives have made various representations even before the announcement of the SAP to the State Government, bringing to the notice of the State Government, the difficulties faced by them and for reasonable fixation of the SAP. Submission of the petitioners is that even before the SAP was announced, the petitioners did make representations but they were not given any weight and, therefore, under compulsion of law, they had to enter into the agreement with the cane growers for supply and purchase of sugarcane at the price so announced by the State Government. Undoubtedly, the statutory agreement between the cane growers and sugar producing factories executed in Form C appended with the Rules of 1954, is binding between the parties. The SAP becomes the agreed price and unless there is any other price agreed to, higher than the SAP in the said agreement, the sugar factories are legally bound to pay the price so agreed upon i.e. the SAP in the instant case.

84. In exercise of powers conferred under Section 16 of the Act, the State has issued the Rules of 1954. Clause 3(2) lays down that a cane grower or a cane growers' cooperative society may within 14 days of the issue of an order reserving an area for a factory, offer to supply cane grown in the reserved area to the occupier of the factory in Form A of the appendix. Clause 3(3) and Clause 4(1) lay down that the occupier of the factory for which an area has been reserved or assigned shall within fourteen days of the receipt of the order enter into an agreement in Form B or Form C of the appendix, with the cane grower or the cane growers' cooperative society, as the case may be, in respect of the cane offered. Clause 5(1) lays down that cane grown in the reserved or assigned area shall not, except with the permission of the Cane Commissioner, be purchased by any person without the previous issue of requisition slips and identification cards

to the growers by the occupier of the factory. Subclauses (2) and (3) of clause 5 obligate that the requisition slips and identification cards to the members of canegrowers" cooperative society shall not be issued except by such society and records of the same have to be maintained by the occupier of the factory and also by the canegrowers" cooperative society. In the said order it is further provided that the occupier of the factory for which an area has been reserved or assigned would execute an agreement in Form B or C, as the case may be.

85. This order prohibits the cane growers or the growers" society whp had entered into an agreement in Form B or C to a factory not to sell the sugarcane to any other person without prior permission of the Cane Commissioner. The Sugarcane Commissioner can very well assign any specified area, outof thereserved areas of the latter factory to the former factory. The.reserved area and the assigned areas are allocated to a particular sugar factory for a crushing season. The petitioners could not have purchased the sugarcane from the cane growers or the Cane Growers" Cooperative Society without entering into the requisite form, i.e. Form B or C, as the case may be.

86. The agreement have been executed in form "C" by the present sugar mills agreeing for sale and purchase of sugarcane as per the quantity mentioned therein and the price agreed to. The agreement binds the sugar factory as well as the cane growers and their Societies, for the sale and purchase of the given quantity of the sugarcane at the given price in the manner agreed to. In caseof defaulton the part of the cane growers in supplying the sugarcane as per the terms of the agreement, they are liable to be penalized and likewise, wilful failure on the part of the sugar mills to accept the sugarcane offered, would entail into payment of compensation. The agreement thus, is binding between the parties.

87. The question still remains that whether fixation of SAP, despite entering into the agreement, can be challenged by the sugar mills on the ground that it is high i?y excessive or arbitrary. The Supreme Court in the case of U.P. Cooperative Cane Unions Federations, after taking into consideration the plea that after the State Government makes an announcement of a Stateadvised price, the occupiers of the sugar factories are compelled to enter into agreements with the cane growers and canegrowers" cooperative society in Forms B and C, wherein the Stateadvised price is mentioned and the same price is also mentioned in the parchas issued to the canegrowers and also considering the plea that in order to constitute a valid agreement, the consent.of the parties thereto should be voluntary consent and not a consent obtained under any kind of compulsion or duress and, therefore, the sugar factories cannot be compelled to pay such Stateadvised price even though it may have been mentioned in the forms or in the parchas, held that the contention that the transactions with which the Court was concerned are not sale cannot be accepted as out of the four elements, three were admittedly established, namely, the parties were competent to contract, the property in the goods was transferred from the seller to the buyers

and price in money was paid. The Supreme Court further found that there was mutual assent in several respects. Para 33 of the report says as under:

"33. As discussed earlier, the reservation or assignment of area is made for the benefit of a sugar factory. The agreements executed by the canegrowers or canegrowers' cooperative society in favour of occupier of a factory are also for the benefit of the sugar factory as by such agreements it gets an assurance of a continuous supply of freshly harvested sugarcane on the days indicated in the requisition slips issued by it so that there may not be any problem in getting optimum quantity of raw material throughout the crushing season. In absence of the agreements the sugar factory will also be a loser as it may face great problem in getting the supply of sugarcane according to its requirement. The occupiers of the factory are themselves keen for execution of the agreements but their only objection is to the mention of State Advised Price. The agreement is one composite transaction and it is not open to them to contend that the terms thereof which are to their advantage should be enforced but the term relating to price notified by the State Government should not be enforced as their consent in that regard was not a voluntary act. In our opinion, having regard to the advantages derived by the sugar factories, they are fully bound by the agreement wherein the State Advised Price may be mentioned and it is not open to them to assail the clause relating to price of the sugarcane on the ground that their consent was not voluntary or was obtained under some kind of duress."

88. With deepest respect to the findings arrived at by the Uttarakhand High Court in this regard, we find it necessary to observe that the consent of the sugar mills' owners or their association or representatives is not at all required for determining the SAP nor the SAP can be challenged on the ground that it was fixed without the consent of the sugar mills or their representatives. The question of voluntary consent for the SAP, therefore, does not arise. If the consent is not required in fixation of the SAP, there was no occasion for voluntary or involuntary consent being given by the sugar mills nor there would be any requirement of affording any opportunity to the sugar mills, while fixing the price. The determination of price is a legislative function, which is to be performed by the State Government under Section 16 of the Act under the delegated powers and, therefore, neither principles of natural justice would be attracted nor there is any need of obtaining any consent from the sugar mills.

89. The case of U.P. Cooperative Cane Unions Federations (supra) lays down the proposition that having regard to the advantages derived by the sugar factories, they are fully bound by the agreement, wherein the State advised price may be mentioned and it is not open to them to assail the clause relating to price of the sugarcane on the ground that their consent was not voluntary or was obtained under some kind of duress.

The plea raised in the present writ petition is slightly different.

90. So far the petitioners' plea that they had entered into an agreement under

compulsion, though they did not agree with the SAP fixed by the State Government is concerned, suffice it would be to mention that they cannot challenge the clause relating to price in the agreement on the aforesaid ground, but where the price so fixed is excessive, arbitrary and has been fixed not by following procedure prescribed under the rules or it is a simple political announcement with no exercise having been done for reaching to the price so announced, it may require consideration by the Court. Any policy decision or may be the fixation of the price is always amenable to judicial review, if it smacks of arbitrariness or suffers from vice of not following the procedure prescribed for the purpose. The arbitrary fixation of price may result into infringement of fundamental right under Article 19(1)(g) of carrying on business and/or provisions of Article 14.

91. The power of judicial review in the matter of fixation of price has been the subject matter of consideration by the apex Court, which lays down the parameters and the limits of jurisdiction in which the Court can travel.

92. In the case of *Ch. Tika Ram v. State of Uttar Pradesh*, AIR 1956 SC 676, the apex Court has held that the Act of 1953 and notifications passed thereunder do not infringe fundamental rights guaranteed by the Constitution of India under Articles 14, 19(1)(f) and (g) as well as Article 31. In Para 53, the apex Court has held that the Act of 1953 is not void on the ground that it is violative of Article 301 of the Constitution, in view of Article 304 of the Constitution, which allows the imposition of such reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State as may be required.

93. In the case of *Prag Ice and Oil Mills v. Union of India*, AIR 1978 SC 1296, the Supreme Court held that "In the ultimate analysis the mechanics of price fixation was necessary to be left to the judgment of the executive, and unless it is patent that there is hostile discrimination against a class of operators, the processual basis of price fixation has to be accepted in the generality of cases as valid".

94. In the case of *Union of India v. Cynamide India Ltd.*, AIR 1987 SC 1802, the Supreme Court held as under:

"We start with the observation '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 enquire into the question, the appropriate proceeding, whether relevant considerations have gone in and irrelevant considerations kept out of 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, enquire 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 here. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw material and the mechanics of 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. There is a difficult "cup of tea" altogether."

95. The Supreme Court further observed :

"A price fixation measure does not concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transactions. It is a direction of a general character, not directed against a particular situation". It is intended to operate in the future. It is conceived in the interests of the general consumer public. The right of the citizen to obtain essential articles at fair prices and the duty of the State to so provide them are transformed into the power of the State to fix prices and the obligation of the producer to charge no more than the price fixed. Viewed from whatever angle, the angle of general applications."

96. In the case of *M. Shri Sitaram Sugar Co. Ltd. v. Union of India*, AIR 1990 SC 1277, the Supreme Court observed as under:

"Judicial review is not concerned with matters of economic policy. The Court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of the expert" by its own views....., judicial inquiry is confined to the question whether the findings of fact were reasonably based on evidence and whether such findings are consistent with the laws of the land. Price fixation is not within the province of the Courts. Judicial function in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority."

97. In the case of *P.T.R. Exports Madras Pvt. Ltd. v. Union of India*, 1996(5) SCC 268, the Supreme Court observed as under:

"The power to lay policy by executive decision or by legislation includes power to withdraw the same unless in the former case, it is by mistake a mere exercise of power or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the Court gives a large leeway to the executive and the legislature.....Government would take diverse factors for formulating the policy.....in the overall larger interest of the economy of the country. It is, therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve such policies. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The Court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same."

98. As observed by Lord Denning:

"The power to overturn executive decisions must be exercised very carefully, because you have got to remember that the executive, and the local authorities have their very own responsibilities and they have the right to make decisions. The Courts should be very wary about interfering and only interfere in extreme cases that is, cases where it is sure that they have gone wrong in law or they have been utterly unreasonable. Otherwise we would get a conflict between the Courts and the Government and the authorities, which would be most undesirable. The Court must act very warily in these matters. (See "Judging the Word" by Garry Sturrgess and Philip Chubb, page 190)"

99. In the words of Chief Justice Neely :

"I have very few illusions about my own limitations as a judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not a function of a judge to act as a super board, or with the Zeal of a pedantic school master. Substituting its judgment for that of the administrator."

100. The Apex Court in the case of *Royalseema Paper Mills Ltd. v. Government of A.R.*, 2002(49) ALR 669, observed that the scope of judicial scrutiny would be far less where the price fixation is not governed by statute or a statutory order and even where the matter is governed by the statutory or a statutory order, the scope of judicial enquiry is limited, it is open to the Government to fix such price as it thinks appropriate having regard to the public interest, which entirely mean include the interest of review. The Court further held that the price is not to be fixed, keeping in mind the requirements of Mills alone. The Court has upheld the fixation of royalty by Government in absence of statutory provisions laying down the criteria or principles to be followed. The Court also held that no doubt any arbitrary action taken by the State would be subject to scrutiny by the Court" but this does not mean that the Supreme Court would act an appellate authority over the determination of the rates of royalty by the Government.

101. In *Ashoka Smokeless Coal India (P) Ltd. v. Union of India*, (2007) 2 SCC 640, the Supreme Court while considering the validity and legality of a scheme framed by Coal India Ltd. for sale of coal by electronic option (e-auction), observed as under:

"84. Price fixation has a direct relationship with the fiscal health of the country. Finance is one of the most important catalysts. The modality of price fixation will depend upon the nature of the commodity, the provisions of the statute concerned governing the same and other relevant factors. When price is fixed in terms of the provisions of the Essential Commodities Act, the State would be governed by the doctrine of the public necessity. It may in terms of its statutory power and having regard to the penal provisions engrafted therein compel a manufacturer or a dealer of an essential commodity to sell it to the public at a

reasonable price or at no profit. Price fixation by the State for its own benefit, however, has an element of profit. Whenever a dual price is resorted to, the same must be rational. The formula for fixing the dual price may be reasonable only under certain circumstances. (See *Union of India v. Hindustan Development Corpn.*)

89. While fixing the price of an essential commodity like coal, the capacity to bid of small manufacturers may also be taken into account. The Court exercising a power of judicial review in a given situation may determine the question on the basis of the material brought on record. (See *Gujarat Ambuja Cement Ltd.*)"

102. In Para 92 the Court said that "'Business' is a word of wide import. It, in the context of application of a statute governing a monopoly concern and also with an essential commodity, would indisputably stand on a different footing from the business concern or a private person".

103. The Court further observed :

"It may be true that prices are required to be fixed having regard to the market forces. Demand and supply is a relevant factor as regards fixation of the price. In a market governed by free economy where competition is the buzzword. Producers may fix their own price. It is, however, difficult to give effect to the constitutional obligations of a State and the principles leading to a free economy at the same time. A level playing field is the key factor for invoking the new economy. Such a level playing field can be achieved when there are a number of suppliers and when there are competitors in the market enabling the consumer to exercise choices for the purpose of procurement of goods. If the policy of the open market is to be achieved the benefit of the consumer must be kept uppermost in mind by the State."

104. The Court rejected the submission of the learned Additional Solicitor General that the policy decision of the State cannot be the subject matter of judicial review and held that "Such a policy decision on the part of the executive of the Central Government must be strictly construed in terms of Article 77 of the Constitution of India. Its exercise of such powers has nothing to do with the price fixation by a policy. The State while exercising its power under the Essential Commodities Act, fixes the price keeping in mind several factors, in particular the larger interest of the people. Price fixation of an essential commodity, therefore, is determined on the touchstone of public interest. While doing so the State is expected to follow a rational and fair procedure and for the said purpose may collect data, obtain public opinion, and may appoint an Expert Committee".

105. In view of the propositions laid down by the apex Court, the power of judicial review in respect of fixation of price by the State Government, can be invoked within the specified limited field, namely, to see that such price fixation has been done in accordance with the provisions of the statute if any such governing principles are provided in statute or rules or in the orders, and whether all relevant factors including economic considerations and the market

trend have been taken into account or not. The fixation of price is to depend on reasonable, nondiscriminatory and uniform criteria, so that it gives an impetus to the economic growth of the country. In the case of essential commodities, the public interest is the key word.

106. It, therefore, can be safely concluded that the SAP cannot be challenged on the ground that sugar mills have entered into an agreement in Form "C"; without their consent and under compulsion but SAP is open to challenge if it is arbitrarily fixed or is discriminatory or has been fixed without following the due procedure? and without taking into consideration all essential relevant factors necessary for such determination.

107. The State Government started determining the price under Section 16 of the Act of 1953, known as SAP since the year 1973-74. In the year 2001-02, it was Rs. 95/ per quintal for the private sugar mills and the same cane price was retained by the State Government for the crushing seasons 2002-03 and 2003-04. Thereafter, for crushing season 2005-06 the rate of SAP was fixed as Rs. 115/ for general variety and Rs. 120/ for early variety.

108. After determining the SAP for the year 2005-06, the State Government increased the SAP by Rs. 10/ per quintal while fixing the SAP for crushing season 2006-07 and the same price has been retained for the crushing season 2007-08.

109. The two writ petitions filed by the sugar mills challenging the SAPs for the year 2003-04 and 2002-03 have been dismissed by the High Court and against those orders, SLPs are reported to be pending in the Supreme Court.

110. It is the settled proposition of law that the Court will not sit in appeal over the decision taken by the State Government or the action drawn, namely, the ultimate price fixed by the State Government but would be within its jurisdiction to see that due procedure? has been adopted in fixing the price and it is not discriminatory, nonuniform or bereft of valid considerations or is not polluted by taking into account the irrelevant considerations or extraneous matters and if the determination of price is found to be arbitrary, it can interfere with such determination.

111. The conclusions, which stand drawn from the arguments raised and the discussions made above, are as follows :

(i) The fixation of the SAP would not be bad for not affording opportunity to the sugar industry in the process of determination and that it can be fixed unilaterally; though the views of the representatives of the Sugar Mills and also that of the Cane Growers' Societies may be taken into consideration.

(ii) Section 16 of the Act is not ultra vires and unconstitutional;

(iii) The factors enumerated by the State Government in its counter affidavit, as discussed by us, do constitute relevant consideration (including market price of sugar on its future likelihood trend);

(iv) The SAP is bound to be higher than the SMP, which is the minimum price for purchasing the levy sugar by the Central Government and not the remunerative price to the cane grower, which is the essence of SAP, wherein various other factors, depending upon the local conditions, including reasonable return to the farmers, has to be taken into consideration. While determining the SAP the interest of the sugar mills, the cane growers and that of the consumers has to be taken care of, the profit and loss to the sugar industry may not be the sole consideration but a relevant circumstance for being taken into account while determining the SAP, subject to the limitation that the price of sugarcane, which is the raw material, cannot be underpriced, but, of course, there can be permissible variation in the reasonable return to the cane growers. The interest of the marginal farmers is also to be protected; and

(v) The agreement entered into Form "B" or "C", as the case may be, is binding between the parties and the SAP cannot be challenged on the ground that the sugar mills were not afforded any opportunity in the process of determination or that it was not their voluntary consent or they had entered into the agreement under some duress.

112. But the SAP can be challenged on the ground of arbitrary fixation either in terms of the price fixed or in the manner in which the same has been fixed.

113. After recording the aforesaid conclusions, we find it necessary to mention that though there has been a strong debate between the parties about the actual losses being suffered by the sugar industry in the previous seasons and in particular, in the crushing season 2006-07, for which certain material have been brought on record from both the sides, reference of which has already been made by us, and which have been considered by us, but we do not find it necessary to record any finding about the actual loss incurred to the sugar industry or profits earned, for the reason (i) it is not only the case of the sugar mills but also the admitted case of the State that the sugar industry has suffered loss during the crushing season 2006-07; the statement of the Minister also says so; and (ii) with the assumption of the aforesaid losses having been incurred to the sugar industry, it is to be considered as to whether the SAP fixed is irrational, arbitrary and excessively high and while fixing the SAP, the relevant considerations were taken into account or not.

114. As already observed, this Court would not make scrutiny of the profits and losses incurred to the sugar industry and would take the plea of the petitioners as correct, that the industry suffered losses, which is also corroborated by the submission made by the State and stands supported by the material placed before the Court by the learned Additional Advocate General for the purpose of determination of SAP. The plea of the respondents that the accounts of the sugar mills show that they did not suffer losses is not a matter to be adjudicated upon in these petitions nor any such adjudication is required.

115. Pertinent to mention here is, that the State Government while fixing the SAP

for the crushing season 200708 has mainly considered the loss suffered by the sugar industry in the previous crushing season and the low market price of sugar, both in the national and international market. The State Government on the basis of the material before it, was of the view that the trend of record production of sugar in the crushing season 200607 is likely to continue in this season also and there is every likelihood of the market price of sugar being low and, therefore, the sugar mills may not be in profitable conditions. Thus, to say that the State Government did not consider the losses to the sugar industry while determining the SAP or the low market price or the reasons thereof or that the sugar mills would not be in a position to earn profits even this year and the market price of sugar would still be low was not considered while fixing the SAP, is not the true statement of fact made by the petitioners.

116. The plea of the petitioners that even in the year 200607, the SAP was not fixed by following the due procedure or by adopting any scientific methodology and, therefore, the present SAP is also arbitrary and illegal suffers from the following limitations and has to be rejected; (i) There is no issue before this Court with respect to determination of SAP for the year 200607 nor any such dispute regarding the correctness of the SAP fixed in the year 200607 can be raised in the present petitions; (ii) The SAP of 200607 has though been set aside by the judgment of the Allahabad High Court in the case of Basti Sugar Mills but the matter is engaging attention in the Supreme Court, where the operation and implementation of the order passed by the Allahabad High Court has been stayed; (iii) Any attempt made by this Court to find out as to whether the SAP fixed in the year 200607 was rightly fixed or not, may or may not only lead to conflicting results as against the one reached by the Allahabad High Court, but also would be a case where the Court would enter into a question, which is not in issue nor open for consideration; and (iv) as per the own case of the petitioners every crushing season is a new season, therefore, any finding on issues of facts rendered for one season shall not be relevant for the other season nor shall operate as *res judicata*. Moreover, so, the determination of the cost of cultivation/growing of sugarcane every year has to be made independently after collecting necessary data for the purpose.

117. The emphasis on the part of the petitioners that the SAP fixed for the crushing season 200607 is arbitrary, thus does not in any way assist the case of the petitioners. The petitioners' main contention has been, that the huge and staggering loss suffered by the industry with record production of sugar, with the downward trend of market price of sugar, both in national and international market, was not considered by the State and excessively high SAP has been fixed. The material produced before the Court by the learned Additional Advocate General, shows that these were the main factors, considered, which weighed with the State Government in not enhancing the SAP. In what manner, the losses have been assessed and considered, so as to protect the interest of the sugar mill owners, was a matter within the domain of the State Government and the State Government having taken into consideration the said important

aspects, and having decided not to enhance the SAP, this Court would not venture into an act of scrutiny of the said decision.

118. It is true that in the counter affidavit, it has been stated that various other factors have been taken into consideration while fixing the SAP but the Cabinet decision and the reason on the basis of which such a decision was taken, produced by the learned Additional Advocate General, show that it does not specifically mention of those factors but such factors were inherent in the aforesaid considerations. It is a fact that in the crushing season 200607, the cost of cultivation of sugarcane was determined as Rs. 102.28 per quintal and the SAP was fixed as Rs. 125/ per quintal for normal varieties, Rs. 130/ for early maturing varieties and Rs. 122.50 for rejected varieties. Notice can be taken of the fact that the cost of cultivation of sugarcane for the present crushing season has been determined as Rs. 114.09 per quintal and even then the same SAP has been maintained, which obviously means that reasonable return to the farmers has decreased to a considerable extent. The State Government was fully conscious of the increased cost of sugarcane cultivation/growing/sowing and also of the expectation of the cane growers to have a reasonable price of their produce, but the State Government, in the interest and for the benefit of the industry did not enhance the price already fixed for the previous season.

119. The State Government considered the reason of over production of sugar in the previous season for the huge losses suffered by the sugar industry and the low price that it fetched to the sugar industry, both in national and international market and being of the view that the same position shall continue in this crushing season also and, therefore, if the State decided not to enhance the SAP and fixed the SAP on the same price, it obviously means that the interest of the sugar mills regarding margin of profit and paying capacity were such factors, which were in due consideration of the State Government, while determining the SAP.

120. This also persuades us to hold that the State Government had in its mind all the relevant factors the paying capacity and the profitability of the sugar factories etc. as put forth by the petitioners for protecting the interest of the sugar mills, while fixing the SAP.

121. It would be apposite to reiterate that the SPOT price index does not show that the price of sugar had gone, at any point of time, below Rs. 1400/ per quintal as against the FUTURE price index, on which reliance has been placed by the petitioners, showing the trend to be less than Rs. 1200/ per quintal, though both the prices would be subject to certain taxes.

122. Our conclusion, therefore, is that the petitioners have utterly failed to establish that the State Government while determining the SAP, did not take into account the prevalent market price of sugar and that the losses incurred to the sugar industry making the prices highly excessive, which will necessarily lead to losses, whereas the State Government provenly had considered the factum of

loss said to have been incurred to the sugar factories in previous crushing season alongwith the reason for such loss and the probable further low market price, though the State Government was speculative in its assessment. The State Government also considered the profitability aspect of the sugar mills.

123. In fact, the considerations made by the State Government do not spell out anything about the cane growers' interest. By maintaining the same SAP for the present crushing season as that of the crushing season 200607, it needs no calculation to say that the margin of profits (reasonable return) to the farmers has considerably decreased, looking to the increased cost of cultivation and growing of sugarcane.

124. The argument that the SAP is very high and has been arbitrarily fixed, is based on the plea that the U.P. Council of Sugarcane Research, Shahjahanpur, was not competent to determine the cost of production/cultivation of sugarcane and, therefore, no sanctity could be attached to the data provided by it. Their plea is that the determination made by the CACP should have been adhered to.

125. The determination made by the CACP, as already observed, is not the determination of remunerative price of sugarcane. The SAP has to be determined by taking into consideration various factors and if the plea is accepted, it would mean that whatever price is fixed as SMP taking into consideration the factors enumerated in Clause 3(1) of the Control Order, 1966, there would be no scope for the State Government to fix any enhanced SAP.

126. This argument stands repelled by the Constitution Bench judgment in the case of U.P. Cooperative Cane Union Federation, wherein it is specifically held that the SAP has to be higher than the SMP. To what extent, it should be high, is a matter which can always be a subject matter of argument. In case the SAP suffers from any arbitrariness and excessive high fixation, of course, judicial review would be possible but if the Court is satisfied that, it is a reasonable and uniform SAP fixed, there would be little scope for the Court to intervene.

127. The U.P. Council of Sugarcane Research, Shahjahanpur is an expert body, consisting of persons having expertise in agriculture and in the matter of sugarcane cultivation and many other officers having scientific expertise, relating to various aspects of sugarcane production. The report of the Council shows that it analyses each and every aspect of sugarcane cultivation and the cost of cultivation/growing of sugarcane has been determined after collecting the necessary data for each stage from field preparation till harvesting and supervision. Report shows that data has been collected and analysed under different heads e.g. field preparation, seed preparation, planting, ratoon preparation, irrigation, fertilizers and application, plant protection, interculture operation, harvesting, supervision; and under these heads there are subheads which detail other specifications. Further the report under these heads shows that other necessary details have also been taken into consideration.

128. We, therefore, find no reason to disbelieve the determination made by it for

the cost of production of sugarcane, as no material or evidence has been brought on record to discredit its testimony, except the oral argument that it is a research institute, which does not have experience or expertise of open farms, where the farmers work. The report of the U.P. Council of Sugarcane Research, Shahjahanpur is based on average yield of Seorahi, Shahjahanpur and "Muzaffarnagar, i.e. three cane research farms and is not merely a theoretical report.

129. On the assumption that the said data has been since provided by a research institute, therefore, it necessarily has to be discarded or to be treated as inadmissible, could not be proved by the petitioners for any reasons. Secondly, the same very research institute has provided inputs to CACP for determining the SMP, a fact which is evident by the letter dated 21.6.06, which was sent for the crushing season 2007/08.

130. In the case of U.P. Cooperative Cane Union Federation, the apex Court held that there is no justifiable reason why a sugarcane grower should suffer only on account of the fact that he happens to fall within the reserved area of a mill run by the U.P. State Sugar Corporation or in the cooperative sector. The State Government fixes uniform prices and not factory wise. Such a fixation of price is, therefore, more just and equitable from the point of view of a sugarcane grower.

131. It has also been brought to our notice by the respondents that in the year 1996/97, the difference between the SAP and the SMP was about 57% (SAP Rs. 721 and SMP Rs. 45.90), but the said SAP was held to be a valid price by the apex Court, whereas in the present crushing season, the difference between the SAP and SMP is only 54% (SAP Rs. 125/ and SMP Rs. 81.18) and, therefore, also it cannot be said to be an arbitrary determination or an exaggerated price. Thus, the basic pleas of the petitioners that the loss to the sugar industry and the downward trend in the market price of sugar in national and international market because of record production of sugar, were not considered by the State Government, stand rebutted by the deliberations made by the State Government and the observations made by us in this order.

132. Keeping in mind the exercise done by the State Government, the factors taken into consideration by it and the findings recorded by us on the pleas raised by the parties and for the reason that the SAP is the remunerative price of the sugarcane for payment to the cane growers, which is bound to be higher than the SMR the SAP so fixed does not appear to be unreasonable so as to be interfered by the Court.

133. We thus uphold the SAP fixed for various varieties of sugarcane for the crushing season 2007/08.

134. We, therefore, direct that henceforth, the petitioners shall pay the SAP at the price determined by the State Government and the arrears of difference of the SAP as against the payment made in pursuance of the interim order passed by this Court, shall also be paid to the cane growers within a maximum period of

two months.

136. With theaforesaid directives, the petitionsaredismissed. .